

MAINE STATE LEGISLATURE

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ONE HUNDRED AND THIRD LEGISLATURE

Legislative Document

No. 1296

H. P. 895

House of Representatives, March 2, 1967

Referred to Committee on Judiciary. Sent up for concurrence and ordered printed.

BERTHA W. JOHNSON, Clerk

Presented by Mr. Beliveau of Rumford.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SIXTY-SEVEN

AN ACT Relating to Adoption.

Be it enacted by the People of the State of Maine, as follows:

Sec. 1. R. S., T. 19, § 531, repealed and replaced. Section 531 of Title 19 of the Revised Statutes is repealed and the following enacted in place thereof:

§ 531. Persons who may adopt and be adopted

The following persons, whether resident or nonresident in this State, may petition the probate court to adopt a person, regardless of the latter's age, and to change his or her name:

1. Husband and wife jointly. A husband and wife jointly, or either the husband or wife if the other spouse is the parent of the person to be adopted;
2. Unmarried person. An unmarried person who is at least 21 years of age;
3. Separated person. A married person at least 21 years of age who is legally separated from the other spouse.

The following persons are eligible to be adopted:

1. Legal resident. Any person having a legal residence in this State;
2. Legal custodian. Any person whose legal custodian has a legal residence in this State.

If the petitioner is a legal resident of this State, the petition shall be filed with, and acted upon by, the probate court for the county in which the petitioner resides at the time of such filing. If the petitioner is not a legal resident of this State at such time, jurisdiction of the proceedings is conferred upon the probate

court for the county in which the person whose adoption is sought then has his or her legal residence or in which his or her legal custodian then resides.

Sec. 2. R. S., T. 19, § 532, repealed and replaced. Section 532 of Title 19 of the Revised Statutes is repealed and the following enacted in place thereof:

§ 532. Consent

Before such petition is granted, written consent, acknowledged as provided, must be given:

1. Person whose adoption is sought. By the person whose adoption is sought if he or she has attained the age of 14 years prior to the time of the decree granting the adoption; and

2. Living parents. By each of his or her living parents who is considered by the court capable of giving consent unless considered by the court unfit to have the custody of such person; or

A. Legal custodian. When such parents are divorced or legally separated, by the person or agency of the State to whom legal custody of such person has been awarded; or

B. Society or agency. When all parental rights in and to such person have been surrendered and released, as provided, by the society or agency to which such surrender and release were made; or

C. Department of Health and Welfare. When such person has been committed to the custody of the Department of Health and Welfare under Title 22, section 3792, and the commitment order is still in effect, by said department; or

D. Legal guardian. When there is no parent or society or agency capable of giving the consent, as provided, by the legal guardian of such person, or if there is no such guardian, by some person appointed by the court to act in the proceedings as the next friend of such person.

Such written consent when given by the person to be adopted or the mother of an illegitimate child shall be acknowledged before the judge of the court having jurisdiction of the petition or someone appointed by the judge for the purposes of the particular case and may be withdrawn by written notice thereof filed in such court within 30 days after the filing of the consent. The effect of the written consent shall be explained by the judge to the person executing the same. In all other cases, the consent is sufficient if acknowledged before a notary public and may be withdrawn only at the discretion of the court.

The consent of the legal father of the person whose adoption is sought shall not be required when he denied paternity of such person but in lieu thereof, his statement acknowledged before a notary public that he is not the father of such person may be accepted.

Personal notice of the petition for adoption shall be given to each living legal parent residing within the State who has not consented thereto in the manner above provided or surrendered and released his or her parental rights as pro-

vided or has had his or her parental rights terminated as provided in Title 22, sections 3792 and 3793; and such notice as the court deems proper shall be given to any such parent residing elsewhere or whose residence is unknown and cannot be ascertained with reasonable diligence.

The parents or surviving parent of a minor child, or the mother, if such child has no legal father or the legal father thereof denies paternity thereof in the manner stated, may, with the approval of the judge of probate of any county within the State and after a determination by such judge of probate that a surrender and release is for the best interests of all parties, surrender and release all parental rights in and to such child and the custody and control thereof to an incorporated and licensed society, asylum, child placing agency or home in this State, or to the State Department of Health and Welfare for the purpose of enabling such incorporated society, asylum or home, or State Department of Health and Welfare to have such child adopted by some suitable person, and its name changed when a change is desirable, and the child made an heir-at-law under this chapter. The effect of this surrender and release shall be fully explained by the judge of probate to the parent or parents executing the same. The surrender and release approved shall be filed with the petition of adoption of said child in the probate court. In such cases the consent to adoption may be given by such incorporated society, asylum or home, or State Department of Health and Welfare.

The effect of this surrender and release, which shall be executed in duplicate and be transferable, together with the custody and control of such child, by such department to any such society or agency, or by such society or agency to another such society or agency, or to such department, shall be fully explained by the judge of probate to the parent or parents executing the same; and one of said duplicates, and a duplicate original of any such transfer, shall be filed by the judge in his court.

Sec. 3. R. S., T. 19, § 534, repealed and replaced. Section 534 of Title 19 of the Revised Statutes is repealed and the following enacted in place thereof:

§ 534. Records and hearings confidential

Unless the court shall otherwise order, all hearings on petitions for adoption shall be confidential, and shall be attended only by such persons and their attorneys as have a direct interest in the case or the work of the court. The court may, when such persons are reasonably available, require the presence and testimony of the petitioners, the parents or other custodian and the person to be adopted, and such other persons, including persons making a report requested by the court, deemed necessary to the disposition of the petition. Any such report shall be admissible in evidence, subject to the right of any interested party to require that the person making it appear as a witness, if reasonably available, and subject himself to examination. Whoever participates in making a report under this section or participates in judicial proceedings resulting therefrom shall be immune from civil or criminal liability, unless such person acted in bad faith or with malicious purpose.

All probate court records relating to any adoption decreed on or after August 8, 1953 are declared to be confidential. The probate court shall keep the records

of such adoptions segregated from all other court records. Such adoption records may be examined only upon authorization by the judge of the probate court. In any case where it is considered proper that such examination be authorized, the judge may in lieu of such examination, or in addition thereto, grant authority to the register of probate to disclose any information contained in such records by letter, certificate or copy of the record.

Sec. 4. R. S., T. 19, § 535, repealed and replaced. Section 535 of Title 19 of the Revised Statutes is repealed and the following enacted in place thereof:

§ 535. Legal effect; descent of property

Upon entry of the decree of adoption, the relationship of parent and child and all the legal rights, privileges, duties, obligations, and all other legal consequences of the natural relationship of child and parent shall thereafter exist between the adopted person and the adoptive parents the same as though the child were born to the adoptive parents in lawful wedlock. The adopted child or the issue of such child shall be entitled to inherit real and personal property from and through the adoptive parents and be considered as coming within Title 18, section 1005, and the adoptive parents shall be entitled to inherit real and personal property from and through the adopted child as though the child were born to the adoptive parents in lawful wedlock.

Upon entry of the decree of adoption, the relationship of parent and child between the adopted person and the persons who were his parents just prior to the decree of adoption shall be completely severed and all the legal rights, privileges, duties, obligations and other legal consequences of the relationship shall cease to exist, including the right of inheritance, except that where the adoption is by the spouse of the child's parent, the relationship of the child to such parent shall remain unchanged by the decree of adoption.

Sec. 5. R. S., T. 19, § 538, repealed and replaced. Section 538 of Title 19 of the Revised Statutes is repealed and the following enacted in place thereof:

§ 538. Annulment of adoption decree

Any judge of probate may, after notice and hearing and for good cause shown, reverse and annul any decree of the probate court in his county, whereby any child has been adopted under the provisions of this chapter. After 2 years from the date the adoption decree is entered, any irregularity in the proceeding shall be deemed cured and the validity of the decree shall not thereafter be subject to attack on any such ground in any collateral or direct proceeding.

After any decree of adoption has been annulled, the register of probate shall forthwith transmit a certified copy of the annulment to the State Registrar of Vital Statistics.

STATEMENT OF FACTS

This bill is based on the result of recommendations made by an advisory committee on adoption of the Bureau of Social Welfare. This committee was com-

posed of representatives of adoption agencies, the major religious faiths and the legal profession.

Principles of sound adoption practice and procedures are constantly being evaluated with the objective of improving this important social-legal service. Current Maine statutes do not reflect some of the new or refined thinking on this subject. This bill will update the Maine adoption statute and includes most of the progressive thinking now available and in use nationwide.