

Regular Session, 2011

HOUSE BILL NO. 439

BY REPRESENTATIVE BARROW

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

CHILDREN/ADOPTION: Provides procedures for the adoption of children

1 AN ACT

2 To amend and reenact Children's Code Articles 1112, 1133, 1134, 1135, 1137, 1138, 1142,
3 1180, 1224, and 1226 and to repeal Children's Code Article 1225, relative to
4 adoption procedures; to provide for surrenders; to provide for consent; to provide
5 filing requirements; to provide for service; to provide procedures relative to
6 unknown fathers; to provide for opposition; to provide for a pretrial process; to
7 provide for the termination of parental rights; to provide for venue and jurisdiction;
8 and to provide for related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. Children's Code Articles 1112, 1133, 1134, 1135, 1137, 1138, 1142, 1180,
11 1224, and 1226 are hereby amended and reenacted to read as follows:

12 Art. 1112. Inability due to court intervention

13 A. Except as provided herein, a ~~parent may not execute a private surrender~~
14 ~~once~~ voluntary Act of Surrender is not effective if it is executed after custody of that
15 child has been removed from the parent by order of a juvenile court and the child has
16 been placed in the legal custody of ~~any person or agency or if the child is the subject~~
17 ~~of a pending termination of parental rights proceeding~~ the department.

18 B. ~~Upon~~ After notice to the department and after a contradictory hearing, if
19 requested by the department, a parent may, with approval of the court, consent in
20 open court in accordance with Article 1195 or execute a ~~private surrender~~ voluntary

1 Act of Surrender of a child in the legal custody of the department ~~to~~ in favor of the
2 foster parent with whom the child was placed by the department.

3 * * *

4 Art. 1133. Notice of filing of surrender; service upon resident alleged or adjudicated
5 father

6 Notice of the filing of a mother's ~~surrender~~ Act of Surrender shall be
7 ~~promptly~~ served upon the alleged or adjudicated father. Notice of the filing shall not
8 be required if an alleged or adjudicated father waives notice of service. If he resides
9 within this state, service shall be ~~made by either registered or certified mail, return~~
10 ~~receipt requested, postage prepaid and properly addressed to his last known address~~
11 either personal or domiciliary and in accordance with the Code of Civil Procedure.

12 Art. 1134. ~~Notice of filing of surrender; service~~ Service upon nonresident alleged
13 or adjudicated father

14 ~~Notice of the filing of a mother's surrender shall be promptly served upon the~~
15 ~~alleged or adjudicated father. Notice of the filing shall not be required if an alleged~~
16 ~~or adjudicated father waives notice of service. If he~~ an alleged or adjudicated father
17 does not reside within this state, service shall be made by either registered or
18 certified mail, return receipt requested, postage prepaid and properly addressed to his
19 last known address or in accordance with the Code of Civil Procedure.

20 Art. 1135. Unidentified fathers; diligent effort; order

21 A. If the identity of the father of the child is unknown and is not reasonably
22 ascertainable, the court, upon motion of the agency or attorney for the prospective
23 adoptive parent and upon finding that a diligent effort has been made to identify the
24 father, shall terminate the ~~father's~~ parental rights of the father.

25 B. For purposes of this Article, the existence of all of the following is
26 sufficient proof that the father is unknown and a diligent effort was made to identify
27 him:

28 (1) A declaration by the ~~surrendering~~ mother in the ~~act of surrender~~ Act of
29 Surrender that the identity of the father is unknown and not reasonably ascertainable.

1 (2) A certified copy of the ~~child's~~ birth certificate of the child with no one
2 indicated thereon as the father of the child.

3 (3) A certificate from the putative father registry indicating that no person
4 is listed or registered as the ~~child's~~ father of the child, ~~which certificate must be dated~~
5 ~~more than~~ at least fifteen days after the date the ~~act of surrender~~ Act of Surrender
6 was executed by the ~~surrendering~~ mother.

7 (4) A certificate from the clerk of court in the parish in which the child was
8 born indicating ~~that no acknowledgment with respect to this child has been recorded~~
9 an absence of a recorded act of paternity, ~~which certificate must be dated more than~~
10 at least fifteen days after the date the ~~act of surrender~~ Act of Surrender was executed
11 by the ~~surrendering~~ mother.

12 * * *

13 Art. 1137. Notice of opposition to adoption by alleged or adjudicated father; time
14 limitations; appointment of counsel for the child; scheduling of hearing;
15 paternity testing

16 A. An alleged or adjudicated father or his representative, if applicable, may
17 oppose the proposed adoption of his child by filing with the court a clear and written
18 declaration of ~~intention~~ intent to oppose the adoption. The declaration shall contain
19 his contact information and a statement regarding his paternity of the child. ~~The~~
20 ~~notice of opposition~~ It shall be filed with the court indicated in the notice of filing
21 ~~of surrender~~ within fifteen calendar days after ~~the time~~ he was served with the notice
22 of ~~surrender~~ the filing of the Act of Surrender, or ~~from the time he was served with~~
23 ~~notice of the filing of~~ an adoption petition in the event ~~that~~ no surrender was
24 ~~executed or filed.~~ The fifteen-day time period in this Subsection is prescriptive.

25 B. Upon receipt of the ~~notice of opposition~~ declaration of intent to oppose,
26 the court shall appoint an attorney to represent the child, subject to the limitations ~~set~~
27 ~~out~~ in Article 1121. Neither the child nor anyone purporting to act on his behalf may
28 be permitted to waive this right requirement. The costs and fees for ~~of the child's~~
29 representation of the child shall be taxed as costs of court.

1 C. The court shall ~~set the opposition for contradictory hearing, which hearing~~
2 ~~shall be held~~ initiate a pretrial process within twenty days of the filing of the
3 ~~opposition.~~ declaration of intent to oppose. The court shall not order visitation until
4 after the trial on the merits of the opposition of the father and only if he successfully
5 established his right to visitation, unless a previous judgment of custody or visitation
6 is in effect. The court shall schedule a trial on the merits of the opposition of the
7 father no later than forty-five days from the date of the filing of the declaration of
8 intent to oppose. The court may grant one continuance for good cause shown.

9 D. ~~Notice of the hearing~~ All pretrial and trial notices shall be served in
10 accordance with Articles 1133 and 1134 on the opposing father, the prospective
11 adoptive parents, the legal custodian, counsel appointed for the child, and the mother
12 of the child through the agency to whom the child was placed or through the attorney
13 who represented the mother in a private surrender unless otherwise waived in the Act
14 of Surrender ~~executed pursuant to Article 1122.~~

15 E. If paternity is ~~at issue~~ disputed, on its own motion or motion of any party,
16 the court shall ~~issue an order for immediate~~ blood or tissue sampling in accordance
17 with the provisions of R.S. 9:396 et seq. ~~and shall order an expedited report~~ The cost
18 of the tests shall be paid by the opposing father; however, if the court finds that
19 paternity was unreasonably disputed, it may allocate expenses as court costs to be
20 reimbursed to the opposing father. The hearing resolving this issue shall be held at
21 the earliest time that the results of the testing can be reported to the court.

22 F. If the opposing father does not timely file a declaration of intent to
23 oppose, the court shall, upon motion, render a default judgment declaring his right
24 to object is waived, any parental rights are terminated, and the child is free to be
25 adopted.

26 Art. 1138. Hearing of opposition to adoption; establishment of parental rights

27 A. At the ~~hearing~~ trial on the merits of the opposition, the alleged or
28 adjudicated father ~~must establish his parental rights~~ shall prove his parental rights by
29 acknowledging ~~that he is the father of~~ paternity of the child and ~~by proving that he~~

1 ~~has manifested a~~ parental fitness and a prior substantial commitment to his parental
2 responsibilities ~~and that he is a fit parent of his child.~~

3 B. Proof of ~~the father's~~ substantial commitment to his parental
4 responsibilities requires a showing, in accordance with his means and knowledge of
5 the mother's pregnancy or the child's birth, that he ~~either~~ did all of the following:

6 (1) Provided financial support, including but not limited to the payment of
7 consistent support to the mother during her pregnancy, contributions to the payment
8 of the medical expenses of pregnancy and birth, or contributions of consistent
9 support of the child after birth; ~~that he~~.

10 (2) ~~frequently~~ Frequently and consistently visited the child after birth; ~~and~~
11 ~~that he is~~ .

12 (3) As of the date of trial, now willing and is able to assume legal obligations
13 and physical care of the child without depending exclusively on others.

14 (2) ~~Was willing~~ (4) Attempted to provide ~~such~~ support and to frequently and
15 consistently visit the child and ~~that he made reasonable attempts while reasonably~~
16 attempting to manifest ~~such~~ a parental commitment, ~~but~~ was unreasonably thwarted
17 ~~in his efforts~~ by the mother or her agents, and ~~that he~~ is now willing and able to
18 assume legal obligations and physical care of the child without depending
19 exclusively on others.

20 C. The child, the mother of the child, and the prospective adoptive parent or
21 legal custodian may offer rebuttal evidence limited to the issues enumerated in
22 Paragraphs A and B of this Article. ~~However, the~~ The primary consideration shall
23 be, and the court shall accept evidence concerning, the best interests of the child.

24 D. If the court finds ~~that~~ the alleged or adjudicated father has failed to
25 establish his parental rights, it shall decree that ~~his rights are terminated~~ the child is
26 free to be adopted.

27 E. If the court finds that the alleged or adjudicated father has established his
28 parental rights, ~~the court~~ it shall declare that ~~no~~ the proposed adoption may not be
29 granted without his consent. The court ~~may~~ shall also order the alleged or

1 adjudicated father to reimburse the department, ~~or the licensed private~~ adoption
 2 agency, ~~or other agency~~, or whoever has assumed financial liability for ~~such costs~~
 3 the child, all or part of the medical expenses incurred for the mother and the child in
 4 connection with the birth of the child, a sum for child support in accordance with
 5 R.S. 9:315 et seq. retroactive to the date of the filing of the declaration of intent to
 6 oppose, and a portion of court costs, including the costs and fees of the attorney for
 7 the child. The court may order the opposing father to post security prior to trial.

8 F. If the child has bonded with the prospective adoptive parents or has
 9 attained the age of one year, the court may consider the recommendations of a child
 10 custody expert before ordering a custody plan. The cost of this recommendation may
 11 be taxed as court costs.

12 * * *

13 Art. 1142. ~~Order Judgment~~ declaring parental rights terminated; motion; certificates

14 A. ~~If no opposition is timely received by the court, the court shall, upon~~
 15 ~~motion, render an order declaring the rights of the parents terminated.~~

16 ~~B. The motion shall be accompanied by~~ Before a judgment of adoption may
 17 be rendered, the prospective adoptive parent shall file a certified copy of the child's
 18 birth certificate, a certificate from the putative father registry of the birth state
 19 indicating whether any act of paternity, formal acknowledgment ~~by authentic act or~~
 20 judgment of paternity has been recorded, and a certificate from the clerk of court in
 21 and for the parish in which the child was born indicating whether any act of
 22 paternity, formal acknowledgment ~~by authentic act, legitimation by authentic act, or~~
 23 judgment of ~~filiation~~ paternity has been recorded relative to this child.

24 ~~C. If the clerk reports that a legitimation by authentic act has been duly~~
 25 ~~recorded by a father, the court shall deny the motion unless the father's parental~~
 26 ~~rights have been terminated in accordance with Title X or the father has executed a~~
 27 ~~surrender in accordance with this Title or has given his consent to the adoption in~~
 28 ~~accordance with Article 1195.~~

1 ~~D. B.~~ B. If any of these certificates identify an alleged or adjudicated father who
2 has not previously been served with notice of the ~~mother's act of surrender, the~~
3 ~~alleged or adjudicated father pending adoption, he~~ shall be served with a copy of the
4 motion to terminate his parental rights or petition for adoption and given an
5 opportunity to be heard in accordance with Articles 1132 through 1141, ~~unless any~~
6 of the following occur:

7 ~~(1) The alleged or adjudicated father's parental rights have been terminated~~
8 ~~by a judgment in accordance with Title X.~~

9 ~~(2) The alleged or adjudicated father has executed an act of surrender in~~
10 ~~accordance with this Title.~~

11 ~~(3) The alleged or adjudicated father has consented to the child's adoption~~
12 ~~in accordance with Article 1195.~~

13 ~~(4) The alleged or adjudicated father has executed a release of claims in~~
14 ~~accordance with Article 1196.~~

15 * * *

16 Art. 1180. Venue and jurisdiction in adoption

17 A. A proceeding for the adoption of a child may be commenced in ~~either~~ any
18 of the following:

19 (1) The juvenile court in the parish of the domicile of the petitioner.

20 (2) The juvenile court in the parish of the domicile of the custodian of the
21 child.

22 (3) The juvenile court in the parish in which a ~~voluntary act of surrender an~~
23 act of intent to surrender or an Act of Surrender has been executed ~~with respect to~~
24 ~~the child to be adopted.~~

25 (4) The juvenile court in which the child has been adjudicated a child in need
26 of care or in which the child in need of care proceeding is pending.

27 (5) The juvenile court which previously terminated parental rights of a parent
28 with respect to the child to be adopted.

CODING: Words in ~~struck through~~ type are deletions from existing law; words underscored are additions.

1 B. An attorney at law named as representative of the prospective adoptive
2 parent shall not be deemed the legal custodian of the child for purposes of proper
3 jurisdiction or venue.

4 C. Upon filing of the ~~act of voluntary surrender approved by the court~~
5 ~~according to Article 1131(C), the court of competent venue and jurisdiction wherein~~
6 ~~the surrender is filed~~ Act of Surrender or petition for adoption, that court shall have
7 exclusive, original jurisdiction over all issues ~~of custody and~~ related to the adoption
8 of the child during the pendency of the proceedings, unless the child is in the custody
9 of the Department of Children and Family Services.

10 * * *

11 Art. 1224. Service of process

12 A. ~~A copy of the petition for private adoption together with all exhibits shall~~
13 ~~be served by registered or certified mail, return receipt requested, postage prepaid,~~
14 ~~or by commercial courier as defined in R.S. 13:3204(D), when the person to be~~
15 ~~served is located outside of this state, and properly addressed to the department.~~

16 B. ~~Except when waived, notice of the filing of the petition shall be served~~
17 ~~on any parent whose parental rights have not been terminated by a court of~~
18 ~~competent jurisdiction.~~

19 C. ~~If the adoption petition names an alleged or adjudicated father and his~~
20 ~~parental rights have not been terminated by a court of competent jurisdiction, he~~
21 ~~shall be served with notice of the filing of the petition in accordance with Articles~~
22 ~~1133, 1134, and 1136~~ A copy of the adoption petition shall be served on any person
23 who may possess the right to notice and a right to be heard, in accordance with the
24 Code of Civil Procedure and thereafter, his rights shall be determined in accordance
25 with the provisions of Articles 1137 through 1143.

26 * * *

27 Art. 1226. Service; nonresident parent

28 If a ~~parent upon whom service is required under Article 1224~~ person alleged
29 to be a father or who may possess the right to notice and a right to be heard does not

1 reside within this state, service shall be made ~~by registered mail to the address~~
2 ~~indicated in the petition, return receipt required,~~ in accordance with the Code of Civil
3 Procedure not less than thirty days prior to commencement of the hearing on the
4 petition.
5 Section 2. Children's Code Article 1225 is hereby repealed in its entirety.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

Barrow

HB No. 439

Abstract: Provides procedures for the opposition to an adoption.

Present law provides that once the court removes the child from the parent and places him in the legal custody of another person or agency, the parent may not execute a private surrender without court approval.

Proposed law provides that a voluntary surrender is not effective if executed after custody of the child has been removed from the parent and given to the department, but the parent may consent to the adoption in open court or execute a surrender with court approval.

Present law provides that notice of a mother's surrender shall be served upon the alleged or adjudicated father by registered or certified mail, return receipt requested, postage prepaid, if he resides in this state and has not waived service.

Proposed law provides that service shall be either personal or domiciliary.

Present law provides for notice to be served by registered or certified mail, return receipt requested, postage prepaid, upon a father who resides in another state.

Proposed law retains present law and provides that service may also be made in accordance with the Code of Civil Procedure.

Present law provides a procedure to terminate the parental rights of an unknown father.

Proposed law retains present law, but adds the requirement that the identity of the father is not reasonably ascertainable from the mother, the birth certificate, the putative father registry, or court filings.

Present law provides a procedure for an alleged or adjudicated father to oppose an adoption.

Proposed law retains present law and requires the opposition to contain the father's contact information and a statement regarding his paternity. Also provides that "days" means calendar days, and the time period for filing is prescriptive.

Present law provides for a contradictory hearing on the opposition.

Proposed law changes present law and requires a pretrial process and prohibits the court from ordering visitation until a trial on the merits which shall be within 45 days of the filing of the opposition. Authorizes one continuance for good cause.

Present law requires notice of the hearing to be served on certain persons.

Proposed law retains present law and additionally requires notice to be served on the prospective adoptive parents.

Present law allows for blood or tissue sampling when paternity is an issue.

Proposed law retains present law and provides that the cost of the paternity test shall be paid by the opposing father, but he may be reimbursed if the court determines that paternity was unreasonably disputed.

Proposed law provides that if an opposing father does not timely object, the court shall enter a default judgment terminating parental rights and freeing the child for adoption.

Present law requires the opposing father to establish parental rights, a commitment to the child, and fitness and allows rebuttal evidence.

Proposed law retains present law but requires the father to prove he is able to assume legal obligations and the physical care of the child, without depending exclusively on others, and additionally allows prospective adoptive parents to offer rebuttal evidence.

Present law authorizes the court to order the father to reimburse whoever has financial responsibility of the child for certain expenses.

Proposed law retains present law and additionally requires the father to pay retroactive child support and court costs and may demand security prior to trial to cover these expenses.

Proposed law provides that if the child has bonded with the adoptive family or is one year of age or older, the court may consider testimony from a child custody expert.

Present law provides for acknowledgments by authentic act and legitimation by authentic act.

Proposed law deletes present law due to the complete revision of the law on filiation.

Present law provides that if a father has not been served with notice, he shall be served and given an opportunity to be heard unless his parental rights were terminated, he executed an act of surrender, he consented, or he executed a release of claims.

Proposed law deletes the exceptions to the opportunity to be heard.

Present law provides that upon the filing of a surrender or petition for adoption, that court has exclusive, original jurisdiction over all issues of custody.

Proposed law expands present law to include all issues related to the adoption.

Present law provides service of process procedures for any parent whose parental rights have not been terminated and any alleged or adjudicated father.

Proposed law provides that a copy of the petition shall be served on all person's possessing a right to notice and a right to be heard.

(Amends Ch.C. Arts. 1112, 1133, 1134, 1135, 1137, 1138, 1142, 1180, 1224, and 1226;
Repeals Ch.C. Art. 1225)