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No. 25 of 2014

Fifth Session Tenth Parliament Republic of
Trinidad and Tobago

HOUSE OF REPRESENTATIVES

BILL

AN ACT to amend the Adoption of Children Act, 2000

THE ADOPTION OF CHILDREN (AMENDMENT) BILL,
2014

Explanatory Note

(These notes form no part of the Bill but are intended only to indicate its general purport)

The object of the Bill is to treat with certain deficiencies in the Adoption of Children Act, No. 67 of 2000 (“the Act”) which has not yet been proclaimed and to replace the Adoption Board with the Children’s Authority (“the Authority”) with respect to responsibility for the adoption of children.

Clauses 1 and 2 of the Bill would speak to the short title and interpretation requirements of the Bill.

Clause 3 of the Bill would amend the long title of the Act to clarify the proper name of the relevant international agreement given the force of law in Trinidad and Tobago.

Clause 4 of the Bill would, generally, delete the words “Board”, “Adoption Board” and “court” wherever they occur in the Act and substitute the words “Authority” and “Court” respectively.

Clause 5 of the Bill would amend section 2 of the Act to redefine the term “Minister” and insert new terms.

Clause 6 of the Bill would repeal Part II of the Act.

Clause 7 of the Bill would repeal and replace section 11 of the Act with a new section dealing with the religious upbringing of the child.

Clause 8 of the Bill would, *inter alia*, amend section 12 of the Act to allow the Authority to waive the probationary period of six months required before an application can be made for an adoption order. This waiver would be made in circumstances where only one of the applicants for a waiver is a parent of the child.

Clause 9 of the Bill would amend section 13 of the Act to widen the instances where a child would be removed from the custody of an applicant against the applicant’s will.

Clause 10 of the Bill would repeal and replace section 14 of the Act to require the Authority to notify a person of its decision to decline their application to adopt a child where the Authority is of the opinion that granting the adoption would not be in the best interest of the child.

Clause 11 of the Bill would insert a new section 14A to provide appeals to the High Court from decisions of the Authority.

Clause 12 of the Bill would amend section 15 of the Act to make more precise the language of the provision dealing with the Authority's application to the Court for making a child available for adoption.

Clause 13 of the Bill would amend section 16 of the Act to set out the limits of the information which the Authority may divulge to a former parent in terms of future questions concerning the adoption of the child.

Clause 14 of the Bill would amend section 17(3) of the Act to narrow the effect of an adoption order revoked in accordance with the Act.

Clause 15 of the Bill would repeal and replace section 22 of the Act to remove the requirement for a child to have legal representation in circumstance where an application for adoption of the child is made.

Clause 16 of the Bill would repeal section 23 of the Act.

Clause 17 of the Bill would amend section 24 of the Act to clearly articulate the circumstances in which the Court in exercising its discretion may grant an order for the adoption of a child.

Clause 18 of the Bill would amend section 25 of the Act by deleting the words "bring up" and substituting the word "raise".

Clause 19 of the Bill would amend section 27 of the Act to ensure that proceedings relating to and application for an adoption order would be held *in camera*, and not published.

Clause 20 of the Bill would amend section 20 of the Act by deleting the word "the" and substituting the word "a".

Clause 21 of the Bill would amend section 33 of the Act to clearly articulate the directions and the manner in which these directions are to be given to the Registrar General in relation to the entries to be made in the Adopted of Children Register as established under the said section 33.

Clause 22 of the Bill would amend the Act by inserting after section 33, new sections 33A, 33B and 33C which would, generally, govern the form and contents of a Birth Certificate issued by the Registrar General in respect of an adopted child.

Clause 23 of the Bill would amend the Act by repealing section 34 and substituting new sections 34 and 34A. These new sections would generally provide for the manner in which an application for disclosure of the birth records of an adopted person who is at least eighteen years can be made.

Clause 24 of the Bill would amend section 35(1) of the Act to expand the application of the restriction of sending a child abroad for adoption under that section to include the parent and step-parent of the child.

Clause 25 of the Bill would amend section 36 of the Act by inserting after the words “have been made” the words “or are likely to be made,”.

Clause 26 of the Bill would amend section 37 of the Act to expand the application of that section to include persons having resident status in Trinidad and Tobago. Any adoption order made outside of Trinidad and Tobago is recognised as having the same legal effect under this section.

Clause 27 of the Bill would amend section 38 of the Act to expand the application of that section to include persons having resident status in Trinidad and Tobago. Under this section, the Court must first be satisfied that all attempts to secure an adoption of a child by a national or resident of Trinidad and Tobago have failed before any application by a person who is not a national or resident of Trinidad and Tobago can be made.

Clause 28 of the Bill would amend section 39 of the Act by inserting after the word “by”, the word “register”.

Clause 29 of the Bill would amend section 40 of the Act by deleting the word “year” and substituting the word “years”.

Clause 30 of the Bill would amend section 42 of the Act by inserting a new subsection (3) to allow for the continued existence of proceedings against the Board after the commencement of this Act.

Clause 31 would amend the Act by deleting the Schedule to the Act.

THE ADOPTION OF CHILDREN (AMENDMENT) BILL, 2014

Arrangement of Clauses

Clause

1. Short title
2. Interpretation
3. Long title amended
4. Act amended
5. Section 2 amended
6. Part II repealed
7. Section 11 repealed and substituted
8. Section 12 amended
9. Section 13 amended
10. Section 14 repealed and substituted
11. Section 14A inserted
12. Section 15 amended
13. Section 16 amended
14. Section 17 amended
15. Section 22 repealed and substituted
16. Section 23 repealed
17. Section 24 amended
18. Section 25 amended
19. Section 27 amended
20. Section 29 amended
21. Section 33 amended
22. Sections 33A, 33B and 33C inserted
23. Section 34 repealed and substituted
24. Section 35 amended
25. Section 36 amended
26. Section 37 amended
27. Section 38 amended
28. Section 39 amended
29. Section 40 amended
30. Section 42 amended
31. Schedule deleted

BILL

AN ACT to amend the Adoption of Children Act, 2000

[, 2014]

ENACTED by the Parliament of Trinidad and Tobago as Enactment
follows:

1. This Act may be cited as the Adoption of Children Short title
(Amendment) Act, 2014.

2. In this Act, “the Act” means the Adoption of Interpretation Act
Children Act, 2000. No. 67 of 2000

- Long title amended
- 3.** The long title of the Act is amended by deleting—
- (a) the word “International” and substituting the words “United Nations”; and
 - (b) the word “1990” and substituting the word “1989”.
- Act amended
- 4.** The Act is amended—
- (a) by deleting the word “Board” and the words “Adoption Board” wherever they occur, except in the definition of “medical practitioner” in section 2 and in section 42, and substituting in each place the word “Authority”; and
 - (b) by deleting the word “court” wherever it occurs and substituting in each place the word “Court”.
- Section 2 amended
- 5.** Section 2 of the Act is amended by—
- (a) deleting the definition of “child care centre”;
 - (b) deleting in the definition of “Minister”, the words “Social and Community Development” and substituting the words “the welfare of children”; and
 - (c) inserting in the appropriate alphabetical sequence, the following new definitions:
 - “former parent” means a person who had care and control of a child prior to any application to adopt the child;
 - “resident” has the meaning assigned to it by section 5 of the Immigration Act;”.
- Chap. 18:01
- Part II repealed
- 6.** The Act is amended by repealing Part II.

7. Section 11 of the Act is repealed and the following section is substituted: Section 11 repealed
and substituted

<sup>“Religious
upbringing of
child</sup> 11. The Authority, when placing a child with an adopter, shall have regard so far as practicable, to the wishes of the parent, guardian or child, in relation to the religious upbringing of the child.”.

8. Section 12 of the Act is amended— Section 12
amended

(a) in subsection (1), by deleting the word “An” and substituting the words “Subject to subsection (2), an”;

(b) in subsection (2), by—

(i) deleting paragraph (b) and substituting the following paragraph:

“(b) one of the applicants is a parent, step-parent or relative of the child, or has been a step-parent or relative of the child;” and

(ii) in paragraph (c), by deleting the word “custody” and substituting the word “control”;

(c) by repealing subsection (3) and substituting the following subsection:

“(3) At any time during the probationary period—

(a) the adopter may give notice in writing to the Authority of his intention not to adopt the child; or

(b) the Authority may give the adopter notice in writing of the Authority’s decision not to allow the child to remain in the care of the adopter.”;

- (d) in subsection (5), by deleting the words “shall within seven days” and substituting the words “may, within twenty-one days”;
- (e) in subsection (6), by deleting the words “upon which that period expired” and substituting the words “following the expiration of the probationary period”; and
- (f) in subsection (7), by deleting the words “shall, within seven days” and substituting the words “may, within twenty-one days”.

Section 13
amended

9. Section 13 of the Act is amended by—

- (a) repealing subsection (1) and substituting the following subsection:

“ (1) Before an adoption order is made in respect of a child who has been in the care and control of an applicant—

- (a) for at least three years preceding the application; or
- (b) for substantially all or most of his life,

no person shall remove that child from such care and control of the applicant against the applicant’s will except with the leave of the Court or under any written law or upon the arrest of the child.”; and

- (b) repealing subsection (2) and substituting the following subsections:

“ (2) A person who contravenes subsection (1) commits an offence and is liable on summary conviction to a fine of five thousand dollars and imprisonment for nine months.

(3) Where a person is convicted under subsection (2), the Court may order that person to return the child to—

- (a) the applicant;
- (b) the parent of the child;

- (c) the guardian; or
- (d) the Authority.”.

10. The Act is amended by repealing section 14 and substituting the following section: Section 14 repealed and substituted

“Notification by Authority on declining application 14. Where a person has made an application to the Authority to adopt a child and the Authority is of the opinion that the adoption of that child by that person would not be in the best interest of the child, the Authority shall notify the person accordingly.”.

11. The Act is amended by inserting after section 14, the following section: Section 14A inserted

“Appeals 14A. A person referred to in section 12(3)(b) or 14 may appeal from a decision of the Authority to a Judge of the High Court.”.

12. Section 15 of the Act is amended by— Section 15 amended

(a) repealing subsection (1) and substituting the following subsection:

“ (1) Where a person makes an application to the Authority to place a child for adoption and the Authority accepts that application, the Authority shall apply to the Court for an order declaring that child to be freed for adoption.”;

(b) repealing subsection (2) and substituting the following subsection:

“ (2) Where a child in respect of whom an application is made under subsection (1) cannot be cared for prior to an adoption order being made, the Authority shall take the child into its care in accordance with the Children’s Authority Act and may place the child with a foster parent or in a community residence.”; and

- (c) by inserting after subsection (2), the following subsection:

“ (2A) Where a child who has been in the care of the Authority, has been declared by the Court to be freed for adoption, the child shall remain in the care of the Authority, which may place the child with a foster parent or in a community residence, until such time as the Authority places the child with suitable adopters.”.

Section 16
amended

13. Section 16 of the Act is amended—

- (a) in subsection (1), by deleting the word “the” and substituting the word “a”;
- (b) in subsection (2), by inserting after the word “period”, the word “of”; and
- (c) by inserting after subsection (3), the following subsection:

“ (3A) Nothing in this section shall be construed as permitting the Authority to divulge to a former parent, any information except the notifications required under subsections (2) and (3).”.

Section 17
amended

14. Section 17 of the Act is amended in subsection (3)—

- (a) by deleting the words “The revocation of an order made under section 15 operates,” and substituting the words “Where the Court revokes an order under section 15, the Court may make such further order as it thinks fit, including an order—”;
- (b) by deleting paragraph (b) and substituting the following paragraph:

“(b) to give parental responsibility to the parent making the application; or”;

- (c) in paragraph (c)(ii), by inserting the word “or” after the words “parent;”.

15. The Act is amended by repealing section 22 and substituting the following section: Section 22 repealed and substituted

“Consideration of views of the child” 22. Where an application for an adoption order is made in respect of a child, the Court shall, before making the order, take into consideration the views and wishes of the child having regard to the age and understanding of the child.”.

16. The Act is amended by repealing section 23. Section 23 repealed

17. Section 24 of the Act is amended— Section 24 amended

- (a) in subsection (2), by deleting the words “The grounds specified for the purpose in subsection (1) are that the parent” and substituting the words “Notwithstanding subsection (1), the Court may make an adoption order where the Court finds that the parent”;
- (b) in subsection (3), by inserting after the word “other”, the words “, unless they have separated and are living apart from each other and the separation is likely to be permanent”; and
- (c) in subsection (5), by deleting the words “deemed to have been abandoned if” and substituting the words “abandoned if, in the opinion of the Court,”.

18. Section 25 of the Act is amended in paragraph (b), by deleting the words “bring up” and substituting the word “raise”. Section 25 amended

19. Section 27 of the Act is amended by repealing subsection (3) and substituting the following subsection: Section 27 amended

“ (3) Proceedings in respect of an application to free a child for adoption or an application for an adoption order shall be held *in camera* and not generally published.”.

Section 29
amended

20. Section 29(1) of the Act is amended in paragraph (b), by deleting the word “the” and substituting the word “a”.

Section 33
amended

21. Section 33 of the Act is amended—

(a) by repealing subsections (2) and (3) and substituting the following subsections:

“ (2) Every adoption order shall contain a direction to the Registrar General to make in the Adopted Children Register—

(a) an entry recording the adoption of the child; and

(b) an entry recording the birth of the child in which each adopter shall be recorded as the parent of the child,

and the entries shall be in such forms as the Registrar General may approve.

(3) If, upon an application for an adoption order, it is proved to the satisfaction of the Court that—

(a) the child was born on a particular date; and

(b) the child is the same child to whom any entry in the Register of Births relates,

the adoption order shall contain a further direction to the Registrar General to cause the entry of the birth of the child in the Register of Births to be marked with the word “adopted”, and to record in the entries referred to in subsection (2), the date of birth of the child as stated in the adoption order.”;

(b) by repealing subsections (5), (6) and (7) and substituting the following subsections:

“ (5) A certified copy of an entry in the Register under subsection (2)(a) purporting to be signed by the Registrar General shall, without any further or other proof of such entry, where the entry contains a record of the date of the birth of the adopted child, be received as evidence of the adoption and of the date of the birth of the adopted child to which the same relates in all respects as though it were a certified copy of an entry in the Register of Births.

(5A) A certified copy of an entry in the Register under subsection (2)(b) purporting to be signed by the Registrar General shall, without any further or other proof of such entry, be received as evidence of the date of the birth of the child to which the same relates in all respects as though it were a certified copy of an entry in the Register of Births.

(6) The Registrar General shall cause an index of the Register to be made and kept in his office, and no person, other than the adopter of a child or a person authorised in writing, for the purpose, by the adopter or by the Authority, shall be entitled to search such index and to have a certified copy of any entry in the Register in all respects upon, and

subject to the same terms, conditions and regulations as to payment of fees and otherwise as are applicable under the Births and Deaths Registration Act, or any other Act, in respect of searches in indexes relating to births and deaths kept in the office of the Registrar General.

(7) The Registrar General shall, in addition to the Register and the index thereof, keep such other registers and books, and make such entries therein as may be necessary, to record and make traceable the connection between any entry in the Register of Births which has been marked “adopted” pursuant to this Act and any corresponding entry in the Register, and—

- (a) those other registers and books shall not be open to public inspection or search; and
- (b) the Registrar General shall not, except under an order of the Court, furnish any person with any information contained in, or with any copy or extract from, those registers or books.”.

Sections 33A, 33B
and 33C inserted

22. The Act is amended by inserting after section 33, the following sections:

“Birth
certificate of
adopted child 33A. Notwithstanding any other written law, where the Registrar General issues a certificate in respect of the birth of an adopted child, the certificate shall bear no overt indication that the child was adopted, except such code as has been

approved by the Registrar General to distinguish the type of entry which is being certified.

Issuance of
certificate of
adoption

33B. Where the adopter of an adopted child or a person authorised in writing for the purpose by that adopter, applies to the Registrar General for the issue of a certified copy of an entry under section 33(2) in respect of that child and pays the prescribed fee, the Registrar General shall issue to that adopter or person the certified copy of the entry in the form approved by the Registrar General.

Application
by adopted
person for
certificate of
adoption

33C.(1) Where an adopted person who is at least eighteen years of age applies to the Registrar General for a certified copy of an entry under section 33(2) in respect of his adoption, and pays the prescribed fee, the Registrar General shall issue to him the certified copy of the entry in the form approved by the Registrar General.

(2) Where an adopted person who is under the age of eighteen years wishes to obtain a certified copy of an entry under section 33(2), he may apply to the Authority to act on his behalf.”.

23. The Act is amended by repealing section 34 and substituting the following sections: Section 34 repealed
and substituted

“Disclosure of
birth records
of adopted
children

34. (1) An adopted person who is at least eighteen years of age and the record of whose birth is kept by the Registrar General, may make an application in the prescribed manner to the Court for such information as is necessary to enable that person to obtain a certified copy of the record of his birth as recorded in the Register of Births and Deaths.

(2) On considering an application under subsection (1), the Court may—

- (a) refer the applicant to the Authority for assistance with accessing counselling; or
- (b) direct the Registrar General to furnish the applicant with such information as the Court thinks fit.

Application
by adopted
persons for
certain
information

34A.(1) An adopted person—

- (a) whose birth record is kept by the Registrar General;
- (b) who intends to get married; and
- (c) who pays the prescribed fee,

may make an application in the prescribed manner to the Registrar General to determine if the adopted person and the person they intend to marry are within the prohibited degrees of consanguinity or affinity for the purposes of the Marriage Act.

Chap. 45:01

(2) Where an application is made under subsection (1), the Registrar General may issue to the applicant, a written report indicating whether or not, from the information contained in the registers of birth or other records, the applicant and the person whom he intends to marry may be within the prohibited degrees of consanguinity or affinity for the purposes of the Marriage Act.

(3) Before supplying any information to an applicant under subsection (2), the Registrar General shall inform the applicant that he may access the Authority for assistance with counselling.”.

24. Section 35(1) of the Act is amended by— Section 35
amended
 (a) deleting the words “, or may be”; and
 (b) inserting the words “parent, step-parent,”
 before the word “guardian”.

25. Section 36 of the Act is amended in Section 36
amended
 subsection (1), by inserting after the words “have been
 made” the words “or are likely to be made,”.

26. Section 37 of the Act is amended by inserting Section 37
amended
 after the words “by a national”, the words “or resident”.

27. Section 38 of the Act is amended by— Section 38
amended
 (a) inserting after the words “a national”, the
 words “or resident”; and
 (b) deleting the words “all attempts to secure
 adoption by applicants who are nationals
 of Trinidad and Tobago have failed, and”.

28. Section 39 of the Act is amended by inserting Section 39
amended
 after the word “by”, the word “registered”.

29. Section 40 of the Act is amended in subsection (2), Section 40
amended
 by deleting the word “year” and substituting the word
 “years”.

30. Section 42 of the Act is amended by inserting Section 42
amended
 after subsection (2), the following subsection:
 “ (3) Any legal proceedings existing against
 the Adoption Board referred to in subsection (1)
 before the commencement of this Act, may be
 continued on, and after, the commencement of
 this Act, against the Authority.”.

31. The Act is amended by deleting the Schedule. Schedule deleted

Passed in the House of Representatives this day
 of , 2014.

Clerk of the House

I confirm the above.

Speaker

Passed in the Senate this day of , 2014.

Clerk of the Senate

I confirm the above.

President of the Senate

No. 25 of 2014

FIFTH SESSION
TENTH PARLIAMENT
REPUBLIC OF
TRINIDAD AND TOBAGO

BILL

AN ACT to amend the Adoption of
Children Act, 2000

Received and read the

First time

Second time

Third time
