

SENATE BILL NO. 758

BY SENATOR BROOME

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AN ACT

To amend and reenact Children's Code Articles 1245(A) and 1247(B) and to enact Children's Code Article 1245.1, relative to intrafamily adoptions; to provide for a burden of proof; to provide for the appointment of counsel; to provide for notice of rights of natural parents; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Children's Code Articles 1245(A) and 1247(B) are hereby amended and reenacted and Children's Code Article 1245.1 is hereby enacted to read as follows:

Art. 1245. Parental consent not necessary; **burden of proof**

A. The consent of the parent as required by Article 1193 may be dispensed with upon proof **by clear and convincing evidence** of the required elements of either Paragraph B, or C of this Article.

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Art. 1245.1. Right to counsel

A. If the adoption petition seeks to terminate parental rights of a parent whose consent to the adoption is required pursuant to Article 1193 and the parent notifies the court of his intent to oppose the adoption, the child and the parent shall each have the right to be represented by separate counsel in the adoption proceeding.

B. Upon receipt of a notice of opposition, the court shall appoint a qualified, independent attorney to represent the child in such a proceeding. Neither the child nor anyone purporting to act on his behalf may be permitted to waive the child's right to counsel. The costs of the child's representation shall be taxed as costs of court.

C. If the court determines that the parent is indigent and unable to

1 employ counsel solely for that reason, an attorney shall be appointed to
2 represent the parent in accordance with Article 320. The costs of the indigent
3 parent's representation may be taxed as court costs.

4 * * *

5 Art. 1247. Service of process

6 * * *

7 B. Except when waived in accordance with the provisions of Title XI or XII,
8 notice of the filing of the petition shall be issued by the clerk and served, together
9 with a copy of the petition, on any every parent whose consent to the adoption is
10 required pursuant to Article 1193 and whose parental rights have not been
11 terminated by a court of competent jurisdiction, and shall state:

12 Notice

13 Louisiana law provides that under certain circumstances your consent
14 to the adoption of your child may be dispensed with and you can permanently
15 lose your rights as a parent by final decree of adoption. An intrafamily
16 adoption petition has been filed requesting the court to grant an adoption and
17 terminate your parental rights to your child. A copy of the petition is attached
18 to this notice. A court hearing of your case has been scheduled for the ___ day
19 of ___ at the ___ division of ___ court in the parish of ___ . At this hearing,
20 you may consent to the adoption or you may oppose the adoption. If you fail to
21 appear, the court can grant the adoption and terminate your rights despite your
22 absence. If the court at the trial finds that the facts set out in the petition are
23 true and that adoption is in the best interests of your child, the court can enter
24 a judgment ending your rights to your child. If the judgment terminates your
25 parental rights, you will no longer have any rights to visit or to have custody of
26 your child, or make any decisions affecting your child and your child will be
27 legally freed to be adopted. This is a very serious matter. You should contact
28 an attorney immediately so that you can be prepared for the court hearing. You
29 have the right to hire an attorney and to have him or her represent you. If you
30 cannot afford to hire an attorney, you may call the telephone number on the

1 attached form for information concerning free legal aid. If free legal aid is not
2 available, the court will appoint an attorney if the court finds that you are
3 unable to pay some or all of the costs. Whether or not you decide to hire an
4 attorney, you have the right to attend the hearing of your case, to call witnesses
5 on your behalf, and to question those witnesses brought against you. If you
6 have any questions concerning this notice, you may call the telephone number
7 of the clerk's office which is _____.

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____