

**NITIJELA OF THE REPUBLIC OF THE MARSHALL ISLANDS
39TH CONSTITUTION REGULAR SESSION, 2018**



Republic of the Marshall Islands
Jepilpilin Ke Ejukaan

ADOPTIONS (AMENDMENT) ACT, 2018

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ADOPTIONS (AMENDMENT) ACT, 2018

AN ACT to amend the Adoptions Act, 2002.

BE IT ENACTED BY THE NITIJELA OF THE REPUBLIC OF THE MARSHALL ISLANDS

§101. Short Title.

This Act may be cited as the *Adoptions (Amendment) Act 2018*.

§102. Amendments.

The Adoptions Act, 2002, amended to read as follows:

§801. Short title.

This Chapter may be cited as the "*Adoptions Act 2002*."

§802. Applicability.

This Chapter applies to the adoption of all resident children in the Marshall Islands, except:

- (1) to adoptions finalized in accordance with Marshallese customary laws; ~~or~~
- (2) to the confirmation of adoptions finalized in accordance with Marshallese customary laws, in the High Court of the Republic of the Marshall Islands;
- (3) to adoptions that have been granted prior to the effective date of this Chapter; or
- (4) to adoption proceedings that have been filed prior to the effective date of this Chapter.

§803. Definitions.

- (1) "adoption" means the termination of all parental rights and responsibilities of the birth parent(s) to their child and the attaching of all such rights and responsibilities to the adoptive parents;
- (2) "agency" means any social services entity duly empowered by law to place minor children for adoption, including duly licensed and approved adoption agencies of the receiving state;
- (3) "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 child to be adopted;
- (4) "birth parent" means the biological father or biological mother of the child to be adopted;
- (5) "child" means, a person under 18 years of age.;
- (6) "court" means the High Court of the Republic of the Marshall Islands.;
- (7) "marriage" refers to means the relationship between a man and a woman who are a legally acknowledged couple either through law or custom of their country of residence;
- (8) "Republic" means the Republic of Marshall Islands; and
- (9) "solicitation" means the active encouragement or pursuit of a birth parent in order to coerce his or her consent to the adoption of their child, by conduct that is prohibited under this Chapter or any other Act.

§804. Exclusive Jurisdiction of the High Court.

The High Court of the Republic of Marshall Islands shall have original and exclusive jurisdiction to grant adoptions pursuant to this Chapter.

§805. Establishment of Central Adoption Authority.

The Central Adoption Authority is hereby established within the Ministry of Culture and Internal Affairs, and shall be responsible for the supervision of all adoption proceedings in the Republic except for adoptions finalized in accordance with Marshallese

customary laws and the confirmation of adoptions finalized in accordance with Marshallese customary laws.

§806. Duties of the Authority.

The Central Adoption Authority shall:

- (1) serve as a the central receiving agency for all referrals of children to be adopted in the Republic;
- (2) conduct investigations into the backgrounds and circumstances under which an adoption is being proposed by birth parents;
- (3) provide case management services to birth parents and children;
- (4) provide counselling to birth parents as to options for realistic and effective parenting, including the possibility of customary or international adoption;
- (5) provide pre-natal nutrition and medical referral services to the birth mother in cooperation with other government agencies, departments, or ministries, as appropriate;
- (6) for international adoptions, coordinate with agencies of the receiving state in monitoring the quality of applications, to determine that prospective parents are eligible and suited to adopt and;
- (7) provide a recommendation to the court on individual applications,;
- (8) for children, whose consent to adoption is required, provide counseling to ascertain the child's wishes regarding adoption;
- (9) for international adoptions, take, directly or through agencies in the receiving state, all appropriate measures to collect, preserve and exchange information about the prospective adoptive parents, so far as is necessary to complete the adoption;
- (10) provide to and receive from agencies in receiving states general evaluation reports about international adoptions;

- (11) for international adoptions, monitor post-adoption progress in coordination with agencies in the receiving state; and
- (12) provide a resource to adoptive parents for post-adoption consultation on issues related to the adoption.

§807. Legal Representation of the Central Adoption Authority.

The Central Adoption Authority shall be represented by the Office of the Attorney-General in all court appearances.

§808. Other Adoptions Invalid.

Except as provided in Section 802, the adoption of children in any manner other than as provided for under this Chapter shall not be valid.

§809. Controlling Consideration.

- (1) In all petitions for adoption of children under this Chapter, the court shall consider first and foremost the best interests of the child.
- (2) In determining the best interests of the child, the court shall consider all the factors included in Section 825 and any other matters the court considers relevant to the issue.

§810. Solicitation Unlawful.

It shall be unlawful and a violation of this Chapter for any person to:

- (1) solicit the birth parents of a child, guardians of a child, or members of their families or other relatives, to place a child for adoption;
- (2) facilitate contact between the prospective adoptive parents and the child's birth parents or guardians prior to the signing of the consent by the birth parents or guardians; and
- (3) knowingly encourage, advise or facilitate a person to travel outside the Republic for purposes of placing that person's child or children, whether born or unborn, for adoption.

§811. Eligibility to Petition for Adoption.

- (1) Any person of the age of majority with a sound mind and good character, whether married or single, or a husband and wife jointly, may petition to adopt a child.
- (2) Each 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.

§812. Adoption Petition.

- (1) All proceedings for adoption shall be commenced by the filing of a petition signed and sworn to by the petitioner(s).
- (2) Each adoption petition shall contain, at a minimum, the following information:
 - (a) the name(s) and address of the petitioner(s);
 - (b) the names of the child to be adopted;
 - (c) the names of the child's birth parents, if known, and if the child does not live with either of the birth parents, the names of the child's guardian(s);
 - (d) the date and place of the child's birth;
 - (e) the date and place of the marriage of the petitioners, if applicable; and
 - (f) the requested new name for the child, if any.
- (3) Each petition shall be accompanied by the following documents:
 - (a) a certified copy of the child's Certificate of Live Birth;
 - (b) an Affidavit of Parentage, executed by one or both of the birth parents or guardian(s);
 - (c) an Affidavit of Relinquishment of Parental Rights and Consent to Adoption signed by the birth parent(s) (or guardian(s));
 - (d) an Affidavit executed by the Director of the Central Adoption Authority or his/her designee, certifying that the birth parent(s) or guardian(s) have been counseled in all aspects of the adoption process, and that its full legal ramifications have been explained to them clearly, in a language they understand;
 - (e) home study evaluation of the adoptive family which, at minimum, shall include:
 - (i) the adoptive parents' educational background and any future plans for further education;

- (ii) the adoptive parents' employment history, current employment status, and any employment changes anticipated in the foreseeable future;
 - (iii) the adoptive parents' income history, and future projections, if available;
 - (iv) the adoptive parents' history of prior marriages, if any, including the basis for divorce, the age and gender of each child, from each prior marriage, and the history of child support for and current relationship with those children;
 - (v) the adoptive parents' history of current marriage, if applicable;
 - (vi) the age and gender of each child already in the home;
 - (vii) a detailed report of any prior adoption experiences;
 - (viii) the adoptive parents' participation in any civic or religious activities;
 - (ix) a nationwide criminal background search in the country of residence and country of citizenship of the prospective parents; and
 - (x) a 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 each petitioner's marriage certificate, if married, regardless of whether petitioning jointly or individually;
 - (g) a certified copy of each petitioner's birth certificate;
 - (h) a photocopy of each petitioner's passport;
 - (i) an original signed letter from each petitioner's primary physician who either has a history of treating the petitioner for at least five years or who has reviewed the petitioner's medical history for the most recent five years, attesting to the physical and mental health and capability of the petitioner to adopt and raise a child and clearing the petitioner of any communicable diseases; and
 - (j) a written determination by the Central Adoption Authority that, after possibilities for placement of the child within the

Republic have been given due consideration, an international adoption is in the child's best interest.

- (4) If the petitioners are citizens and domiciles of a foreign country, the home study evaluation required by Section 812(3)(e) shall be conducted by an agency in the petitioners' country of citizenship or domicile.
- (5) If the petitioners are citizens and residents of the Republic, the home study evaluation required by Section 812(3)(e) shall be conducted by the Central Adoption Authority.

§813. Consent to Adoption.

- (1) Unless consent is not required pursuant to Section 816, a petition to adopt a child may be granted only if the following written consents have been obtained:
 - (a) consent of the birth parents;
 - (b) if the child to be adopted is not in the custody or care of either birth parent, consent of the person(s) who have primary guardianship or custody of the child pursuant to a court order or pursuant to Marshallese culture; and
 - (c) if the child to be adopted is older than 12 years of age, consent of the child.
- (2) In order for a consent to be valid, it must be shown:
 - (a) that the consent was not induced by payment or compensation of any kind;
 - (b) that the person giving consent was not under the influence of mind altering drugs, alcohol or other chemicals which impaired that person's judgment or clarity of thought at the time consent was given;
 - (c) that the consent was freely and knowingly and voluntarily given;
 - (d) for a birth mother's consent, that the consent was given only after the birth of the child; and
 - (e) for a child's consent, that the child was counseled and duly informed of the effects of the adoption and of his/her consent thereto and that consideration was given to the child's wishes and opinions.

§814. Duty to Advise Birth Parents/Guardians.

- (1) The court shall ensure that the persons whose consent is required fully understand the consequences of the adoption.
- (2) In all phases of the adoption process, the birth parents or guardians shall be entitled to the services of the Central Adoption Authority.
- (3) The Central Adoption Authority may however recommend legal representation for the birth parents or guardians of the child depending on the circumstances of each case.
- (4) In all phases of representation, the birth parents or guardians of the child shall have interpretation of the proceedings into their primary language.
- (5) All documents presented to the birth parents or guardians shall be translated into their primary language. If the birth parents or guardians 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 Director of the Central Adoption Authority or his/her designee shall attest to this fact in the affidavit referred to in Section 812(3)(d).

§815. Certification by the Central Adoption Authority.

- (1) In addition to the matters referred to in Section 812(3)(d) and Section 814(5), the Director of the Central Adoption Authority shall also certify that:
 - (a) the birth parents or guardians are not in a state of mind which would raise the question of their judgment or clarity of thought; and
 - (b) the birth parents or guardians understand the permanency of adoption, and that they are not acting under duress, coercion, or belief of financial, material, or opportunity gain from the adoption of the child.

§816. Consent not Required.

- (1) It is not necessary to obtain the consent of the following persons:

- (a) 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) where the child to be adopted was born out of wedlock and the birth father of the child has not been 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 other sex crime against the birth mother, the assailant's consent is not required;
 - (d) where a parent is unable to care for the child by reason of severe mental illness established by the testimony of a qualified physician, the consent of such parent is not required;
 - (e) where the birth parents have both abandoned the child and the child is in the custody or guardianship of another person, the birth parents' consent is not required; and
 - (f) where a birth parent's parental rights have been terminated by a court order, such parent's consent is not required.
- (2) The court may, upon request of the petitioners and prior to the final hearing, conduct a hearing to determine whether a person's consent is not required pursuant to this Section.

§817. Revocation of Consent.

- (1) Any person who has given consent to an adoption may revoke his/her consent 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 delivering a written revocation to the court; or
by orally revoking his/her consent in open court.

§818. Children Eligible for Adoption.

The petitioners may petition to adopt any child, provided that the child has not attained the age of 18 years.

§819. Representation of the Child.

The court may appoint an attorney or guardian ad litem, to act for and on behalf of the child, who is the subject of the adoption proceedings.

§820. Reserved.

§821. Certificate of Readiness for Final Hearing.

- (1) Upon filing of the petition and other documents required by this Chapter, the Court may, upon motion of the petitioner(s):
 - (a) issue a Certificate of Readiness for Final Hearing; or
 - (b) order further investigation of specified matters.
- (2) The issuance of a Certificate for Readiness for Final Hearing is not a substitute for competent proof of all required evidence at the final adoption hearing.

§822. Notice of Hearings.

- (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 the child is 12 years of age or older; and
 - (d) on the Central Adoption Authority at least 7 days prior to the hearing.
- (2) Voluntary appearance at a hearing constitutes a waiver of notice of the hearing.

§823. Waiting Period - for Final Hearing.

No final hearing shall be held until at least 30 days have elapsed since the signing of the Affidavit of Relinquishment of Parental Rights and Consent to Adoption by each person who is required to sign the same.

§824. Required Court Appearances.

The child to be adopted, the birth parents or guardian(s), and the petitioner(s) must appear in person before the court at the final hearing.

§825. Best Interests of the Child.

- (1) No adoption shall be granted unless the court, based on clear and convincing evidence, is satisfied that granting the adoption is in the best interests of the child.

- (2) In determining the best interests of the child, the court may, in addition to other considerations, consider:
- (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 needs.

§826. Effect of Decree.

- (1) Upon entry of the decree of adoption, 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) Upon entry of the decree of adoption, the birth parents shall be relieved of all parental duties and responsibility for the child and shall have no rights over the child.
- (3) A child adopted under this Chapter shall have the same rights of inheritance as if he were the birth child of the adoptive parents.

§827. Post-Adoption Reports.

- (1) Each adoption decree, in addition to establishing a parent-child relationship, granting a name change if requested, and granting other relief, shall include a requirement that the adoptive parents:
 - (a) within the first six months of the adoption, arrange for at least one post-adoption home visit and file a Post-Adoption Report with the Central Adoption Authority; and
 - (b) every four years thereafter until the child turns 18 years of age, file a subsequent Post-Adoption Report with the Central Adoption Authority.

- (2) Each Post-Adoption Report 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 birth family of the status of the child.

§828. Reserved.

§829. Unlawful inducements.

It shall be unlawful for any person to offer any financial remuneration, aid, gifts, promises of items of monetary value; or future opportunities to any person for the purpose of inducing that person to relinquish parental rights, or consent to an adoption.

§830. Criminal Offenses and Penalties.

Any person who violates any provisions of this Chapter or commits an offense prescribed by this Chapter shall be guilty of an offense, and shall, upon conviction, be liable to pay a fine not exceeding \$10,000 or to serve a term of imprisonment not exceeding 12 months, or both.

§831. Adoption Assistance Fund.

- (1) The Adoption Assistance Fund is established as a special revenue account within the National Treasury and under the control and supervision of the Ministry of Finance, which must provide for its administration in accordance with the Finance Management Act of 1990.
- (2) The sources of the Fund consist of:
- (a) money appropriated by the Nitijela in respect of the functions of the Central Adoption Authority;
 - (b) administrative fees collected under this Section ;
 - (c) other moneys provided by the Cabinet for the work of the Central Adoption Authority by way of grant or otherwise; and
 - (d) money paid to the Republic by any person or body for the work of the Central Adoption Authority.
- (3) If the sum available in the Fund is not sufficient to meet the purposes stated in Section 806:

- (a) the Minister of Culture and Internal Affairs may request the Nitijela to provide finance for the implementation of this Act in addition to the annual appropriation; and
- (b) the Cabinet may:
 - (i) make available monies from the Contingencies Fund or by reprogramming; and
 - (ii) seek assistance from international and other sources.
- (4) Money made available and received under subsection (3) must be credited to the Fund.
- (5) This Section does not limit the authority of the Cabinet to apply for, administer or expend any grants, gifts, or payments or pass through funds for the purpose of this Act.
- (6) Fines payable under this Act are to be paid to the Ministry of Finance and deposited into the General Fund of the Marshall Islands.
- (7) The Fund must be used to contribute to the expenses, including capital expenses, of the Central Adoption Authority.
- (8) The Secretary of Finance shall maintain proper accounts and records of the Fund, and the accounts are to be provided to the Nitijela by the Minister of Finance pursuant to Article VIII, Section 5(4), of the Constitution.

§832. Regulations.

The Cabinet may, in accordance with the Administrative Procedure Act, promulgate necessary rules and regulations to give effect to the provisions of this Chapter.

§833. Adoption records.

Decrees of adoption are public records and may be examined by any person. All other documents pertaining to specific adoption proceedings that are maintained by the Central Adoption Authority or contained in adoption files maintained by the court are non-public records, and may only be examined pursuant to court order upon a showing of good cause.

§834. Reserved.

§103. Effective Date.

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


CERTIFICATE

I hereby certify:

1. That Nitijela Bill No: 139 ND1 was passed by the Nitijela of the Republic of the Marshall Islands on the 24th day of October 2018; and


2. That I am satisfied that Nitijela Bill No: 139 ND1 was passed in accordance with the relevant provisions of the Constitution of the Republic of the Marshall Islands and the Rules of Procedures of the Nitijela.

I hereby place my signature before the Clerk this 20th day of November 2018.



Hon. Kenneth A. Kedi
Speaker
Nitijela of the Marshall Islands

Attest:



Morean S. Watak
Clerk
Nitijela of the Marshall Islands