

CHAPTER 8.**ADOPTIONS****ARRANGEMENT OF SECTIONS****Section**

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An Act to provide for a comprehensive set of procedures to govern the adoption of children in the courts of the Republic of the Marshall Islands. This Act repealed 26 MIRC Chapter 1 Part III, in its entirety. [Section numbering style modified to conform to new Code format (Rev.2003)]

Commencement: November 11, 2002

Source: P.L. 2002-64

§801. Short Title.

This Act may be cited as the Adoptions Act, 2002. [P.L. 2004-64, §1.]

§802. Applicability.

- (1) This Act applies to the adoption of all resident children in the Marshall Islands, except;
- (a) to adoptions finalized in accordance with Marshallese customary laws; or
 - (b) to the confirmation of adoptions finalized in accordance with Marshallese customary laws, in the High Court of the Republic of the Marshall Islands.

(c) to adoptions that have been granted prior to the effective date of this Act;

(d) to adoption proceedings that have been filed prior to the effective date of this Act. [P.L. 2004-64, §2.]

§803. Definitions.

(1) As applied in this Act:

(a) “abuse” means, to inflict intentional, physical and emotional harm on the child causing noticeable injury to the child or attempting to cause such injury;

(b) “Sexual Assault” means, to inflict physical, mental and emotional harm in the child by physical conduct that is sexual in nature, against the person of the child;

(c) “abandonment” means the failure to provide financial support to the child; or knowingly failing to provide a normal parent-child relationship with the child for a period of six or more months, and deliberately failing to arrange for the provision of care and supervision of a child by another adult or adults who are willing and able to care for the child.

(d) “adoption” means the termination of all parental rights and responsibilities of the natural parent(s) to their child and attaching such rights and responsibilities to the adoptive parents.

(e) “agency” means any domestic or foreign government or state social affairs services entity duly empowered by law to place minor children for adoption, including foreign adoptions, including duly licensed adoption agencies;

(f) “birth family” means members of the child’s biological family on both paternal and maternal sides, and includes the birth parents, birth grandparents and birth aunts and uncles of the subject child in an adoption proceeding.

(g) “Central Adoption Authority” means the agency created under Section 805 herein.

(h) “child” means, for the purposes of this Act, a person younger than 16 years of age.

(i) “court” means the High Court of the Republic of the Marshall Islands.

(j) “Marshallese child” means a child who is the offspring of at least one Marshallese citizen and who is resident of the Republic.

(k) “marriage” refers to the relationship between a man and a woman who are a legally acknowledged couple either through law or custom of their country of residence.

(l) “natural parent” means the biological father or mother of the child to be adopted;

(m) “Republic” means the Republic of Marshall Islands.

(n) “solicitation” means active encouragement or pursuit of a natural parent, to coerce his or her consent to the adoption of their child, by conduct that is prohibited under this Act or any other Act.

(o) “Ministry” means the Ministry of Internal Affairs. [P.L. 2004-64, §3.]

§804. Exclusive Jurisdiction of the High Court.

The High Court of the Republic of Marshall Islands shall have original and exclusive jurisdiction to grant an adoption pursuant to this Act. [P.L. 2004-64, §4.]

§805. Establishment of Central Adoption Authority.

- (1) The Central Adoption Authority is hereby established.
- (2) The Authority shall be created within the Ministry of Internal Affairs, and shall be responsible for the supervision of all adoption proceedings in the Republic of the Marshall Islands. [P.L. 2004-64, §5.]

§806. Duties of the Authority.

- (1) The Central Adoption Authority shall;
 - (a) Serve as a central receiving point for or all referrals of children to be adopted;
 - (b) conduct investigations into the backgrounds and circumstances under which an adoption is being proposed by the natural parents;
 - (c) Provide case management services to natural parents and children, including:
 - (i) Birth parent counseling as to options for realistic and effective parenting, including the possibility of traditional or foreign adoption;
 - (ii) Pre-natal nutrition and medical referral services to the birth mother in cooperation with other government agencies, departments, or ministries, as appropriate;
 - (iii) Coordinating with licensed agencies in monitoring the quality of applications, and providing a recommendation to the Court on individual applications,
 - (iv) For children, whose consent to adoption is required, provide counseling to ascertain the child's wishes regarding adoption;
 - (d) Monitor post-adoption progress in coordination with the foreign agencies;
 - (e) Providing a resource to adoptive parents for post-adoption consultation on issues related to the adoption. [P.L. 2004-64, §6.]

§807. Legal Representation of the Authority.

The Central Adoption Authority shall be represented by the office of the Attorney-General in all court appearances. [P.L. 2004-64, §7.]

§808. Adoption of Children.

The adoption of children in any manner other than as provided for under this Act, shall not be valid. [P.L. 2004-64, §8.]

§809. The Controlling Consideration.

- (1) In all petitions for adoption of children under this Act, the Court shall consider first and foremost the "best interests" of the child.
- (2) In determining the issue of the "best interests of the child", the court shall consider all the circumstances as set forth under Section 826, hereunder, and any other matters the court considers relevant to the issue. [P.L. 2004-64, §9.]

§810. Solicitation unlawful.

- (1) It shall be unlawful and a violation of this Act for any person to:
 - (a) solicit the birth parents of a child, guardians of a child, or members of their families and other relatives, to put up a child for adoption;
 - (b) facilitate contact between the prospective adoptive parents and the child's natural parents or guardians prior to the signing of the consent by the natural parents.
 - (c) knowingly, encouraging, advising or facilitating a person to travel outside the Republic for purposes of placing that person's child or children, whether born or unborn, for adoption. [P.L. 2004-64, §10.]

§811. Eligibility to petition for adoption.

- (1) Any person of the age of majority, whether married or single, or a husband and wife jointly, may petition to adopt a child.
- (2) A petitioner shall be at least 15 years older than the child to be adopted.
- (3) Same sex couples are, or an individual living as a member of a same sex couple is, not eligible to petition the court for the adoption of any children. [P.L. 2004-64, §11.]

§812. Adoption Petition.

- (1) All proceedings for adoption shall be commenced by a petition signed and sworn to by the petitioner(s).
- (2) An adoption petition shall contain, at the minimum, the following information:
 - (a) name and address of the petitioner(s);
 - (b) the names of the child and biological parents(s);
 - (c) date and place of the child's birth;
 - (d) date and place of marriage of the petitioners, if applicable;
 - (e) the requested new name for the child, if any.
- (3) The adoption petition shall be accompanied by the following documents:
 - (a) a certified copy of the Certificate of Live Birth of the Child;
 - (b) an Affidavit of Parentage, executed by one or both of the natural parents.

When the child to be adopted does not live with at least one of the biological parents, the names of the guardian(s) shall be set out in the affidavit.

- (c) an Affidavit of Relinquishment of Parental Rights and Consent signed by the natural parent(s) (or guardian(s) where applicable).

- (d) an Affidavit executed by the Head of the Central Adoptions Authority or his/her designee, certifying that the natural parent(s) or guardian(s) have been counseled in all aspects of the adoption process, and its full legal ramification have been explained to them clearly, in the appropriate language.

- (e) a properly conducted home study evaluation of the adoptive family which, at minimum, shall include:

- (i) the educational background and any future plans for further education;

- (ii) employment history, current status and any changes in the foreseeable future;
 - (iii) income history and future projections, if available;
 - (iv) history of prior marriages, if any, including the basis for divorce, the age and gender of each child, the history of child support for and current relationship with those children;
 - (v) history of current marriage, if applicable; age and gender of each child already in the home; and detailed report of any prior adoption experiences;
 - (vi) participation in any civic or religious activity of prospective parents; and
 - (vii). A nation wide criminal background search in the country of residence or citizenship of the prospective parent(s), and locally in the Republic of the Marshall Islands jurisdiction;
 - (viii) an original child abuse records search on the petitioners; or, where such is not available, a report by the local child welfare agency;
 - (f) a certified copy of the petitioner's marriage certificate, if married, regardless of whether petitioning jointly or individually;
 - (g) a certified birth certificate of each petitioner;
 - (h) a photocopy of each petitioner's passport;
 - (i) an original signed letter from the petitioner's primary physician who has a history of treating the petitioner for at least 2 years, attesting to the physical and mental health and capability of the petitioner to adopt and raise a child and clearing the adoptive parents of any communicable diseases;
- (4) In the case where the prospective parents are citizens and domiciles of a foreign country, the Home Study Report anticipated by section 12(3)(e) herein, shall be conducted by the appropriate or responsible state or government agency in their country of citizenship or domicile.
- (5) In the case of a resident adoption, the Home Study Report anticipated by section 812(3)(e) herein, shall be conducted by the Central Adoption Authority. [P.L. 2004-64, §12.]

§813. Consent to Adoption.

- (1) Unless consent is specified as unnecessary under respective subsections hereof, a petition to adopt a child may be granted only if the following consents have been obtained.
- (a) consent of the natural parents(s);
 - (b) if the child to be adopted is not in the custody or care of either parent, consent of the person(s) who have primary guardianship or custody of the child pursuant to a court Order or to Marshallese culture. [P.L. 2004-64, §13.]

§814. Duty to Advise natural parents/guardians.

- (1) The Court shall ensure that the person(s) whose consent is required, fully understand(s) the consequences of the adoption.
- (2) In all phases of the adoption process, the natural parent(s) or guardian(s) shall be entitled to the services of the Central Adoption Authority.

(3) The Central Adoption Authority may however recommend legal representation for the natural parent(s) or guardians(s) of the child depending on the circumstances of each case.

(4) In all phases of representation the natural parent(s) or guardian(s) of a child shall have interpretation of the proceedings into their primary language.

(5) All documents presented to the natural parent(s) or guardian(s) shall be translated into their primary language. If the natural parent(s) or guardian(s) are illiterate, they shall have a thorough explanation of the contents of the documents, including the consent documents, by an officer of the Central Adoption Authority or an attorney, prior to signing any such document. The Head of the Central Adoption Authority or his designee, shall attest to this fact in the affidavit referred to in section 812 (3) (d) above. [P.L. 2004-64, §14.]

§815. Certification by Central Adoption Authority.

(1) In addition to the matters referred to under section 812 (3) (d) and section 814(5) above, The Head of the Central Adoption Authority shall also certify that;

(a) the natural parent(s) or guardian(s) are not in a state of mind which would raise the question of judgment or clarity of thought; and

(b) the natural parent(s) or guardian(s) understand the permanency of adoption, and that neither of them was acting under duress, coercion, or belief of financial, material, or opportunity gain from the adoption of the child.

(2) No valid consent may be obtained if either of the natural parent(s) or guardian(s) is under the influence of mind altering drugs, alcohol or other chemicals which may impair judgment or clarity of thought. [P.L. 2004-64, §15.]

§816. Consent not Required.

(1) Notwithstanding the consent provisions above, it is not necessary to obtain the consent of the following persons;

(a) In the case where the child to be adopted was conceived out of wedlock, and the parent who does not have custody of the child has failed to acknowledge the child, provide for the child, assist in the upbringing of the child, or develop a relationship with the child, such parent's consent is not required;

(b) In the case where the child to be adopted was born out of wedlock and the natural father of the child could not be identified or determined, the consent of such a father is not required;

(c) Where the child was conceived as a result of a sexual assault or any other sex crime against the natural mother, the assailant's consent is not required;

(d) in the case where a natural parent is unable to care for the child by reason of severe mental illness the consent of such parent is not required. Such mental illness may be established by the testimony of a qualified physician.

(e) In the case where the natural parents have both abandoned the child and the child is in the custody or guardianship of another person, such parents' consent is not required.

(f) in the case where the natural parent(s)' rights have been terminated by a court Order, such parents' consent is not required. [P.L. 2004-64, §16.]

§817. Revocation of Consent.

(1) The natural parent(s) or guardians, as the case may be, may revoke consent to the adoption at any time during the proceedings, provided that such revocation is communicated to the court prior to the filing of the order granting the adoption.

(2) Such revocation may be effected by;

(a) the delivery of a written revocation to the Court at any time during the adoption proceedings, and prior to the filing of the Order granting the adoption;

(b) by orally revoking the consent in open court, at any time during the proceedings prior to the filing of the Order granting adoption. [P.L. 2004-64, §17.]

§818. Children Eligible for Adoption.

In all cases, the petitioners may petition to adopt any child, provided that such a child has not attained the age of 16 years. [P.L. 2004-64, §18.]

§819. Consent and Representation of the Child.

(1) Depending on the circumstances of each particular case, the court shall have the discretion to appoint an attorney or guardian ad litem, to act for and on behalf of the interests of the child, who is the subject of the adoption proceedings.

(2) If the child to be adopted is twelve years of age or older, that child shall be examined by the Court as to the child's understanding of the adoption, prior to the child issuing his or her consent.

(3) If a child of twelve (12) years or older objects to the adoption, such objection is controlling.

(4) If a child who is younger than twelve years of age objects, the Court shall determine whether adoption is in the child's best interest, but the child's objection shall not be controlling. [P.L. 2004-64, §19.]

§820. Determination of Consent.

Where necessary, a motion for a determination that consent of a parent is not necessary, pursuant to the preceding provisions of this Act shall be heard by the Court prior to the final hearing, at the instance of the petitioner(s). [P.L. 2004-64, §20.]

§821. Certification of Readiness for Final Hearing.

(1) Upon complete filing of the contents of the petition and the accompanying documents as required in Section 812 above, the Court may, upon motion of the petitioner(s):

(a) Issue a Certification of Readiness for Final Hearing; or

(b) Order further investigation on specified matters.

(2) The issuance of a Certificate for Readiness for Hearing is not a substitute for competent proof of all required evidence at final adoption hearing. [P.L. 2004-64, §21.]

§822. Notice of Hearing.

(1) Notice of all court hearings in the adoption proceedings shall be served;

- (a) on the natural parent(s) or guardian(s) of the child to be adopted;
- (b) on the prospective adoptive parents;
- (c) on the child if 12 years or older ;
- (d) on the Central Adoption Authority,

at least 7 days prior to the final hearing.

(2) Voluntary appearance in court shall constitute a waiver of the requirement of service of notice. [P.L. 2004-64, §22.]

§823. Waiting period-Final Hearing.

No final hearing of the adoption shall be held until at least thirty (30) days have elapsed since the signing of the Affidavit of Relinquishment of Parental or guardianship Rights. [P.L. 2004-64, §23.]

§824. Court appearances.

The child to be adopted, the natural parents or guardian(s), and the petitioner(s) must appear in person before the Court at the final hearing. [P.L. 2004-64, §24.]

§825. Best interest of child and other Considerations.

(1) No adoption shall be granted unless the court, based on clear and convincing evidence, is satisfied;

- (a) that the necessary consents have been obtained;
- (b) that the consents were given voluntarily and not coerced by conduct prohibited under this or any other Act;
- (c) that the natural parent(s) or guardian(s) fully understand the consequences of an adoption;
- (d) most importantly, that granting the adoption is in the best interest of the child;

(2) In determining the issue of what is in the best interests of the child, the Court may, in addition to other considerations, consider, inter alia:

- (a) the child's safety, health and welfare, and the resources available to meet those needs;
- (b) the child's level of development and physical and emotional needs;
- (c) the relationship the child has with his or her current family and the importance of continuity in the child's well-being;
- (d) the child's cultural, racial, linguistic and religious heritage and the fostering of a strong personal identity;
- (e) the child's views toward being adopted; and
- (f) the resources available to meet the child's natural needs. [P.L. 2004-64, §25.]

§826. Effect of decree.

(1) After a decree of adoption has been granted, the child and the adopting parents shall hold towards each other the legal relation of parent and child and shall have all the rights and be subject to all the duties of that relationship.

(2) The natural parents of the adopted child are, as of the date of the Order granting the adoption, relieved of all parental duties and responsibility for the child and shall have no right over the child.

(3) A child adopted under this Act shall have the same rights of inheritance as if he were the natural child of the adoptive parents. [P.L. 2004-64, §26.]

§827. Content of decree; specific provisions.

The adoption decree, in addition to establishing a parent-child relationship, granting a name change if requested, and other provisions, shall include a requirement that the adoptive parents arrange for at least one post-adoption home visit during the first six months of the adoption and to file a Post-Adoption Report with the Central Adoption Authority at the conclusion of the six months period. [P.L. 2004-64, §27.]

§828. Content of the Post Adoption Report.

(1) The Post-Adoption report anticipated by section 827 above, shall contain a description of how the child and family are adjusting, whether bonding and attachment between the child and family are sufficient, whether the child's health and emotional needs are being met, what the family is doing to encourage the child's cultural heritage, and any other pertinent data sufficient to inform the natural families of the status of the child. [P.L. 2004-64, §28.]

§829. Monetary inducement.

- (1) It shall be unlawful for any person to offer;
- (a) financial remuneration;
 - (b) aid,
 - (c) gifts,
 - (d) promises of items of monetary value;
 - (e) or future opportunities;

to any natural parent(s) or guardians, for the purpose of inducing that parent or guardian to relinquish parental rights, or consent to an adoption.

(2) The same prohibition shall apply to the inducement of consent from a child who is old enough to give consent. [P.L. 2004-64, §29.]

§830. Criminal penalties.

Any person that violates any provisions of this Act or commits an offense as prescribed by this Act, shall be guilty of an offense, and shall, upon conviction, be liable to a fine not exceeding \$1,000 or, to a term of imprisonment not exceeding twelve (12) months, or both. [P.L. 2004-64, §30.]

§831. Fees.

Unless otherwise directed by the Court, the petitioners shall be responsible for all administrative fees and expenses incurred in the adoption action. [P.L. 2004-64, §31.]

§832. Regulations.

Cabinet may, in accordance with the Administrative Procedure Act, promulgate the necessary rules and regulations to give effect to the provisions of this Act. [P.L. 2004-64, §32.]

§833. Adoption records.

All adoption records shall remain open for public inspection. [P.L. 2004-64, §33.]

§834. Transition and Repeal.

The provisions of 26 MIRC Chapter 1 Part III, in its entirety, and the Adoption Residency (Domestic Relations Amendment) Act, 1999, will continue in force, and will be deemed repealed, only on the date that the Minister responsible, certifies or declares in writing that the Central Adoption Authority has been duly established. [The Minister responsible has since certified or declared the establishment of the Authority, effectively repealing the provisions of the above stated laws][P.L. 2004-64, §34.]

§835. Effective Date.

This Act shall take effect on the date of certification in accordance with Article IV, Section 21, of the Constitution.