

10TH CONGRESS OF THE REPUBLIC )  
 OF THE PHILIPPINES )  
 First Regular Session )

96 MAY -3 P4:05

SENATE

RECEIVED BY: PHS. No. 1514


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Introduced by Senator Raul S. Roco

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### EXPLANATORY NOTE

The attached Domestic Adoption Bill has three main objectives: (a) to rectify several recognized deficiencies in adoption laws founded in the Family Code and the Child and Youth Welfare Code; (b) to increase the resources for domestic adoption promotion and services; and (c) to consolidate within a single law the various provisions on domestic adoption that are found in several laws. Under the proposed bill, the major improvements in the legal framework for domestic adoption are as follows:

**Rectification of Simulated Births.** "Simulation of birth" refers to the act of making it appear that a child was born to a woman other than his own biological mother and registering the same in the civil registry motivated by a desire to cause the loss of any trace as to the child's true filiation to his prejudice. It is estimated that there are several hundred thousand Filipinos who have been "adopted" in a non-legal manner through simulation of birth. However, such non-legal processes, involving the falsification of a public document (i.e., the child's birth record), leave the child legally unprotected in the event of the death of the "adoptive" parents or if the legality of the simulation of birth is challenged in a court of law. Although many families would now like to rectify their non-legal adoptions, the fear of being penalized for the "simulation of birth", an illegal act, prevents these families from undergoing legalization procedures. The bill enables those who "adopted" through "simulation of birth" to rectify their non-legal adoption without fear of being penalized for their earlier act of falsifying a public document, so long as it can be shown that the simulation of birth was undertaken in good faith and in the best interest of the child, and provided that the parents apply for the rectification of their non-legal adoptions within a five-year period from the effectivity of the proposed law. Unless simulations of birth can be legally rectified, many children may suffer for actions which they did not commit.

**Eligibility of Resident Aliens.** The bill expands the eligibility for domestic adoption to aliens residing legally in the Philippines for at least three (3) years, including those who are permanent residents, those who are legally permitted to work or engage in business in the Philippines, members of the diplomatic corps, and those who are employees of international organizations stationed in the Philippines. Currently, hundreds of Filipino children are placed each year with families abroad under the inter-country adoption program. The rationale for expanding eligibility for domestic adoption is to permit more Filipino children to be placed with adopting parents who are familiar with the Philippines and have experienced Filipino culture and values, rather than with parents abroad who have no ties with this country. At the same time, the bill establishes additional safeguards and requirements in the case of aliens to ensure that those who are permitted to adopt possess all the qualifications and none of the disqualifications to become adoptive parents.

**Services for Biological Parents.** The bill specifies the services that should be provided to biological parents considering the relinquishment of their child for

adoption. This will help to ensure that biological parents make this decision carefully with full knowledge of the implications.

Succession. The bill eliminates the existing ambiguities with respect to the succession or inheritance rights of adopted children and adopting parents. The bill states that the adopting parents and their legitimate children, on one hand, and the adopted child, on the other hand, are compulsory heirs of each other. This would permit adopters to inherit from their adopted child in the event that the child predeceases them.

Equal Benefits for Adopters. Current law fails to include adoptive parents as eligible for maternity leave and similar benefits which are available to biological parents. The denial of parental leave at the time of the child is placed with the family deprives parents and child of the necessary period for bonding, which is required by all families when a new child is received. The bill extends all benefit and leave entitlements of biological parents to adopting parents as well. If the bill is passed into law, mothers who adopt children below 7 years of age through regular adoption procedures would be able to enjoy maternity leave when the child is placed with the prospective adopters.

Rescission of Adoption. The bill repeals a questionable provision in the Family Code, Article 192(2), which permits adopting 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 provision of the Family Code is discriminatory because it places an undue burden on the minor adopted child to behave at all times in a manner that would not "repudiate the adoption"; otherwise, his adopters could take steps to "terminate" their relationship. This option is obviously not open to parents of biological children.

Penalties. The Family Code does not include any penalty clause for violation of adoption laws. The proposed bill provides for penalties for those who participate in securing the adoption of a child in violation of the requirements or procedures stipulated in the bill. Penalties are also established for acts constituting child trafficking and for violations of the requirements for confidentiality of adoption proceedings.

This bill is filed upon the request of Task Force on Adoption Legislation Reform. Accordingly, early passage of the bill is earnestly recommended.

*Raul S. Roco*

RAUL S. ROCO  
Senator

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**AN ACT  
ESTABLISHING THE RULES TO GOVERN THE ADOPTION OF  
FILIPINO CHILDREN IN THE PHILIPPINES, 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  
"Domestic Adoption Act of 1996."

**SEC. 2. Declaration of Policy.**--The State shall protect the  
rights and promote the welfare of children in keeping with the  
mandate of the fundamental law and the precepts of the United  
Nations Convention on the Rights of the Child. The State is,  
therefore, bound to provide for a system of adoption which shall  
ensure paramount consideration to the best interests of the  
child.

The State recognizes the need to provide every neglected,  
orphaned, surrendered or abandoned child with a family that will  
provide them with love and care as well as opportunities for full  
growth and development. Efforts shall thus be exerted to promote  
domestic adoption to place the child with a family or parent in  
the country.

**SEC. 3. Definition of Terms.**--As used in this Act, the term:

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

- b) A child legally available for adoption refers to a child who has been voluntarily or involuntarily committed to the Department of Social Welfare and Development in accordance with provisions of the Child and Youth Welfare Code.
- c) Resident alien is a foreigner residing legally in the Philippines, including an alien who is legally permitted to work or engage in business in the Philippines, a member 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 adopting 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 (24) hour resident group service for the physical, mental, social and spiritual well-being of nine (9) or more mentally-gifted, dependent, abandoned, neglected, handicapped or disturbed children or youth offenders.
- g) Pre-adoption placement authority refers to the document issued by the Department which authorizes the placement of a child with a prospective adopting parent for a given period preparatory to adoption.
- h) Simulation of birth refers to the act of making it appear that a child was born to a woman other than his own

biological mother and registering the same in the Civil Registry motivated by a desire to cause the loss of any trace as to the child's true filiation to his prejudice.

## Article II

### BIOLOGICAL PARENTS

**SEC. 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.

**SEC. 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 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.

**SEC. 6. *Unknown Parents.***--If the biological parents are not known, the Department, or the duly licensed and accredited child

caring agency which has custody of the child should register the child as a foundling. Thereafter, the child may be subject of court proceeding where he or she may be declared abandoned or neglected and in the legal custody of the Department.

### **Article III**

#### **ELIGIBILITY AND PROCEDURE**

**SEC. 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.

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.

Husband and wife must jointly adopt, except in the following cases: (1) when one spouse seeks to adopt his or her own illegitimate child; or (2) when one spouse seeks to adopt the legitimate child of the other; or (3) when the spouses are legally separated from each other. In case husband and wife jointly adopt or one spouse adopts the legitimate child of the other, joint parental authority shall be exercised by the spouses.

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

The following may be 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 the 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 rescinded or unless his or her adopting parents have already died.

**SEC. 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 punishable by *prision mayor*;

3) An alien except:

a) a former Filipino citizen who seeks to adopt a relative by consanguinity;

b) one who seeks to adopt the legitimate child or children 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 three (3) years prior to the filing of the application provided he or she maintains such residence until the adoption decree is entered and is eligible to adopt under his or her national law: *Provided, That the country of which such alien is a national maintains diplomatic relations with the Philippines.*

An alien seeking to adopt through the domestic adoption program shall be required to submit certifications issued by his or her diplomatic or consular officials (1) of his or her legal capacity to adopt; and, (2) of the absence of any legal impediment or violation of public policy that would bar recognition by his or her national law. Such alien may also be subject to additional documentary requirements by the Department in order to ascertain that he or she possesses all the qualifications and none of the disqualifications to be an adopter. Aliens disqualified to adopt under Section 9(3d) above may adopt Filipino children in accordance with Republic Act No. 8043.

**SEC. 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 imposed by duly licensed and accredited child placement agencies in connection with the application for adoption.

**SEC. 11. Case Study.**--No petition for adoption shall be granted unless the Department or a duly licensed and accredited child placement agency 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.

At the time of preparation of the child's case study, the concerned social worker shall confirm with the Civil Registry the real identity and registered name of the child. If the birth of the child was not registered, it shall be the responsibility of



the concerned social worker to ensure that an application is promptly submitted to the Civil Registrar for delayed registration of the child's birth by the biological parents or, in their absence, the person or entity having legal custody over the child.

The case study of the child should establish that the child is legally available for adoption, and that the necessary documents to support this fact are valid and authentic.

The Department shall intervene on behalf of the child if it finds, after such case study, that the petition should be denied. The case study and other relevant documents and records pertaining to the child and the adoption shall be preserved by the Department.

**SEC. 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.

**SEC. 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 relationship. 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 in the best interest of the child. In such case, the court shall state its reasons for reducing said period.

**SEC. 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: (1) the petitioner is qualified to maintain,

care for, and educate the child; (2) the trial custody period has been completed; and, (3) 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 henceforth to be known.

**SEC. 15. Nature of Proceedings and Records.**--All hearings in adoption cases shall be confidential. All records, books and papers relating thereto in the files of 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, and 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 the purposes connected with or arising out of the adoption and will be to the best interest of the adopted, the court may permit the necessary information to be released, restricting the purposes for which it may be used. Persons to whom the information is to be released shall be required to obtain proper counseling to help ensure that the information is received and used responsibly.

**SEC. 16. Civil Registry Record.**--The adoption shall be recorded in the local civil registry 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 rule in confidentiality, the amended birth certificate,

unless so requested, should not indicate that it was amended.

**SEC. 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 adopters;
- 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.

#### **Article IV**

##### **SUCCESSION AND EFFECT OF ADOPTION**

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

- 1) For all 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; and,
- 2) Except in cases where the biological parent is the spouse of the adopter, all legal ties between the biological parents and the adopted shall be severed.

**SEC. 19. Succession.**--Successional rights of the adopted shall be governed by the provisions in Title IV of the Civil Code subject to Section 18 of this Act.

When the adopted dies, leaving no children or descendants, his or her adoptive parents and their legitimate children, and not the adopted's biological parents and relatives by

consanguinity, shall be the legal heirs of the adopted. But, when only the biological parents survive, they shall inherit the entire estate.

## Article V

### RESCISSION OF ADOPTION

**SEC. 20. *Petition for Rescission.***--If the adopted is a child 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 or she may petition for judicial rescission of the adoption on the same grounds prescribed for disinheriting an ascendant.

**SEC. 21. *Prohibition to File.***--Adoption, being in the best interest of the child, shall not be subject to rescission by the adopters. However, the adopters may disinherit the adopted for causes provided in Article 919 of the Civil Code.

**SEC. 22. *Effect of Rescission.***--If the adopted 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 is physically or mentally handicapped, the court shall appoint in the same proceeding a guardian over the adopted or the adopted's 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 surname of the adopters and shall resume his or her surname prior to the adoption.

#### **Article VI**

##### **BENEFIT AND LEAVE ENTITLEMENTS**

**SEC. 23.** Provided that the child to be adopted is below 7 years of age is placed with the prospective adoptive parent through a pre-adoption placement authority issued by the Department, the prospective adoptive parent 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.

#### **Article VII**

##### **PENALTIES**

**SEC. 24. Penalties.**--Any person who knowingly participates in securing the adoption of a child contrary to the requirements provided in this Act and other laws pertaining to adoption shall be punished with a penalty of imprisonment ranging from six (6) years and one (1) day to twelve (12) years and/or fine of not less than fifty thousand pesos (₱50,000.00), but not more than two hundred thousand pesos (₱200,000.00) at the discretion of the court.

Violation of adoption laws include the following acts:

- 1) obtaining consent for an adoption through coercion, undue influence, fraud or improper material inducement;
- 2) non-compliance with the procedures and safeguards placed under the law for adoption; and
- 3) subjecting or exposing the child to be adopted to danger, abuse and exploitation.

Any person who shall violate established regulations relating to the confidentiality and integrity of records, documents, communications of adoption applications, cases, and processes shall suffer the penalty of imprisonment ranging from one (1) year and one (1) day to two (2) years, and/or a fine of not less than five thousand (₱5,000.00) but not more than ten thousand (₱10,000.00), at the discretion of the court.

A penalty lower by two (2) degrees than that prescribed for the consummated felony under this article shall be imposed upon the principals of the attempt to commit any of the acts herein enumerated.

Acts punishable under this article, when committed by a syndicate or where it involves two or more children shall be considered as an offense constituting child trafficking and shall merit the penalty or *reclusion perpetua*.

Acts punishable under this article are deemed committed by a syndicate if carried out by a group of three (3) or more persons conspiring and/or confederating with one another in carrying out any of the unlawful acts defined under this article. Penalties as are herein provided shall be in addition to any other penalties which may be imposed for the same acts punishable under other laws, ordinances, executive orders, and proclamations.

When the offender is an alien, he or she shall be deported immediately after service of sentence and perpetually excluded from entry to the country.

**SEC. 25. Public Officers as Offenders.**--Any government official, employee or functionary who shall be found guilty of violating any of the provisions of this Act, or who shall conspire with the private individuals shall, in addition to the above-prescribed penalties, be penalized in accordance with

existing civil service laws, rules and regulations: Provided, That upon the filing of a case, either administrative or criminal, said government official, employee or functionary concerned shall automatically suffer suspension until the resolution of the case.

**SEC. 26. Rectification of Simulated Birth.**--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 247 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 simultaneously filed within five (5) 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.

#### Article VIII

#### FINAL PROVISIONS

**SEC. 27. Implementing Rules and Regulations.**--As the lead agency for the Domestic Adoption Program, the Department, in coordination with the Council for the Welfare of Children, the Department of Justice and the Office the Civil Registrar General, and after due consultation with agencies involved in domestic adoption, child care and placement, shall promulgate the necessary rules and regulations to implement the provisions of this Act within six (6) months after its effectivity.

**SEC. 28. Appropriations.**--The amount of ten million pesos (P10,000,000.00) is hereby appropriated to the Department to

cover administrative and other expenses associated with the promotion of domestic adoption, counseling services for parents, pre and post adoption services for adoptive families, and other expenses associated with the implementation of the provisions of this Act. Subsequently, such sums as may be necessary for the purposes stated in this Act shall be included annually in the General Appropriations Act.

**SEC. 29. 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.

**SEC. 30. Repealing Clause.**--Any law, decree, executive order, administrative order or rules and regulations contrary to, or inconsistent with, the provisions of this Act are hereby repealed, modified or amended accordingly.

**SEC. 31. Effectivity Clause.**--This law shall take effect fifteen (15) days after its publication in two (2) newspapers of general circulation.

Approved,