

Regular Session, 2013

HOUSE BILL NO. 578

BY REPRESENTATIVE NANCY LANDRY

(On Recommendation of the Louisiana State Law Institute)

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

ADOPTION: Provides for intercountry adoptions

1 AN ACT

2 To amend and reenact Children's Code Articles 1281.3(1), (2), (3), and (5), 1281.4(A)(1)
3 and (2), 1281.5, 1281.6(A)(introductory paragraph), 1281.7, 1281.9, the heading of
4 Chapter 2 and 1282.1(A)(introductory paragraph) and (B), 1282.2(3), 1282.5, the
5 heading of Chapter 3 and 1283.1(A)(introductory paragraph) and (B), 1283.2(B)(1),
6 1283.4, 1283.10(C), the heading of Article 1283.13, 1283.15, and 1283.16 and to
7 enact Children's Code Articles 1281.3(6), Chapter 4 of Title XII-A of the Children's
8 Code, to be comprised of Articles 1284.1 through 1284.5, and Chapter 5 of Title
9 XII-A of the Children's Code, to be comprised of Articles 1285.1 through 1285.17,
10 relative to intercountry adoptions; to provide for intercountry adoption definitions;
11 to provide for types of intercountry adoptions; to provide for procedures for
12 recognition of foreign adoption decrees; to provide for procedures for adoption of
13 foreign orphans and Hague Convention adoptees; to provide for name changes and
14 issuance of a new birth certificate; and to provide for related matters.

15 Be it enacted by the Legislature of Louisiana:

16 Section 1. Children's Code Articles 1281.3(1), (2), (3), and (5), 1281.4(A)(1) and
17 (2), 1281.5, 1281.6(A)(introductory paragraph), 1281.7, 1281.9, the heading of Chapter 2
18 and 1282.1(A)(introductory paragraph) and (B), 1282.2(3), 1282.5, the heading of Chapter
19 3 and 1283.1(A)(introductory paragraph) and (B), 1283.2(B)(1), 1283.4, 1283.10(C), the
20 heading of Article 1283.13, 1283.15, and 1283.16 are hereby amended and reenacted and

1 Children's Code Articles 1281.3(6), Chapter 4 of Title XII-A of the Children's Code,
2 comprised of Articles 1284.1 through 1284.5, and Chapter 5 of Title XII-A of the Children's
3 Code, comprised of Articles 1285.1 through 1285.17, are hereby enacted to read as follows:

4 Art. 1281.3. Definitions

5 As used in this Title:

6 (1) "Agency" or "child placing agency" includes the Department of Children
7 and Family Services, the corresponding department of any other state, and those
8 private agencies and institutions licensed for the placement of children for adoption
9 by the Department of Children and Family Services or by the corresponding
10 department of any other state. Any person offering or providing intercountry
11 adoption services shall be accredited by the Department of State in accordance with
12 the Intercountry Adoption Universal Accreditation Act of 2012.

13 (2) "Birth certificate" means ~~the child's official birth certificate~~
14 documentation of the child's record of birth acceptable to the United States
15 Citizenship and Immigration Services and, if the ~~certificate~~ document is not in
16 English, a certified translation of the ~~certificate~~ document.

17 (3) ~~"Child" means a person under seventeen years of age and not~~
18 ~~emancipated by marriage.~~ "Convention adoptee" or "Hague Convention adoptee"
19 means a child living in a Hague Convention country who is under the age of sixteen
20 at the time a Form I-800, Petition to Classify Convention Adoptee as an Immediate
21 Relative, is filed on his behalf and who is found by the Department of State and
22 United States Citizenship and Immigration Services to meet the definition of
23 "Convention Adoptee" under Section 101(b)(1)(G) of the Immigration and
24 Nationality Act and 8 CFR 1101(b)(1)(G).

25 * * *

26 (5) "Foreign orphan" means a ~~foreign-born~~ child living in a Non-Hague
27 Convention country (a) who is under the age of sixteen at the time a ~~visa petition~~
28 Form I-600, Petition to Classify an Orphan as an Immediate Relative is filed on his
29 behalf and: ~~whose parents have both died or disappeared, or abandoned or deserted~~

1 ~~him, or who has become separated or lost from both parents; whose sole surviving~~
2 ~~parent is incapable of providing for the child's care and has in writing irrevocably~~
3 ~~released the child for emigration and adoption; or who is a child born outside of~~
4 ~~marriage whose father acknowledges paternity and signs a relinquishment along with~~
5 ~~the mother.~~ who is found by the Department of State or United States Citizenship
6 and Immigration Service to meet the definition of "orphan" under Section
7 101(b)(1)(F) of the Immigration and Nationality Act and 8 CFR 1101(b)(1)(F); or
8 (b) who is under the age of eighteen and is a biological sibling of a child previously
9 adopted by the same applicant(s) who is petitioning on his behalf.

10 (6) "Hague Convention adoption" or "Hague adoption" or "Convention
11 adoption" means the adoption of a child habitually resident in any country outside
12 the United States that is a party to the Hague Adoption Convention. "Orphan
13 adoption" or "Non-Hague adoption" refers to the adoption of a child from a country
14 that is not a party to the Hague Adoption Convention.

15 Comments 2013

16 (a) Accreditation and approval is governed by Sections 201 et seq. of the
17 Intercountry Adoption Act. See 22 CFR 96. 22 CFR 96.2 defines "adoption
18 services" to include identifying a child for adoption and arranging an adoption;
19 securing the necessary consent for termination of parental rights and for adoption;
20 performing a background study on a child or a home study on a prospective adoptive
21 parent(s) and reporting on such a study; making a non-judicial determination of the
22 best interests of a child and the appropriateness of an adoptive placement for the
23 child; monitoring a case after a child has been placed with a prospective adoptive
24 parent(s) until final adoption; and when necessary on account of disruption prior to
25 final decree, assuming custody and providing or facilitating the provision of child
26 care or any other social service pending an alternative placement.

27 (b) U.S. Citizenship and Immigration Services birth certificates and other
28 documentation requirements are governed by 8 CFR 103.2.

29 (c) Definition of "foreign orphan" is found in Section 101(b)(1)(F) of the
30 Immigration and Nationality Act and 8 CFR 1101(b)(1)(F) and is referenced in 8
31 CFR 204.3.

32 (d) Definition of "convention adoptee" is found in Section 101(b)(1)(G) of
33 the Immigration and Nationality Act and 8 CFR 1101(b)(1)(F) and is referenced in
34 8 CFR 204.300 - 314.

1 Art. 1281.4. Types of adoption

2 A. This Title sets forth the exclusive procedures for intercountry adoption
3 of foreign orphans in Louisiana. There are two types of intercountry adoptions of
4 foreign orphans in Louisiana:

5 (1) ~~Recognition~~ Adoption or recognition of a foreign decree of adoption of
6 a foreign orphan from a country outside the United States that is not a party to the
7 Hague Adoption Convention.

8 (2) Adoption or recognition of a foreign ~~orphan~~ decree of adoption of a
9 convention adoptee from a country outside the United States that is a party to the
10 Hague Adoption Convention.

11 * * *

12 Comment 2013

13 A Hague Convention country is defined in 22 CFR 96.2 as a country that is
14 a party to the Convention and with which the Convention is in force for the United
15 States.

16 A current listing of Hague Convention member countries can be accessed at
17 <http://adoption.state.gov/hagueconvention/countries.php>.

18 Art. 1281.5. Prior approval of adoptive placement

19 No ~~foreign orphan~~ child who is the subject of an intercountry adoption shall
20 be placed in the home of the prospective adoptive parents prior to their obtaining a
21 certification for adoption, ~~as provided for in~~ that meets the requirements of Articles
22 1171 through 1173 and prior to approval from the United States Citizenship and
23 Immigration Services.

24 Comment 2013

25 Notice of approval is provided by the USCIS on I-171H or I-797 forms.

26 Art. 1281.6. Venue in intercountry adoption

27 A. A proceeding for ~~the an~~ an intercountry adoption of a ~~foreign orphan~~ may
28 be commenced in either:

29 * * *

1 Art. 1281.7. Persons whose consent is required

2 A. The parental rights of the parents of any child who has qualified as a
3 foreign orphan or a convention adoptee are deemed to be terminated and no further
4 consent to adoption or relinquishment of parental rights shall be required.

5 B. Consent to the adoption shall be required of ~~the~~ any custodial or
6 supervisory agency which has placed the foreign orphan for adoption, except that the
7 court may grant the adoption without the consent of ~~the~~ an agency if the court finds
8 that the adoption is in the best interest of the child and ~~there is a finding~~ that the
9 agency has unreasonably withheld its consent.

10 * * *

11 Art. 1281.9. Persons who may petition for intercountry adoption

12 A United States citizen and his spouse ~~jointly~~ who is a United States citizen
13 or has lawful immigration status may petition jointly, or an unmarried United States
14 citizen at least twenty-five years of age, may petition for intercountry adoption ~~of a~~
15 ~~foreign orphan~~. At least one petitioner shall be a domiciliary of Louisiana. When
16 one joint petitioner dies after the petition has been filed, the adoption proceedings
17 may continue as though the survivor was a single original petitioner.

18 Comment 2013

19 Requirements for the petitioner eligibility are more fully explained in 8 CFR
20 204.3. Form I-600A determines the eligibility and suitability of the prospective
21 adoption parents.

22 CHAPTER 2. NON-HAGUE CONVENTION COUNTRY ADOPTIONS

23 RECOGNITION OF FOREIGN ADOPTIONS

24 Art. 1282.1. Petition; contents; form

25 A. The petition for recognition of foreign adoption shall be styled: "In re
26 _____, Applying for Recognition of Foreign Adoption from a Non-Hague
27 Convention Country." The petition or an attached exhibit shall state:

28 * * *

29 B. The petition shall be accompanied by a certification for adoption, a
30 certified copy of the ~~Immigration and Naturalization Service~~ documentation of

1 orphan status, documentary proof of citizenship status, a copy of the child's
2 immigrant visa or resident alien card, the original or a certified copy of a valid
3 foreign adoption decree, together with a notarized translation, and the original or
4 certified copy of a valid birth certificate, together with a notarized translation, and
5 an affidavit of fees and expenses.

6 Comment 2013

7 Form I-600 is used to determine whether the child qualifies as an orphan
8 under Section 101(b)(1)(F) of the Immigration and Nationality Act, 8 CFR
9 1101(b)(1)(F), and 8 CFR 204.3(b). The requirement for documentation of orphan
10 status would be met by an IR3 or IR4 stamp on the child's visa or by approval of the
11 Form I-604 report that addresses the child's eligibility under the Immigration and
12 Nationality Act provided in a Form I-171 or Form I-797. Documentation of
13 citizenship includes a permanent resident card or certificate of citizenship. Children
14 with an IR-3 immigrant visa automatically acquire citizenship upon entry to the
15 United States and a Certificate of Citizenship is provided by the U.S. Citizenship and
16 Immigration Services.

17 Art. 1282.2. Findings

18 The court shall issue a judgment recognizing the foreign adoption and
19 rendering a final decree of adoption upon finding that:

20 * * *

21 (3) The child has qualified as a foreign orphan and is in the United States in
22 accordance with applicable ~~Immigration and Naturalization Service~~ federal
23 regulations.

24 * * *

25 Art. 1282.5. Change of name

26 The full name of the adopted child may be changed in the final decree of
27 ~~recognition of foreign~~ adoption and, if changed, the surname shall be the same as that
28 of the adoptive parent. In accordance with R.S. 40:79, the clerk of court shall
29 forward, on a form supplied by the Department of Children and Family Services, his
30 certificate of the decree to the state registrar, who shall make a new certificate of live
31 birth of the person adopted, in the new name if the name has been changed in the
32 decree.

1 CHAPTER 3. NON-HAGUE CONVENTION COUNTRY ADOPTIONS

2 ADOPTION OF A FOREIGN ORPHAN

3 Art. 1283.1. Petition; contents; form

4 A. The petition for adoption of a foreign orphan shall be styled: "In re
5 _____, Applying for Adoption of Foreign Orphan from a Non-Hague
6 Convention Country." The petition or an attached exhibit shall state:

7 * * *

8 B. The petition shall be accompanied by a certification for adoption, a
9 certified copy of the ~~Immigration and Naturalization Service~~ United States
10 Citizenship and Immigration Services documentation of orphan status, a copy of the
11 child's immigrant visa or permanent resident card, the original or a certified copy of
12 a valid foreign custody decree, together with a notarized translation, and the original
13 or certified copy of a valid birth certificate, together with a notarized translation, and
14 an affidavit of fees and expenses.

15 Comment 2013

16 The requirement for documentation of orphan status would be met by an IR3
17 or IR4 stamp on the child's visa. Children with IR-4 visas do not acquire automatic
18 citizenship upon entry to the United States, but become permanent residents and
19 receive a permanent resident card (green card).

20 Art. 1283.2. Permissible reimbursement of expenses

21 * * *

22 B. Payments made by or on behalf of the adoptive parents or their
23 representative to the department or to a child-placing agency or its agent or any
24 broker for reimbursement of the following expenses are permissible and not a
25 violation of R.S. 14:286:

26 (1) Reasonable medical expenses, including hospital, testing, nursing,
27 pharmaceutical, travel, or other similar expenses incurred by the ~~natural~~ biological
28 mother for prenatal care and those medical and hospital expenses incurred by the
29 biological mother and child incident to birth.

30 * * *

1 Art. 1283.4. Service of process

2 A copy of the petition for adoption of a foreign orphan together with all
3 exhibits shall be served by registered or certified mail, return receipt requested,
4 postage prepaid and properly addressed to the department and on any agency having
5 legal custody of the child. ~~Two copies of the same petition need not be served on the~~
6 ~~department.~~

7 * * *

8 Art. 1283.10. Continuing duties of department

9 * * *

10 C. A second confidential report must be presented to the court preceding the
11 hearing on the final decree of approval of foreign adoption. The findings of this
12 report shall be based upon the same ~~considerations~~ findings as prescribed in Article
13 1283.5 and shall disclose any changed conditions and all new pertinent information.

14 * * *

15 Art. 1283.13. Petition for final decree following interlocutory decree

16 * * *

17 Art. 1283.15. Effect of final decree

18 ~~Upon a final decree of approval of foreign adoption, the parents of the child~~
19 ~~are relieved of all their legal duties and divested of all their legal rights with regard~~
20 ~~to the adopted child, and the adopted child is relieved of all of his legal duties and~~
21 ~~divested of all his legal rights with regard to the parents, except the right of the child~~
22 ~~to inherit from his parents. The final decree of adoption shall have the same force~~
23 ~~and effect as any final decree of adoption rendered by a court of this state and~~
24 ~~automatically entitles the child to United States citizenship under the Intercountry~~
25 ~~Adoption Act.~~

26 Comment 2013

27 Proof of citizenship may be obtained by filing of an N-600 application with
28 the U.S. Citizenship and Immigration Services upon issuance of a full and final
29 decree of adoption.

1 Comment 2013

2 Children with an IH-3 visa automatically acquire citizenship upon entry to
3 the United States. A Certificate of Citizenship is provided by the U. S. Citizenship
4 and Immigration Services.

5 Art. 1284.2. Findings

6 The court shall issue a judgment recognizing the foreign adoption and
7 rendering a final decree of adoption upon finding that:

8 (1) At least one of the adoptive parents is a domiciliary of the state of
9 Louisiana.

10 (2) The original or a certified copy of the foreign adoption decree, together
11 with a notarized transcript, has been filed and is presumed to have been granted in
12 accordance with the law of the foreign country.

13 (3) The foreign adoption has been completed in accordance with the Hague
14 Convention and the Intercountry Adoption Act.

15 (4) The child is either a permanent resident or a naturalized citizen of the
16 United States.

17 (5) The petitioners have the ability to care for, maintain, and educate the
18 child.

19 Art. 1284.3. Final decree; standard

20 The court, after taking into consideration all documents filed concerning the
21 adoption, may enter a final decree of adoption, or it may deny recognition of the
22 adoption. Recognition may be refused only if the adoption is manifestly contrary to
23 public policy, taking into account the best interests of the child.

24 Art. 1284.4. Effect of final decree

25 The final decree of adoption shall have the same force and effect as any final
26 decree of adoption rendered by a court of this state.

27 Comment 2013

28 Although a foreign adoption decree is presumed valid on its face and formal
29 recognition proceedings are not required by law, recognition by a Louisiana court
30 provides a Louisiana adoption decree and allows for the issuance of a Louisiana birth
31 certificate. When the adoption is full and final in the foreign country, citizenship is
32 automatic and proof of citizenship will be received from U.S. Citizenship and
33 Immigration Services without the need for further filing.

1 Art. 1284.5. Change of name; issuance of birth certificate

2 The full name of the adopted child may be changed in the final decree of
3 recognition of foreign adoption and, if changed, the surname shall be the same as that
4 of the adoptive parent. In accordance with R.S. 40:79, the clerk of court shall
5 forward, on a form supplied by the Department of Children and Family Services, his
6 certificate of the decree to the state registrar, who shall make a new certificate of live
7 birth of the person adopted, in the new name if the name has been changed in the
8 decree.

9 CHAPTER 5. ADOPTION OF A HAGUE CONVENTION ADOPTEE10 Art. 1285.1. Petition; contents; form

11 A. The petition for adoption of a Hague Convention adoptee shall be styled:
12 "In re _____, Applying for Adoption of Hague Convention Adoptee." The
13 petition or an attached exhibit shall state:

14 (1) The full name, address, age, occupation, and marital status of each
15 petitioner.

16 (2) The name by which the child is known to petitioners as well as the name
17 under which the birth of the child is recorded.

18 (3) The place and date of the birth of the child if known; if not known, then
19 the approximate age of the child.

20 (4) The date and circumstances under which the child entered the home of
21 the petitioner.

22 (5) Any relationship existing between the petitioner and the child.

23 B. The petition shall be accompanied by a Hague Custody Declaration issued
24 by a United States consular officer and a copy of the child's IH-4 visa or a certificate
25 from the Secretary of State that the legal custody of the child was granted in
26 compliance with federal law. Documents related to a convention adoption shall
27 require no authentication in order to be admissible unless a specific and supported
28 claim is made that the documents are false, have been altered or are otherwise
29 unreliable.

1 Comment 2013

2 Children with IH-4 visas do not acquire automatic citizenship upon entry to
3 the United States, but become permanent residents and receive a permanent resident
4 card (green card). A certificate of citizenship may be obtained by filing an N-600
5 form with the U.S. Citizenship and Immigration Services.

6 Art. 1285.2. Permissible reimbursement of expenses

7 A. The petitioner shall file with the petition a preliminary estimate and
8 accounting of fees and charges in accordance with Article 1285.3. The petitioner
9 also shall file a final Adoption Disclosure Affidavit with the court not later than ten
10 days prior to the date scheduled for the final hearing on the adoption.

11 B. Payments made by or on behalf of the adoptive parents or their
12 representative to the department or to a child-placing agency or its agent or any
13 broker for reimbursement of the following expenses are permissible and not a
14 violation of R.S. 14:286:

15 (1) Reasonable medical expenses, including hospital, testing, nursing,
16 pharmaceutical, travel, or other similar expenses incurred by the biological mother
17 for prenatal care and those medical and hospital expenses incurred by the biological
18 mother and child incident to birth.

19 (2) Reasonable medical expenses, including hospital, testing, nursing,
20 pharmaceutical, travel, or other similar expenses and foster care expenses incurred
21 on behalf of the child prior to the decree of adoption.

22 (3) Reasonable expenses incurred by the department or the agency for
23 adjustment counseling and training services provided to the adoptive parents and for
24 home studies or investigations.

25 (4) Reasonable administrative expenses incurred by the department or the
26 agency, including overhead, court costs, travel costs, donations required by an
27 orphanage, notarial and interpreter fees, emigration permit costs, and attorney fees.

28 (5) Any other specific service or fee the court finds is reasonable and
29 necessary.

1 C. The payment of expenses permitted by Paragraph B of this Article may
 2 not be made contingent on the placement of a child for adoption, relinquishment of
 3 the child, or consent to the adoption.

4 D. Adoptive parents shall pay to the department any of the expenses listed
 5 in Paragraph A of this Article which may be imposed by the department. Such
 6 payments shall be imposed solely at the discretion of the department. The
 7 department shall not include payment of the expenses listed in Paragraph A of this
 8 Article as a requirement for adoption.

9 E. If a court determines from an accounting that an amount that is going to
 10 be or has been disbursed for expenses permitted by Paragraph B of this Article is
 11 unreasonable, it shall order a reduction in the amount disbursed, or to be disbursed,
 12 and order the person who received the disbursement to refund that portion.

13 F. If a court determines from an accounting that an amount is going to be or
 14 has been disbursed for expenses not permitted by Paragraph B of this Article, it may:

15 (1) Issue an injunction prohibiting the disbursement or order the person who
 16 received the disbursement to refund it.

17 (2) Inform the district attorney for the consideration of criminal charges
 18 pursuant to R.S. 14:286.

19 (3) If in the best interest of the child, the court may also refuse to approve
 20 the adoption.

21 G. The court shall not issue a final decree of adoption until it has reviewed
 22 and approved the final accounting.

23 H. A copy of the Adoption Disclosure Affidavit and all orders of the court
 24 pursuant to this Article shall be mailed to the office of children and family services,
 25 Department of Children and Family Services.

26 Comment 2013

27 Hague Convention Article 32 provides that no one shall derive improper
 28 financial or other gain from an activity related to an intercountry adoption; only costs
 29 and expenses, including reasonable professional fees of persons involved in the
 30 adoption, may be charged or paid; and that directors, administrators, and employees
 31 of bodies involved in an adoption shall not receive remuneration that is unreasonably
 32 high in relation to services rendered.

1 Art. 1285.3. Adoption disclosure affidavit of fees and charges

2 A. Each petition for an adoption shall be accompanied by an affidavit
3 executed by the petitioner and petitioner's attorney containing an accounting of fees
4 and charges paid or agreed to be paid by or on behalf of the petitioner in connection
5 with the adoption.

6 B. The affidavit shall not include any identifying information as to the
7 biological parents, their families, or the child's birth name.

8 C. The form for the affidavit shall be as follows:

9 "ADOPTION DISCLOSURE AFFIDAVIT

10 BEFORE ME, the undersigned authority, personally came and appeared

11 _____ (petitioner) and _____ (attorney for petitioner), who, being first

12 duly sworn, did depose and state:

13 In the matter of the adoption by _____ (petitioner's name):

14 (1) We report the following fees and charges, or other things of value given

15 in connection with this adoption paid to any agency or individual:

16 Actual Estimated due: Due or paid to:

17 \$ \$

18 A. Agency administrative expenses:

19 1. Attorney fees

20 2. Court costs

21 3. Travel costs

22 4. Overhead

23 5. Other (Specify)

24 B. Agency Mental Health Counseling expenses:

25 1. Counseling for adoptive parents

26 2. Home study evaluations

27 3. Counseling for the child

28 4. Other (Specify)

29 C. Medical expenses for biological mother:

1 1. Medical

2 2. Travel

3 3. Other (Specify)

4 D. Medical/foster care expenses for child:

5 1. Medical

6 2. Travel

7 3. Other (Specify)

8 E. Other expenses (Specify):

9 (2) We certify that to the best of our knowledge no other fees, charges, or
10 things of value other than court costs have been given or shall be given by anyone
11 in connection with this adoption.

12 (3) We declare that this disclosure statement has been examined by each of
13 us and that its contents are true to the best of our information, knowledge, and belief.

14 (4) We understand that each of us has a continuing obligation to supplement
15 and amend this affidavit as necessary.

16 (5) We understand that this information will be transmitted to the office of
17 adoption services, Department of Children and Family Services. We further
18 understand that it may be released by written authorization of the court for purposes
19 of a grand jury investigation pursuant to R.S. 14:286 or for an ethical investigation
20 by the Committee on Professional Responsibility of the Louisiana State Bar
21 Association.

22 _____ _____

23 Signature of Petitioner Signature of Attorney

24 _____

25 Address Address

26 SWORN TO AND SUBSCRIBED BEFORE ME ON THIS DAY OF _____

27 _____

28 (NOTARY PUBLIC)"

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

1 D. Confidentiality of information contained in the adoption disclosure
2 affidavit shall be maintained as provided in Chapter 5 of Title XII of this Code, and
3 shall be released only in accordance with this Article or on written authorization of
4 the court for the purposes of a grand jury investigation of a violation of R.S. 14:286
5 or an ethical investigation by the Committee on Professional Responsibility of the
6 Louisiana State Bar Association.

7 Art. 1285.4. Service of process

8 A copy of the petition for adoption of a Hague Convention adoptee together
9 with all exhibits shall be served by registered or certified mail, return receipt
10 requested, postage prepaid, and properly addressed to the department and on any
11 agency having legal custody of the child.

12 Art. 1285.5. Duties of department; home study; confidential report

13 A. The department shall investigate the proposed adoption of the Hague
14 Convention adoptee and submit a confidential report of its findings to the court. The
15 findings shall include:

16 (1) The conditions with respect to the availability of the child for adoption.

17 (2) The physical and mental condition of the child.

18 (3) Other factors regarding the suitability of the child for adoption in
19 petitioner's home.

20 (4) The moral and financial fitness of the petitioner.

21 (5) The conditions of the proposed adoptive home with respect to health,
22 adjustment, and other advantages or disadvantages to the child.

23 B. The department may delegate the performance of this investigation to an
24 authorized Hague Convention home study preparation agency, but the department
25 remains responsible for ensuring the accuracy and thoroughness of the resulting
26 report and for the safety and welfare of the child. The department shall adopt,
27 promulgate, and enforce such rules and regulations as are necessary and appropriate
28 to implement this authorization in accordance with the Administrative Procedure
29 Act.

1 Art. 1285.6. Hearing

2 A. The court shall sign the order setting the time and place for the hearing
3 of the petition for adoption of the Hague Convention adoptee not less than thirty nor
4 more than sixty days after the filing of the adoption petition. The court may extend
5 this time for good cause, which may include a showing by the department that it has
6 been impossible to gather the necessary data within the time prescribed. The court
7 may reduce the time to a minimum of fifteen days with written approval of the
8 department and the petitioner.

9 B. At this hearing, the court shall consider:

10 (1) Any motion to intervene that has been filed.

11 (2) Any other issues in dispute.

12 (3) The confidential report of the department.

13 (4) The report of any criminal records or validated complaints of child abuse
14 or neglect concerning the petitioner.

15 (5) The testimony of the parties.

16 C. If the child to be adopted is twelve years of age or older, the court shall
17 solicit and consider his wishes in the matter.

18 Art. 1285.7. Intervention

19 A. Intervention in agency adoption proceedings shall not be allowed except
20 on motion to the court and a showing of good cause.

21 B. Such intervention shall be limited to persons having a substantial
22 caretaking relationship with the child for one year or longer, or any other person that
23 the court finds to be a party in interest.

24 C. The intervention of a party in interest shall be for the limited purpose of
25 presenting evidence as to the best interest of the child.

26 Art. 1285.8. Interlocutory decree

27 Upon due consideration of the factors enumerated in Article 1285.6(B), the
28 court may grant or refuse to grant an interlocutory decree during or after the hearing.
29 The basic consideration for this decree shall be the best interest of the child.

1 Comment 2013

2 Although an interlocutory decree is not required, extraordinary circumstances
3 may warrant such a request.

4 Art. 1285.9. Final decree at first hearing

5 Upon due consideration of the factors enumerated in Article 1285.6(B), the
6 court may render a final decree of adoption at the first hearing, without the necessity
7 of first entering an interlocutory decree, if the child was placed in the petitioner's
8 home by a licensed agency and the child has lived in that home for at least six
9 months prior to the hearing for adoption.

10 Art. 1285.10. Continuing duties of department

11 A. After an interlocutory decree has been entered, the department shall
12 maintain contact with the proposed adoptive home directly or through another
13 agency in accordance with Paragraph B of this Article. The number of visits to the
14 home and the time for them shall be within the discretion of the department;
15 however, no less than two visits shall be made to the home, one of which shall occur
16 within thirty days before the final decree of adoption.

17 B. The department may delegate the performance of this investigation to a
18 licensed private adoption agency, but the department remains responsible for
19 ensuring the accuracy and thoroughness of the resulting report and for the safety and
20 welfare of the child. The department shall adopt, promulgate, and enforce such rules
21 and regulations as are necessary and appropriate to implement this authorization in
22 accordance with the Administrative Procedure Act.

23 C. A second confidential report must be presented to the court preceding the
24 hearing on the final decree of approval of foreign adoption. The findings of this
25 report shall be based upon the same findings as prescribed in Article 1285.5 and shall
26 disclose any changed conditions and all new pertinent information.

27 Art. 1285.11. Expiration of interlocutory decree

28 If no petition for a final decree is filed within two years after the granting of
29 an interlocutory decree, the latter shall become null and void unless good cause is
30 shown why an extension should be granted.

1 Art. 1285.12. Revocation of interlocutory decree

2 A. At any time before the entry of the final decree of adoption, the court for
3 good cause may revoke its interlocutory decree either on its own motion, on the
4 motion of the department, or on the motion of the petitioner or any person interested
5 in the child.

6 B. All parties upon whom service was originally made shall be notified at
7 least ten days prior to the signing of the order of revocation and shall be given an
8 opportunity to be heard upon their written request.

9 Art. 1285.13. Petition for final decree following interlocutory decree

10 A. The child shall have lived with the petitioner for at least one year and at
11 least six months shall have elapsed after the granting of an interlocutory decree
12 before the petitioner may file a petition for final decree of adoption.

13 B. The court shall set a time and place for the hearing of the petition for final
14 decree. The petition for final decree need not be served upon anyone except the
15 department.

16 Art. 1285.14. Final decree; standard

17 The court, after a hearing and after taking into consideration information
18 from all sources concerning the adoption, may enter a final decree of adoption, or it
19 may deny the adoption. The basic consideration shall be the best interest of the
20 child.

21 Art. 1285.15. Effect of final decree

22 If not determined previously, upon a final decree of adoption, the parents of
23 the child are relieved of all their legal duties and divested of all their legal rights with
24 regard to the adopted child, and the adopted child is relieved of all of his legal duties
25 and divested of all his legal rights with regard to the parents, except the right of the
26 child to inherit from his parents. A final decree of adoption automatically entitles
27 the child to United States citizenship under the Intercountry Adoption Act.

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Comment 2013

Although the adopted child is entitled to citizenship, proof of citizenship can only be obtained by filing an N-600 form with the U.S. Citizenship and Immigration Services upon issuance of a full and final decree of adoption.

Art. 1285.16. Change of name; issuance of birth certificate

The full name of the adopted child may be changed in the final decree of adoption and, if changed, the surname shall be the same as that of the adoptive parent. In accordance with R.S. 40:79, the clerk of court shall forward, on a form supplied by the Department of Children and Family Services, his certificate of the decree to the state registrar, who shall make a new certificate of live birth of the person adopted, in the new name if the name has been changed in the decree.

Art. 1285.17. Refusal of final decree

Upon refusal to grant a final decree to the petitioners for the reason that the intercountry adoption is not in the best interest of the child, the court may remove the child from the petitioner and reinstate the legal custodian or appoint a custodian.

Section 2. The Louisiana State Law Institute is hereby directed to add the following respective comments under the following respective Children's Code Articles 1281.1, 1281.8, 1282.4, and 1283.8 to read as follows.

Art. 1281.1. Purpose

* * *

Comment 2013

The Intercountry Adoption Act (IAA) of 2000, PL106-279, 42 USC 14901-14954, 22 CFR 96.2, provided for United States implementation of the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption. Pursuant to the Act, the Department of State serves as the central authority of the United States for all Hague Convention adoptions and is responsible for implementation of the Convention, including accreditation of agencies and persons who provide international adoption services and maintaining an intercountry adoption registry. The IAA preempts state adoption laws only to the extent state laws are inconsistent with provisions of the Act. Intercountry adoptions taking place from Non-Hague Convention countries, and therefore outside of the scope of the Convention, are governed by the Immigration and Nationality Act, and are under the jurisdiction of the U.S. Citizenship and Immigration Services of the Department of Homeland Security.

* * *

1 Art. 1281.8. Birth certificate requirement

2 * * *

3 Comment 2013

4 U.S. Citizenship and Immigration Services requirements for birth certificates
5 and other documentation are governed by 8 CFR 103.2.

6 * * *

7 Art. 1282.4. Effect of final decree

8 * * *

9 Comment 2013

10 Although a foreign adoption decree is presumed valid on its face and formal
11 recognition proceedings are not required by law, recognition by a Louisiana court
12 provides a Louisiana adoption decree and allows for the issuance of a Louisiana birth
13 certificate. When the adoption is full and final in the foreign country, citizenship is
14 automatic and proof of citizenship will be received from U.S. Citizenship and
15 Immigration Services without the need for further filing.

16 * * *

17 Art. 1283.8. Interlocutory decree

18 * * *

19 Comment 2013

20 Although an interlocutory decree is not required, extraordinary circumstances
21 may warrant such a request.

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)]

Nancy Landry

HB No. 578

Abstract: Provides the procedures for Non-Hague Convention Country Recognition of Foreign Adoptions and Adoptions of a Foreign Orphan and provides the procedures for a Hague Convention Country Recognition of Foreign Adoptions and Adoptions of a Foreign Orphan.

Present law (Ch.C. Art. 1281.3) provides definitions for the following terms: (1) "agency" or "child placing agency", (2) "birth certificate", (3) "child", (4) "department", and (5) "foreign orphan".

Proposed law changes present law to incorporate terminology used in the Intercountry Adoption Act. Provides the following definitions: (1) "agency" or "child placing agency", (2) "birth certificate", (3) "Convention adoptee" or "Hague Convention adoptee", (5) "foreign orphan", and (6) "Hague Convention Adoption" or "Hague adoption" or "Convention adoption" and "orphan adoption" or "Non-Hague adoption".

Present law (Ch.C. Art.1281.4(A)) defines the two types of intercountry adoption in Louisiana as recognition of a foreign decree of adoption and adoption of a foreign orphan.

Proposed law changes present law to mean adoption or recognition of a foreign decree of adoption of a foreign orphan from a country outside the U.S. that is not a party to the Hague Adoption Convention and adoption or recognition of a foreign decree of adoption of a convention adoptee from a Hague Adoption Convention country.

Present law (Ch.C. Art.1281.5) provides that no foreign orphan, in an intercountry adoption, may be placed in prospective parents' home prior to obtaining certification for adoption as per Ch.C. Arts. 1171-1173.

Proposed law retains present law but changes "foreign orphan" to "child" and requires prior approval from USCIS.

Present law (Ch.C. Art.1281.6(A)(intro. par.)) provides for the venue in an intercountry adoption.

Proposed law retains present law but deletes "of a foreign orphan".

Present law (Ch.C. Art.1281.7) provides for the persons whose consent is required in an intercountry adoption and that the parental rights of the parents of any child who has qualified as a foreign orphan are deemed to be terminated. Further requires any custodial or supervisory agency which placed the foreign orphan for adoption to consent to the adoption. Allows the court to grant the adoption without the consent of an agency if the adoption is in the best interest of the child and the court has made a finding that the agency has unreasonably withheld consent.

Proposed law retains present law but extends applicability to a "convention adoptee" and requires the court to make a finding that the adoption is in the best interest of the child and that the agency unreasonably withheld consent.

Present law (Ch.C. Art.1281.9) provides that a U.S. citizen and spouse or unmarried U.S. citizen who is at least 25 years old may petition for an intercountry adoption.

Proposed law retains present law but requires that the spouse be either a U.S. citizen or have lawful immigration status.

Present law (Ch.C. Art.1282.1(A)) provides for petition's contents, form, and attachments for recognition of a foreign adoption. Further requires certain documentation to accompany the petition.

Proposed law retains present law but narrows it to recognition of a Non-Hague Convention Country adoption and requires a copy of the child's immigrant visa or resident alien card be included.

Present law (Ch.C. Art.1282.2(3)) provides that the court shall issue a judgment recognizing a foreign adoption if it finds that the child has qualified as a foreign orphan and is in the U.S. in accord with Immigration and Naturalization Service (INS) regulations.

Proposed law retains present law but changes "INS" to "federal regulations".

Present law (Ch.C. Art.1282.5) provides that the adopted child's name may be changed in a final decree of recognition of a foreign adoption and if changed it shall be the same surname as adoptive parent.

Proposed law retains present law but changes "final decree of recognition of a foreign adoption" to "final decree of adoption" and additionally requires the clerk of court to forward

his certificate of the decree of name change to the state registrar of vital records who shall issue a new certificate of live birth in the new name if changed.

Present law (Ch.C. Art.1283.1) provides for the contents and form of the petition of adoption of a foreign orphan. Further requires certain documentation to accompany the petition.

Proposed law retains present law but narrows applicability to Non-Hague Convention Country adoptions and requires a certified copy of the documentation of orphan status certified by the USCIS, rather than by the Immigration and Naturalization Service, and a copy of the child's immigrant visa or permanent resident card accompany the petition.

Present law (Ch.C. Art.1283.2(B)(1)) provides for reimbursement of reasonable medical expenses incurred by the "natural mother".

Proposed law retains present law but changes "natural mother" to "biological mother".

Present law (Ch.C. Art.1283.4) provides for the service of process of the petition for adoption and states that two copies of the petition need not be served on the department.

Proposed law retains present law but deletes that provision stating that two copies of the petition need not be served on the department.

Present law (Ch.C. Art.1283.15) provides for the final decree of adoption's effect to include relieving the parents of the child of all duties and rights in regard to the child and conversely with the child in regards to the parents with the exception of inheritance rights.

Proposed law deletes present law and provides that the final decree has the same force and effect as final decree of adoption and automatically entitles the child to U.S. citizenship under the Intercountry Adoption Act.

Present law (Ch.C. Art.1283.16) provides that the adopted child's name may be changed in the final decree and if changed it shall be the surname of the adoptive parent.

Proposed law retains present law but adds that the clerk of court shall forward a copy of the certificate of final decree of the adoption of the foreign orphan to the state registrar of vital records who shall issue a new certificate of live birth to include the new name if changed in the decree.

Proposed law (Ch.C. Art. 1284.1) provides the content and form of a petition to recognize a foreign adoption from a Hague Convention Country. It requires an attachment of the child's and petitioners' personal information to include the circumstances of the child's adoption in the foreign country and any relationship between the child and petitioners. It also requires attachment of a Hague Adoption Certificate and a copy of the child's IH-3 visa.

Proposed law (Ch.C. Art. 1284.2) requires the court to render a final decree of adoption upon finding the following: (1) at least one of the adoptive parents is a domiciliary of Louisiana, (2) the original or a certified copy of the foreign adoption decree and a notarized transcript has been filed, (3) the foreign adoption has been completed in accordance with the Hague Convention and the Intercountry Adoption Act, (4) the child is either a permanent resident or a naturalized citizen of the U.S., and (5) the petitioners have the ability to care for, maintain, and educate the child.

Proposed law (Ch.C. Art. 1284.3) authorizes the court to either grant or deny the final decree of adoption, but requires the adoption to be contrary to public policy, taking into account the best interests of the child, in order for the court to deny the final decree.

Proposed law (Ch.C. Art. 1284.4) provides that the final decree of adoption has the same force and effect of a final decree of adoption rendered by a state court.

Proposed law (Ch.C. Art.1284.5) provides that the adopted child's name may be changed in the final decree of recognition of foreign adoption and if changed it shall be the surname of the adoptive parent. It also provides that the clerk of court shall forward a copy of the certificate of final decree of the adoption of the foreign orphan to the state registrar of vital records who shall issue a new certificate of live birth to include the new name if changed in the decree.

Proposed law (Ch.C. Art.1285.1) provides for the content, form and attachments for a petition to adopt a Hague Convention adoptee. Requires attachment of a Hague Custody Declaration, a copy of the child's IH-4 visa, or a certificate from the Secretary of State that the child's legal custody was granted in compliance with federal law. Provides that documents related to a Convention adoption do not need to be authenticated to be admissible unless there is a specific and supported claim of falsity or alteration.

Proposed law (Ch.C. Art.1285.2) requires a petitioner to file a preliminary estimate and accounting of fees and charges and to file a final affidavit not later than ten days prior to the final adoption hearing. Provides for permissible expenditures made by or on behalf of the adoptive parents or representative to include medical expenses incurred by the biological mother and on behalf of the child, counseling and training provided to the adoptive parents, the department's administrative expenses, emigration permit costs and attorney fees. Further requires the adoptive parents to pay expenses imposed by the department. Authorizes the court to reduce unreasonable expenses, to issue an injunction prohibiting disbursements that are not permitted, to inform the district attorney for consideration of criminal charges, or to refuse to approve the adoption.

Proposed law (Ch.C. Art.1285.3) provides the form of the adoption disclosure affidavit of fees and expenses. Requires the petitioners to certify the correctness of the information provided and to acknowledge that the information will be sent to the department. Affirms the confidentiality of the affidavit's information.

Proposed law (Ch.C. Art.1285.4) requires a copy of the petition for adoption of a Hague Convention adoptee to be served on the department and any agency having legal custody of the child.

Proposed law (Ch.C. Art.1285.5) requires the department to investigate the proposed adoption and to submit a confidential report to the court that includes its findings on the following: (1) the conditions with respect to the availability of the child for adoption, (2) the physical and mental condition of the child, (3) other factors regarding the suitability of the child for adoption in petitioner's home, (4) the moral and financial fitness of the petitioner, and (5) the conditions of the proposed adoptive home with respect to health, adjustment, and other advantages or disadvantages to the child. Authorizes the department to delegate the performance of this investigation to an authorized Hague Convention home study preparation agency while maintaining responsibility for ensuring the accuracy and thoroughness of the resulting report and for the safety and welfare of the child.

Proposed law (Ch.C. Art.1285.6) requires the court to set a hearing not less than 30 nor more than 60 days after the filing of a petition for adoption of a Hague Convention adoptee. Requires the court to consider any motion to intervene, any other issues in dispute, the department's confidential report, the report of any criminal records or validated complaints of child abuse or neglect concerning the petitioner, and the testimony of the parties. Further requires the court to solicit and consider the wishes of the child to be adopted if the child is 12 years of age or older.

Proposed law (Ch.C. Art.1285.7) prohibits intervention in agency adoption proceedings unless there is good cause shown. Further limits an intervention to persons with a substantial caretaking relationship and requires presentation of evidence as to the best interest of the child.

Proposed law (Ch.C. Art.1285.8) authorizes the court to either grant or deny the interlocutory decree of adoption.

Proposed law (Ch.C. Art.1285.9) authorizes the court to render a final decree of adoption at the first hearing if a licensed agency placed the child in the petitioner's home and the child has lived in the home for at least six months prior to the hearing.

Proposed law (Ch.C. Art.1285.10) requires the department to maintain contact with the proposed adoptive home before the final decree of adoption. Authorizes the department to delegate performance of its duties to a licensed private adoption agency. Requires a home visit within 30 days before the final decree of adoption and that a second confidential report be issued to the court preceding the hearing on the final decree of approval.

Proposed law (Ch.C. Art.1285.11) provides that the interlocutory decree shall be null and void if no petition for a final decree of adoption is filed within two years of the granting of the interlocutory decree.

Proposed law (Ch.C. Art.1285.12) authorizes the court, for good cause shown, to revoke the interlocutory decree of adoption. Requires that all parties originally served to be notified prior to the signing of the order of revocation.

Proposed law (Ch.C. Art.1285.13) provides for the petition for a final decree of adoption following an interlocutory decree. Requires the child to have lived with the petitioner for at least one year and at least six months to have elapsed after the granting of an interlocutory decree. Requires the petition be served on the department only.

Proposed law (Ch.C. Art.1285.14) authorizes the court to either grant or deny the petition for a final decree and that the basic consideration is the best interest of the child.

Proposed law (Ch.C. Art.1285.15) provides that the final decree of adoption relieves the parents of all legal duties and divests them of all legal rights with regard to the adopted child, and the adopted child is relieved of all of his legal duties and divested of all his legal rights with regard to the parents, except the right to inherit from his parents. Further provides that a final decree automatically entitles the child to U.S. citizenship under the Intercountry Adoption Act.

Proposed law (Ch.C. Art.1285.16) provides that the child's name may be changed in the final decree of adoption and, if changed, the surname shall be the same as that of the adoptive parent. It also provides that the clerk of court shall forward, his certificate of the decree to the state registrar of vital records who shall make a new certificate of live birth to include any name change.

Proposed law (Ch.C. Art.1285.17) authorizes the court, upon refusal to grant the final decree of adoption because it is not in the child's best interest, to remove the child from the petitioner.

Proposed law adds comments under Children's Code Arts. 1281.1, 1281.8, 1282.4 and 1283.8.

(Amends Ch.C. Arts. 1281.3(1), (2), (3), and (5), 1281.4(A)(1) and (2), 1281.5, 1281.6(A)(intro. para.), 1281.7, 1281.9, the heading of Chapter 2 and 1282.1(A)(intro. para.) and (B), 1282.2(3), 1282.5, the heading of Chapter 3 and 1283.1(A)(intro. para.) and (B), 1283.2(B)(1), 1283.4, 1283.10(C), the heading of Art. 1283.13, 1283.15, and 1283.16; Adds Ch.C. Arts. 1281.3(6), 1284.1-1284.5, and 1285.1-1285.17)