

TENTH CONGRESS OF THE REPUBLIC )  
OF THE PHILIPPINES )  
First Regular Session )

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S E N A T E

S. B. No. 1405

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Introduced by Senator Shahani

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EXPLANATORY NOTE

With the passage of Republic Act No.8043, otherwise known as the Inter-Country Adoption Act of 1995, aliens may now legally adopt abandoned, surrendered and neglected Filipino children. However, Section 11 of the same law provides; "No child shall be matched to a foreign adoptive family unless it is satisfactorily shown that the child cannot be adopted locally." This bias in favor local adoption is nonetheless not fully effective. While R.A. 8043 provides for a budgetary allocation to carry out said provisions to the tune of Five Million Pesos (5,000,000.00), there is no counterpart support for local adoption.

Moreover, aliens residing in the Philippines, who at least theoretically, have a better grasp of Filipino culture and laws were inadvertently left out in the Act. If they wish to avail of adoption, they still have to leave the country and go back to their country of origin to file the necessary adoption proceedings. This somehow provides an undue disadvantage to them than their fellow citizens who wish to adopt Filipino children in their own homeland.

Furthermore, Title VII, of Executive Order 209, otherwise known as the Family Code, is quite ambiguous as far as successional rights of the adopted is concerned. Although Article 189 of the Family Code cites the reciprocal rights and obligations of adoptive parent and child, it does not explicitly provide that the adoptive parents are the compulsory heirs of the adopted child. This may seem inconsistent with the policy of establishing reciprocal rights between parent and child, including successional rights. Article 984 of the Civil Code states thus: "in case of the death of an adopted child leaving no legitimate children and descendants of the deceased, his parents and relatives by consanguinity and not by adoption shall be his legal heir." This ambiguity in the Civil Code has not been addressed by passage of the Family Code. This measure therefore corrects this inconsistency and provides that the adoptive parents and child are compulsory heirs to one another.


The bill also uses the term "biological" child and/or parent in lieu of "natural" parent and/or child. This is so in order to be consistent with current usage.

On the other hand, Article 192 (2) of the Family Code permits adoptive parents to rescind the adoption while the

adopted is still a minor when he or she commits acts that have "definitely repudiated the adoption". This seem to be quite discriminatory since it places an undue burden on the minor adopted child to behave at all times in the manner that would not "repudiate the adoption." Otherwise, his adoptive parents could take steps to "terminate" their relationship. This option is certainly not available to biological parents. The measure eliminates therefore this discriminatory provision and allows the adoptive parents to disinherit only for causes permitted under Article 919 of the Civil Code.

The most innovative feature of the bill however is the aspect of simulation of births. According to available records, there are about 300,000 to 500,000 Filipinos who have been locally "adopted" through simulated births. This practice leaves the "adopted" child unprotected in the event of death of the "adoptive" parents or if the legality of the simulation of births is challenged by unscrupulous parties. In these cases, the child will loose the right to use the family name, not to mention the trauma that the "adoptive" child will undergo by the disruption of family ties. Many parents who have undertaken "simulated births" are now afraid to come out in the open for fear of disclosure of the fact that the birth certificate of the child have been falsified. As such, they also run the risk of being prosecuted for falsification of public documents under the Revised Penal Code. To protect themselves from the public eye, many parents who have "simulated births" conceal this fact even from the "adoptive" child. To rectify this situation, the bill proposes to provide immunity from criminal prosecution to parents who have "simulated" their births provided the same has been done in good faith and has redounded to the best interest of the child, and also provided they rectify their "informal" adoption within two years from the effectivity of this proposed law. The welfare of the child, which is the paramount consideration in all adoption proceedings, to the mind of the author, justifies the grant of immunity to parents who have undergone "simulated births."

In view of the aforesaid reasons, the immediate approval of this measure is earnestly sought.

  
LETICIA RAMOS SHAHANI  
Senator

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**AN ACT**

ESTABLISHING THE RULES TO GOVERN THE ADOPTION OF FILIPINO CHILDREN IN THE PHILIPPINES, AMENDING FOR THE PURPOSE CERTAIN PROVISIONS OF EXECUTIVE ORDER NO. 209, OTHERWISE KNOWN AS THE FAMILY CODE AND FOR OTHER PURPOSES.

Be it enacted by the Senate and house of Representatives of the Philippines in Congress assembled:

**ARTICLE I**

**GENERAL PROVISIONS**

**SECTION 1. Short Title.** - This Act shall be known as the " Local Adoption Act of 1996"

**SECTION 2. Declaration of Policy.** - It is hereby declared the Policy of the state;

(1). To exert all efforts to allow each child to remain under the care and custody of his or her parents; only when such efforts prove insufficient and no appropriate placement within the child's extended family is available shall adoption be Considered;

(2). That the best interest of the child will be the paramount consideration in all adoption procedures;

(3). To provide every neglected, orphaned, surrendered, or abandoned child with a family that will provide such child with love and care as well as opportunities for growth and development; towards this end, efforts shall be exerted to promote local adoption and to place the child with an adoptive family or parent in the Philippines;

(4). To conduct public Education to promote a positive environment for adoption;

(5). To ensure that sufficient capacity exist within government and private sector agencies to handle adoption inquiries, process local adoption application and offer adoption-related services, including parent preparation and post adoption education and counseling; and

(6). To consider inter-country adoption only as a last resort, after all possibilities for the local adoption of the child have been exhausted and if inter-country adoption is demonstrated to be in the best interest of the child.

**SECTION 3. Definition of Terms.** - As used in this Act, the terms:

a) **Child** - Refers to a person below eighteen years of age.

b) **Legally-free Child** - Refers to a child who has been voluntarily or involuntarily committed to the Department of Social Welfare and Development in accordance with the provision of the child and youth welfare code.

c) **Resident Aliens** - Refers to the persons residing legally in the Philippines, including aliens who are legally permitted to work or engage in business in the Philippines, members of the diplomatic corps and staff of international organizations based in the Philippines.

d) **Department** - Refers to the Department of Social Welfare and Development.

e) **Child Placement Agency** - Refers to the agency duly licensed and accredited by the Department of Social Welfare and Development to provide comprehensive child placement services including receiving applications for adoption, evaluating the prospective adoptive parents and preparing the adoption home study.

f) **Child Caring Agency** - Refers to an agency duly licensed and accredited by the Department that provides

twenty-four hours resident group service for the physical, mental, social, and spiritual well-being of nine or more mentally-gifted, dependent, abandoned, neglected, handicapped or disturbed children or youth offenders.

g) **Simulation of Birth** - Refers to the pretention that a child was born to a woman who is not the child's biological mother and the registration of the child in the registry of birth as such.

## ARTICLE II

### BIOLOGICAL PARENTS

**SECTION 4. Counseling Services.** The services of licensed social workers shall be provided to the biological parents who are contemplating the relinquishment of their child for adoption. Counseling should be provided to the biological parents, if possible before, as well as after, the birth of the child, to assist them in considering the alternatives for the child's future and the implications of each alternative. No binding commitment to an adoption plan shall be permitted before the birth of the child. In accordance with Article 164 of the Child and Youth Welfare Code, sufficient time should be allowed for the biological parents to reconsider any decision to relinquish a child for adoption before the decision becomes irrevocable. Counseling and rehabilitation services should also be offered to the biological parents after they have relinquished the child for adoption.

**SECTION 5. Hurried Decisions.** In all proceedings for adoption, steps should be taken by the Department, by the duly licensed and accredited child caring agency and by the

court to prevent the biological parents from making hurried decisions caused by the strain or anxiety to give up the child, and to ascertain that all measures to strengthen the family have been exhausted and that any prolonged stay of the child with the biological parents will be inimical to the child's welfare and safety.

**SECTION 6. Unknown Parents.** If the biological parents are not known, the Department, or the duly licensed and accredited child caring agency in whose care the child has been placed, shall seek to identify and locate the biological parents as soon as possible and ensure that the abovementioned services and counseling are provided before taking any action in relation to the adoption of the child. If the biological parents cannot be located, the child may be declared as abandoned in accordance with the provisions on abandonment in the Child and Youth Welfare Code.

### ARTICLE III

#### ELIGIBILITY AND PROCEDURE

**SECTION 7. Who May Adopt.** - A person of age and in possession of full civil capacity and legal rights may adopt, provided he or she is in a position to support and care for his or her children, legitimate or illegitimate, in keeping with the means of the family.

Husband and wife must jointly adopt, except in the following cases:

- (1) when one spouse seeks to adopt his own illegitimate child; or
- (2) when one spouse seeks to adopt the legitimate child of the other. In case husband and wife jointly adopt or one exercised by the spouses.

**SECTION 8. Who May Be Adopted.** - Only minors may be adopted, except in the cases when the adoption of a person of majority age is allowed under this Act.

In addition, the adopter must be at least sixteen years older than the person to be adopted, unless the adopter is the biological parent of the adopted, or is the spouse of the legitimate parent of the person to be adopted.

The following may not be adopted:

(1) a person of legal age, unless he or she is a biological child of the adopter or his or her spouse, or, prior to adoption, said person has been consistently considered and treated by the adopter as his or her own child during minority;

(2) an alien with whose government the Republic of the Philippines has no diplomatic relations; and

(3) a person who has already been adopted unless such adoption has been previously revoked or rescinded.

**SECTION 9. Who May Not Adopt.** - The following persons may not adopt:

(1) The guardian with respect to the ward prior to the approval of the final accounts rendered upon the termination of their guardianship relationship;

(2) Any person who has been convicted of a crime AGAINST CHASTITY OR AGAINST PERSONS;

(3) An alien except:

(a) a former Filipino citizen who seeks to adopt a child WHO MAY OR MAY NOT BE A RELATIVE;

(b) one who seeks to adopt the legitimate child of his or her Filipino spouse;

(c) one who is married to a Filipino citizen and seeks to adopt jointly with his or her spouse a relative by consanguinity of the latter; or

(d) A RESIDENT ALIEN WHO HAS BEEN LIVING IN THE PHILIPPINES FOR AT LEAST TWO (2) YEARS PROVIDED HE OR SHE MAINTAINS SUCH RESIDENCE UNTIL THE ADOPTION DECREE IS ENTERED AND IS ELIGIBLE TO ADOPT UNDER HIS OR HER NATIONAL LAWS, PROVIDED, THAT THE COUNTRY OF WHICH SUCH ALIEN IS A NATIONAL, MAINTAINS DIPLOMATIC RELATIONS WITH THE PHILIPPINES.

Aliens DISQUALIFIED TO ADOPT UNDER THE PRECEDING may adopt Filipino children in accordance with REPUBLIC ACT NO. 8043.

**SECTION 10. Child Placement Agencies.** - ONLY AGENCIES WHICH HAVE BEEN DULY LICENSED AND ACCREDITED BY THE DEPARTMENT TO ACCEPT AND PROCESS APPLICATIONS FOR ADOPTION, CONDUCT THE ADOPTION HOME STUDY AND PROVIDE OTHER CHILD PLACEMENT - RELATED SERVICES ARE AUTHORIZED TO RENDER SUCH SERVICES. THE DEPARTMENT IS EMPOWERED TO DETERMINE A REASONABLE SCHEDULE OF FEES AND CHARGES THAT MAY BE EXACTED BY DULY LICENSED AND ACCREDITED CHILD PLACEMENT AGENCIES IN CONNECTION WITH THE APPLICATION FOR ADOPTION.

**SECTION 11. Case Study.** - No petition for adoption shall be granted unless the Department OR A CHILD PLACEMENT AGENCY DULY LICENSED AND ACCREDITED BY THE DEPARTMENT has made a case study of the child to be adopted, his BIOLOGICAL parents as well as the prospective ADOPTIVE parents, and has submitted its report and recommendations on the matter to the court hearing such petition. THE CASE STUDY OF THE CHILD SHOULD ESTABLISH THAT THE CHILD IS LEGALLY FREE FOR ADOPTION AND THAT THE NECESSARY DOCUMENTS TO SUPPORT THIS FACT ARE VALID. The Department shall intervene on behalf of the child if it finds, after such case study, that the petition should be denied. SUCH CASE STUDY AND OTHER RELEVANT DOCUMENTS AND RECORDS PERTAINING TO THE CHILD SHALL BE PRESERVED BY THE DEPARTMENT.



**SECTION 12. Legal Proceedings.** - The proceedings for adoption shall be governed by the Rules of Court in so far as they are not in conflict with this ACT.

**SECTION 13. Trial Custody.** - No petition for adoption shall be finally granted unless and until the adopting parents are given by the court a supervised trial custody period of at least six months to assess their adjustment and emotional readiness for the legal union. During the period of trial custody, parental authority shall be vested in the adopting parents.

The court may, upon its own motion or on motion of the petitioner, reduce or dispense with the trial period if it finds that it is to the best interest of the child. In such case, the court shall state its reasons for reducing said period.

**SECTION 14. Decree of Adoption.** - If, after considering the report of the Department or duly licensed AND ACCREDITED child placement agency and the evidence submitted before it, the court is satisfied that the petitioner is qualified to maintain, care for, and educate the child, that the trial custody period has been completed, and that the best interest of the child will be promoted by the adoption, a decree of adoption shall be entered, which shall be effective as of the date the original petition was filed. The decree shall state the name by which the child is thenceforth to be known.

**SECTION 15. Confidential Nature of Proceedings and Records.** - All hearings in adoption cases shall be confidential and shall not be open to the public. All records, books and papers relating to the adoption cases in the files of the court, or of the Department, and of any other agency and institution participating in the adoption proceedings, shall

be kept strictly confidential.

Subject to the provisions of Article 7 of the Child and Youth Welfare Code, in any case in which the information from such records, books and papers is needed, the person or agency requesting the release of the information may file a petition to the court which entered the decree of adoption for its release. If the court finds that the disclosure of the information is necessary for purposes connected with or arising out of the adoption and will be for the best interest of the child, the court may permit the necessary information to be released, restricting the purposes for which it may be used.

**SECTION 16. Civil Registry Record.** - The adoption shall be recorded in the local civil register and shall be annotated on the record of birth and the same shall entitle the adopted person the issuance of an amended birth certificate. IN KEEPING WITH THE NEED FOR CONFIDENTIALITY, THE AMENDED BIRTH CERTIFICATE, UNLESS SO REQUESTED, SHOULD NOT INDICATE THAT IT WAS AMENDED.

**SECTION 17. Consent to Adoption.** - The written consent of the following to the adoption shall be necessary:

(1) the person to be adopted, if ten years of age or over;

(2) the BIOLOGICAL parents of the child, legal guardian, or the proper government instrumentality;

(3) the legitimate and adopted children, ten years of age or over, of the adopting parent or parents;

(4) the illegitimate children, ten years of age or older, of the adopting parent, if living with the said parent and the latter's spouse, if any; and

(5) the spouse, if any, of the person adopting or to be adopted.

**SECTION 18. Effect of Adoption.**- Adoption shall have the following effects:

(1) for civil purposes, the adopted shall be deemed to be a legitimate child of the adopter and both shall acquire the reciprocal rights and obligations arising from the relationship of parent and child including the right of the adopted to use the surname of the adopters AS WELL AS THE RIGHTS OF THE ADOPTERS AND THE ADOPTED TO BE COMPULSORY HEIRS OF EACH OTHER;

(2) the parental authority of the BIOLOGICAL parents over the adopted shall terminate and shall be vested in the adopters, except that if the adopter is the spouse of the BIOLOGICAL parent of the adopted, parental authority over the adopted shall be exercised jointly by both spouses; and

(3) the adopted shall remain a LAWFUL heir of his BIOLOGICAL parents and other blood relatives.

**SECTION 19. Succession.** - SUCCESSION TO THE ESTATE OF AN ADOPTED CHILD SHALL BE GOVERNED BY THE PROVISIONS IN TITLE IV OF THE NEW CIVIL CODE SUBJECT TO THE FOLLOWING RULES:

(1) When the BIOLOGICAL parents, legitimate or illegitimate, or the legitimate ascendants of the adopted concur with the adopters, they shall divide the entire estate, one half to be inherited by the BIOLOGICAL parents or ascendants and the other half, by the adopters.

(2) WHEN THE BIOLOGICAL PARENTS AND THE ADOPTIVE PARENTS CONCUR WITH THE SURVIVING SPOUSE OR ILLEGITIMATE CHILDREN OF THE ADOPTED, THEY SHALL DIVIDE THE ESTATE, ONE-HALF TO BE INHERITED BY THE SURVIVING SPOUSE OR ILLEGITIMATE CHILDREN AND THE OTHER HALF BY THE BIOLOGICAL PARENTS AND THE ADOPTIVE PARENTS TO BE ALLOCATED IN THE MANNER STATED IN PARAGRAPH (1) OF THIS ARTICLE;

(3) WHEN THE BIOLOGICAL PARENTS AND THE ADOPTIVE PARENTS CONCUR WITH THE SURVIVING SPOUSE OR ILLEGITIMATE CHILDREN OF THE ADOPTED, THEY SHALL DIVIDE THE ESTATE EQUALLY INTO THREE PARTS, ONE-THIRD TO BE INHERITED BY THE SURVIVING SPOUSE, ANOTHER ONE-THIRD TO THE ILLEGITIMATE CHILDREN, AND THE REMAINING ONE-THIRD TO THE BIOLOGICAL PARENTS AND THE ADOPTIVE PARENTS TO BE ALLOCATED IN THE MANNER IN PARAGRAPH (1) OF THIS ARTICLE.

(4) WHEN ONLY THE BIOLOGICAL PARENTS OR THE ADOPTIVE PARENTS CONCUR WITH THE HEIRS IN THE TWO PRECEDING PARAGRAPHS, THE FORMER SHALL STILL BE ENTITLED TO THE SHARE THEREIN PROVIDED;

(5) When only the adopters survive, they shall inherit the entire estate.

**SECTION 20.** If the adopted is a minor or otherwise incapacitated, the adoption may be judicially rescinded upon the petition of any person authorized by the court or proper government instrumentality acting on his or her behalf, on the same grounds prescribed for loss or suspension of parental authority. If the adopted is at least eighteen years of age, he may petition for judicial rescission of the adoption on the same grounds prescribed for disinheriting an ascendant.

**SECTION 21.** Adoption, being for the best interest and welfare of the child, shall not be subject to rescission by the adopters. However, the adopters may disinherit the adopted for causes provided in articles 919 of the civil code.

**SECTION 22.** If the adopted minor has not reached the age of majority at the time of the judicial rescission of the adoption, the court in the same proceeding shall reinstate the parental authority of the BIOLOGICAL parents,

unless the latter are disqualified or incapacitated, in which case the court shall appoint a guardian over the person and property of the minor. If the adopted person is physically or mentally handicapped, the court shall appoint in the same proceeding a guardian over his person or property or both.

Judicial rescission of the adoption shall extinguish all reciprocal rights and obligations between the adopters and the adopted arising from the relationship of parent and child. The adopted shall likewise lose the right to use the surnames of the adopters and shall resume his surname prior to the adoption.

**SECTION 23.** The adopters shall enjoy all the parental benefits to which Biological parents are entitled, including parental leave from the date the child is placed with the prospective adoptive parent.

**SECTION 24.** Any person who places a child or causes a child to be placed for profit shall be punished with a penalty of imprisonment ranging from six (6) years and one (1) day to twelve (12) years and/or a fine of not less than Fifty Thousand Pesos (P50,000.00).

**SECTION 25.** Any person who knowingly participates in securing the adoption of a child contrary to the requirements herein provided shall be punished in accordance with the preceding article. However, a person who has, prior to the effectivity of this ACT, simulated the birth of a child shall not be punished for such ACT under article 347 of the revised penal code or other existing laws, provided the simulation of birth was made for the best interest of the child and the child has been consistently considered and treated by that person as his or her own child; Provided further that the application for correction of the birth registration and petition for adoption shall be simultaneous-

ly filed within two years from the effectivity of this ACT and completed thereafter; provided finally that such person complies with the procedure as specified in article III of this Act and other requirements as determined by the Department.

**SECTION 26.** Implementing Rules and Regulations. the Department, in coordination with the council for the welfare of children, the Department of Justice and the Civil Registrar General, after due consultation with agencies involved in local adoption, child care and placement, shall promulgate the necessary rules and regulation to implement the provision of this Act within six (6) months after its effectivity.

**SECTION 27.** Appropriations. The amount of Ten Millions Pesos (P10,000,000.00) is hereby appropriated to cover the administrative and other expenses associated with the promotion of the local adoption, counseling services for parents considering the relinquishment of a child for adoption, pre-and-post adoption services for adoptive families, and other expenses associated with the implementation of the provisions of this Act. The same shall be included in the general appropriations act for the year following its enactment. Thereafter, such sums as may be included in the General Appropriations Act.

**SECTION 28.** Separability Clause. If any provision, or part hereof, is held invalid or unconstitutional, the remainder of the law or the provision not otherwise affected, shall remain valid and subsisting.

**SECTION 29.** Repealing Clause. Any law, decree, executive order, administrative order or rules and regulation contrary to, or inconsistent with, the provisions of this Act are hereby repealed, modified or amended accordingly.

**SECTION 30.** Effectivity Clause. This law shall take

effect fifteen (15) days after its publication in two (2) newspaper or general circulation.

Approved.