



94TH GENERAL ASSEMBLY
State of Illinois
2005 and 2006
HB4675

Introduced 1/12/2006, by Rep. Constance A. Howard

SYNOPSIS AS INTRODUCED:

750 ILCS 50/13

from Ch. 40, par. 1516

Amends the Adoption Act. Provides that an interim order of custody may be entered for up to 30 days (now, 10 days) if a sworn petition establishes (now, states) there is an immediate danger to the child and that irreparable harm will result if notice is given to the parent or guardian. Provides a description of irreparable harm that includes the inability of a petitioner to obtain medical insurance for the child or the absence of a temporary legal custodian for the child.

LRB094 16332 AJO 51583 b

1 AN ACT concerning adoption.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Adoption Act is amended by changing Section
5 13 as follows:

6 (750 ILCS 50/13) (from Ch. 40, par. 1516)

7 Sec. 13. Interim order. As soon as practicable after the
8 filing of a petition for adoption the court shall hold a
9 hearing for the following purposes:

10 A. In other than an adoption of a related child or an
11 adoption through an agency, or of an adult:

12 (a) To determine the validity of the consent, provided
13 that the execution of a consent pursuant to this Act shall
14 be prima facie evidence of its validity, and provided that
15 the validity of a consent shall not be affected by the
16 omission therefrom of the names of the petitioners or
17 adopting parents at the time the consent is executed or
18 acknowledged, and further provided that the execution of a
19 consent prior to the filing of a petition for adoption
20 shall not affect its validity.

21 (b) To determine whether there is available suitable
22 temporary custodial care for a child sought to be adopted.

23 B. In all cases except standby adoptions:

24 (a) The court shall appoint some licensed attorney
25 other than the State's attorney acting in his or her
26 official capacity as guardian ad litem to represent a child
27 sought to be adopted. Such guardian ad litem shall have
28 power to consent to the adoption of the child, if such
29 consent is required.

30 (b) The court shall appoint a guardian ad litem for all
31 named minors or defendants who are persons under legal
32 disability, if any.

1 (c) If the petition alleges a person to be unfit
2 pursuant to the provisions of subparagraph (p) of paragraph
3 D of Section 1 of this Act, such person shall be
4 represented by counsel. If such person is indigent or an
5 appearance has not been entered on his behalf at the time
6 the matter is set for hearing, the court shall appoint as
7 counsel for him either the Guardianship and Advocacy
8 Commission, the public defender, or, only if no attorney
9 from the Guardianship and Advocacy Commission or the public
10 defender is available, an attorney licensed to practice law
11 in this State.

12 (d) If it is proved to the satisfaction of the court,
13 after such investigation as the court deems necessary, that
14 termination of parental rights and temporary commitment of
15 the child to an agency or to a person deemed competent by
16 the court, including petitioners, will be for the welfare
17 of the child, the court may order the child to be so
18 committed and may terminate the parental rights of the
19 parents and declare the child a ward of the court or, if it
20 is not so proved, the court may enter such other order as
21 it shall deem necessary and advisable.

22 (e) Before an interim custody order is granted under
23 this Section, service of summons shall be had upon the
24 parent or parents whose rights have not been terminated,
25 except as provided in subsection (f). Reasonable notice and
26 opportunity to be heard shall be given to the parent or
27 parents after service of summons when the address of the
28 parent or parents is available. The party seeking an
29 interim custody order shall make all reasonable efforts to
30 locate the parent or parents of the child or children they
31 are seeking to adopt and to notify the parent or parents of
32 the party's request for an interim custody order pursuant
33 to this Section.

34 (f) An interim custody order may be granted without
35 notice upon presentation to the court of a written
36 petition, accompanied by an affidavit, establishing

1 ~~stating~~ that there is an immediate danger to the child and
2 that irreparable harm will result to the child if notice is
3 given to the parent or parents or legal guardian. Upon
4 making a finding that there is an immediate danger to the
5 child if service of process is had upon and notice of
6 hearing is given to the parent or parents or legal guardian
7 prior to the entry of an order granting temporary custody
8 to someone other than a parent or legal guardian, the court
9 may enter an order of temporary custody which shall expire
10 not more than 30 ~~10~~ days after its entry. Every ex parte
11 custody order granted without notice shall state the harm
12 ~~injury~~ which the court sought to avoid by granting the
13 order, the irreparable harm ~~injury~~ that would have occurred
14 had notice been given, and the reason the order was granted
15 without notice. Irreparable harm pursuant to this
16 subsection (f) shall include, but is not limited to, the
17 inability of a petitioner to obtain dependent medical
18 insurance coverage for the child or the absence of a
19 temporary legal custodian for the child. The matter shall
20 be set down for full hearing before the expiration of the
21 ex parte order and will be heard after service of summons
22 is had upon and notice of hearing is given to the parent or
23 parents or legal guardian. At the hearing the burden of
24 proof shall be upon the party seeking to extend the interim
25 custody order to show that the order was properly granted
26 without notice and that custody should remain with the
27 party seeking to adopt during the pendency of the adoption
28 proceeding. If the interim custody order is extended, the
29 reasons for granting the extension shall be stated in the
30 order.

31 C. In the case of a child born outside the United States or
32 a territory thereof, if the petitioners have previously been
33 appointed guardians of such child by a court of competent
34 jurisdiction in a country other than the United States or a
35 territory thereof, the court may order that the petitioners
36 continue as guardians of such child.

1 D. In standby adoption cases:

2 (a) The court shall appoint a licensed attorney other
3 than the State's Attorney acting in his or her official
4 capacity as guardian ad litem to represent a child sought
5 to be adopted. The guardian ad litem shall have power to
6 consent to the adoption of the child, if consent is
7 required.

8 (b) The court shall appoint a guardian ad litem for all
9 named minors or defendants who are persons under legal
10 disability, if any.

11 (c) The court lacks jurisdiction to proceed on the
12 petition for standby adoption if the child has a living
13 parent, adoptive parent, or adjudicated parent whose
14 rights have not been terminated and whose whereabouts are
15 known, unless the parent consents to the standby adoption
16 or, after receiving notice of the hearing on the standby
17 adoption petition, fails to object to the appointment of a
18 standby adoptive parent at the hearing on the petition.

19 (d) The court shall investigate as needed for the
20 welfare of the child and shall determine whether the
21 petitioner or petitioners shall be permitted to adopt.

22 (Source: P.A. 90-14, eff. 7-1-97; 90-349, eff. 1-1-98; 91-572,
23 eff. 1-1-00.)