

## ADOPTION LAW - BACKGROUND MEMORANDUM

### INTRODUCTION

Senate Concurrent Resolution No. 4014 (2001), attached as an appendix, provides for a study of adoption laws in this state and other states.

### RECENT LEGISLATION

**Senate Bill No. 2252 (2001)** increased from \$1,000 to \$1,750 the long-form income tax deduction for adoption expenses and allowed the deduction to be carried forward for up to five taxable years. The bill also allowed a deduction from federal income tax liability on the short-form individual income tax return in the amount of the taxpayer's federal qualified adoption expenses credit, not exceeding \$1,750.

**Senate Bill No. 2171 (1999)** implemented the federal Adoption and Safe Families Act of 1997, and amended the adoption procedures statute to require that the reports and assessments of adoptive parents include a criminal history record investigation. The federal law affects the adoption of foster children and redefines "reasonable efforts," "case plans," and "reviews" for purposes of foster care adoptions; addresses termination of parental rights for foster care children; provides who must be given notice of foster care adoption proceedings; changes the timeframe for permanency planning hearings for foster care children; and limits the time for reunification services for foster care children.

**Senate Bill No. 2388 (1999)** provided that under certain circumstances, the court may waive the adoption investigation and report requirements for an adopting party who is a grandparent, brother, sister, stepbrother, stepsister, uncle, or aunt of an adoptee.

**House Bill No. 1107 (1993)** updated the law pertaining to access to information regarding genetic parents, siblings, and children.

**Senate Bill No. 2294 (1993)** made changes to the notice requirements for the adoption of an adult and provided the court with discretion to prevent the parents of an adult adoptee from attending the adoption hearings and proceedings.

### ADOPTION STATISTICS

The Evan B. Donaldson Adoption Institute, an independent, not-for-profit organization that was incorporated in 1996, reports:

- In North Dakota:
  - 313 children were adopted in 1992;
  - 11 children in foster care were legally free for adoption in 1996;

79 children in foster care were adopted in 1998; and

14 private adoption agencies were licensed in 1998.

- In 1992, 127,441 children of all races and nationalities were adopted in the United States:
  - 42 percent of which were stepparent or relative adoptions;
  - 15.5 percent of which were adoptions of children in foster care;
  - 5 percent of which were adoptions of children from other countries by families from the United States; and
  - 37.5 percent of which were handled by private adoption agencies or independent practitioners such as lawyers.
- Between 2 to 4 percent of families in the United States have adopted children.
- As of March 1999, there were 547,000 children in foster care in the United States:
  - 43 percent of which were African-American;
  - 36 percent of which were white;
  - 15 percent of which were Hispanic;
  - 1 percent of which were American Indian or Alaskan native;
  - 4 percent of which were of unknown or other racial or ethnic background; and

As many as 117,000 of which were in need of adoptive families.

- Between 15,000 and 20,000 children are adopted each year worldwide.
- The number of children adopted by families from the United States has grown over the years:

1990	7,093
1993	7,348
1996	11,316
1999	16,396

- There are approximately five to six adoption seekers for every actual adoption.
- The costs of adoption tend to vary based on the type of adoption agency or intermediary that is involved and based on whether the adoption is foreign or domestic.

- Estimated waiting periods for adoption:

Healthy infant	1 to 7 years
Foreign-born child	6 to 18 months
Foster care	4 to 18 months

### ADOPTION LAW

Generally, adoption is a creature of state law, and although all 50 states in the union have different ways of dealing with the issue of adoption, the overall adoption scheme is similar in most states. Although the National Conference of Commissioners on Uniform State Laws drafted uniform adoption Acts in 1953, 1969, and 1994, the states have been hesitant to adopt these Acts. North Dakota, along with Alaska, Arkansas, and Ohio, has enacted the National Conference of Commissioners on Uniform State Laws' 1996 Revised Uniform Adoption Act. Since it was enacted in 1971 as North Dakota Century Code (NDCC) Chapter 14-15, North Dakota's version of the Act has been amended several times, resulting in nonuniform provisions. Vermont appears to be the only state that has adopted the 1994 version of the Uniform Adoption Act.

In addition to the states' version of the Revised Uniform Adoption Act, state law addresses adoption in NDCC Chapter 50-12, regarding licensure by the Department of Human Services of child-placing agencies; Chapter 50-28, regarding the Department of Human Services' adoption assistance program for special needs children; Chapter 14-13, enacted in 1963, regarding Interstate Child Placement Compacts; Chapter 14-15.1, enacted in 1987, regarding the relinquishment of a child to adoptive parents; and Chapter 14-17, enacted in 1975, the Uniform Parentage Act. The Uniform Parentage Act has also been enacted by Alabama, California, Colorado, Delaware, Hawaii, Illinois, Kansas, Minnesota, Missouri, Montana, Nevada, New Jersey, New Mexico, Ohio, Rhode Island, Washington, and Wyoming.

According to the National Adoption Information Clearinghouse, some of the similarities between states' adoption laws include:

- All states allow the adoption of a child;
- All states allow the adoption of a foreign-born child;
- A single adult or a husband and wife together can adopt;
- A child may be placed with prospective adoptive parents by the public agency responsible for adoptions or by a private agency;
- A person may not be paid for placing a child for adoption; however, reasonable fees may be charged;

- All adoption hearings take place in state courts;
- All adoptions are based upon the consent of persons or agencies legally empowered with the care or custody of the child;
- An investigation and homestudy to determine the appropriateness of particular adopting parents are required before an adoption can occur;
- All adoption proceedings are confidential and held in a court that is closed to the public or in the judge's chambers and all documents pertaining to the adoption are sealed and kept as permanent records of the court in a locked file; and
- The adoptive parents or adult adoptee can receive limited information that does not identify the biological parents.

Areas that differ from state to state include:

- Who is required to consent to an adoption, for example, the mother, father, agency, and adoptee;
- When and how consent may be executed and revoked;
- Who may adopt, who may be adopted, and who may place a child for adoption;
- Whether the state has a putative father registry, information contained in the registry, revocation of information contained in the registry, notice requirements of registered putative fathers, and who has access to the registry;
- Whether and how the state regulates fees and expenses such as birth parent expenses, agency fees and costs, intermediary fees, payments for relinquishing a child, and state agency fees; and
- The specifics of how and to what extent the state recognizes a foreign adoption.

### STUDY APPROACH

A possible approach to the study of adoption laws of North Dakota and other states would be to:

- Receive testimony from interested persons such as the Department of Human Services, adoption agencies, and adoptive parents regarding problems or concerns with the present adoption system in this state; and
- Review adoption laws of other states in order to address any problems or concerns with the present adoption system in this state.

ATTACH:1