

Regular Session, 2010
HOUSE BILL NO. 1146
BY REPRESENTATIVE LANDRY

ACT No. 738

1 AN ACT

2 To amend and reenact Children's Code Articles 1244(A), 1245(A), 1247(B), and 1253(A),
3 to enact Children's Code Article 1244.1, and to repeal Children's Code Articles
4 1245.1 and 1258, relative to intrafamily adoptions; to provide for the filing of an
5 opposition; to provide for notice; to provide for a determination regarding the
6 appointment of an attorney by the court; to provide for time periods; to provide for
7 the refusal of a decree; and to provide for related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. Children's Code Articles 1244(A), 1245(A), 1247(B), and 1253(A) are
10 hereby amended and reenacted and Children's Code Article 1244.1 is hereby enacted to read
11 as follows:

12 Art. 1244. Consent of parent

13 A. Except as otherwise provided herein, any parent may execute an authentic
14 act consenting to the adoption of his child in an intrafamily adoption, including a
15 waiver of service or notice for any subsequent proceeding.

16 * * *

17 Art. 1244.1. Opposition to intrafamily adoption; time limitations; appointment of
18 counsel; attorney fees

19 A. A parent, whose rights have not been terminated in accordance with Title
20 X or XI or who has not previously consented to the adoption in accordance with
21 Article 1244, may oppose the adoption of his child by filing a clear and written
22 answer and opposition to the adoption. The answer and opposition shall be filed
23 with the court within fifteen days from the time of service of the filing of an
24 intrafamily adoption petition.

1 B. Upon receipt of the opposition, the court shall appoint an attorney to
 2 represent the child, subject to the limitations in Article 1121. Neither the child nor
 3 anyone purporting to act on his behalf may be permitted to waive this right. The
 4 costs of the representation of the child shall be taxed as costs of court.

5 C. When the opposition provides that the parent cannot afford to hire an
 6 attorney, the court shall determine whether due process requires the appointment of
 7 counsel within twenty-one days of the filing of the opposition.

8 D. Notice shall be served in accordance with Articles 1133 and 1134 on the
 9 opposing parent, the legal custodian, the petitioner, counsel appointed for the child,
 10 counsel appointed for the parent, and the other parent not consenting to the adoption
 11 pursuant to Article 1144 or whose rights have not previously been terminated.

12 Art. 1245. Parental consent not necessary; burden of proof

13 A. The consent of the parent as required by Article 1193 may be dispensed
 14 with upon proof by clear and convincing evidence of the required elements of either
 15 Paragraph B or C of this Article at the hearing on the opposition and petition.

16 * * *

17 Art. 1247. Service of process

18 * * *

19 B. Except when waived in accordance with the provisions of Title XI or XII,
 20 notice shall be issued by the clerk and served, together with a copy of the petition,
 21 on every parent whose consent to the adoption is required pursuant to Article 1193
 22 and whose parental rights have not been terminated by a court of competent
 23 jurisdiction, and shall state:

24 Notice

25 Louisiana law provides that under certain circumstances your consent to the
 26 adoption of your child may be dispensed with and you can permanently lose your
 27 rights as a parent by final decree of adoption. An intrafamily adoption petition has
 28 been filed requesting the court to grant an adoption and terminate your parental
 29 rights to your child. A copy of the petition is attached to this notice. If you do not
 30 file a written answer and opposition to the adoption within fifteen days of receiving

1 this notice you will lose the right to object to the adoption. If you choose to file a
2 written answer and opposition to the adoption you must file it with the clerk of court
3 at _____. A court hearing of your case has been scheduled for the ____
4 day of ____ at the ____ division of ____ court in the parish of _____. ~~At this hearing,~~
5 ~~you may consent to the adoption or you may oppose the adoption.~~ If you fail to
6 appear, the court can grant the adoption and terminate your rights despite your
7 absence. If the court at the trial finds that the facts set out in the petition are true and
8 that adoption is in the best interests of your child, the court can enter a judgment
9 ending your rights to your child. If the judgment terminates your parental rights, you
10 will no longer have any rights to visit or to have custody of your child or make any
11 decisions affecting your child, and your child will be legally freed to be adopted.
12 This is a very serious matter. You should contact an attorney immediately so that
13 you can be prepared for the court hearing. You have the right to hire an attorney and
14 to have him or her represent you. If you cannot afford to hire an attorney, ~~you may~~
15 ~~call the~~ and you oppose the adoption, your opposition must request that the court
16 determine if you have the right to have an attorney appointed. You may also call the
17 telephone number on the attached form for information concerning free legal aid.
18 ~~If free legal aid is not available, the court will appoint an attorney if the court finds~~
19 ~~that you are unable to pay some or all of the costs.~~ Whether or not you decide to hire
20 an attorney, you have the right to attend the hearing of your case, to call witnesses
21 on your behalf, and to question those witnesses brought against you. If you have any
22 questions concerning this notice, you may call the telephone number of the clerk's
23 office which is _____.

* * *

Art. 1253. Hearing; petition for intrafamily adoption

26 A. The court shall ~~sign the order setting the time and place for the hearing~~
27 ~~of~~ hear the petition for intrafamily adoption ~~not less than thirty nor more than sixty~~
28 ~~days after the filing of the adoption petition~~ within sixty days if there is no
29 opposition or within ninety days if there is opposition. The court may extend this
30 time for up to sixty days for good cause, which may include a showing by the

1 department that it has been impossible to gather the necessary data within the time
 2 prescribed. The court may reduce the time to a minimum of fifteen days with written
 3 approval of the department and the petitioner. ~~If an extension of time is granted, the~~
 4 ~~court shall set a new hearing date and shall require the petitioner to report to the~~
 5 ~~court, either at that hearing, or before, in detail concerning the progress of the child's~~
 6 ~~adoptive placement.~~

7 * * *

8 Section 2. Children's Code Articles 1245.1 and 1258 are hereby repealed in their
 9 entirety.

10 Section 3. The Louisiana State Law Institute is hereby directed to prepare comments
 11 to the provisions of this Act.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____