

9:3-37 et al

LEGISLATIVE HISTORY CHECKLIST

NJSA 9:3-37 et al (Revision of adoption law)

Laws of 1977 Chapter 367

Bill No. S1631

Sponsor(s) Menza

Date Introduced August 12, 1976

Committee: Assembly Institutions, Health & Welfare
Senate Law, Public Safety, & Defense

Amended during passage Yes ~~No~~ Amendments during passage denoted by asterisks

Date of passage: Assembly November 28, 1977

Senate May 5, 1977

Date of approval February 6, 1978

Following statements are attached if available:

Sponsor statement Yes ~~No~~

Committee Statement: Assembly Yes ~~No~~

Senate Yes ~~No~~

Fiscal Note ~~Yes~~ No

Veto message ~~Yes~~ No

Message on signing Yes ~~No~~

Following were printed:

Reports ~~Yes~~ No

Hearings Yes ~~No~~

974.90 N.J. Legislature. Senate.
C536 Public Safety & Defense Committee.
1977a Public hearing on
S1631. Held 2-23-77. Trenton.

10/4/76

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SENATE, No. 1631

STATE OF NEW JERSEY

INTRODUCED AUGUST 12, 1976

By Senator MENZA

Referred to Committee on Judiciary

AN ACT concerning the adoption of children and revising and repealing various parts of the law relating to adoption.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. This act shall be liberally construed to the end that the
2 best interests of children be promoted. Due regard shall be given
3 to the rights of all persons affected by an adoption.

1 2. For the purposes of this act:

2 a. "Approved agency" shall mean a nonprofit corporation,
3 association or agency, including any public agency, approved by
4 the Department of Institutions and Agencies for the purpose of
5 placing children for adoption in New Jersey;

6 b. "Child" shall mean a person under 18 years of age, provided,
7 however, that any person under 21 years of age may be adopted
8 under the provisions of this act;

9 c. "Custody" shall mean exercise of continuing control over the
10 person of a child;

11 d. "Guardianship" shall mean responsibility for and authority
12 over the person and property of a child as established by a court
13 order;

14 e. "Parent" shall mean a natural parent or natural parents,
15 without regard to the marital status of either at the time of the
16 child's birth or conception, or a parent or parents by adoption;

17 f. "Placement for adoption" shall mean the transfer of custody
18 of a child to a person for the purpose of adoption by such person;
19 and

20 g. "Plaintiff" shall mean a prospective parent or parents who
21 have filed a complaint for adoption.

1 3. a. No person, firm, partnership, corporation, association or
2 agency shall place, offer to place or materially assist in the place-
3 ment of any child for adoption in New Jersey unless such person

4 shall be the parent of the child, or such firm, partnership, corpora-
5 tion, association or agency shall be an approved agency; provided,
6 however, that this prohibition shall not apply to the placement for
7 adoption of a child with a brother, sister, aunt, uncle, grandparent,
8 natural father or stepparent of such child. For the purposes of
9 this section, material assistance in the placement for adoption of
10 any child shall include but shall not be limited to acting as an agent,
11 finder or intermediary for or between any parent and any prospec-
12 tive parent or a person acting on behalf of either in connection
13 with a placement for adoption of such parent's child. The Superior
14 Court, in an action by the Commissioner of the Department of
15 Institutions and Agencies, may enjoin any party found by the
16 court to have violated this section from any further violation of
17 this section.

18 b. Any person, firm, partnership, corporation, association or
19 agency violating this section shall be guilty of a misdemeanor.

1 4. The Commissioner of the Department of Institutions and
2 Agencies shall promulgate rules and regulations relating to the
3 qualification of agencies for approval to make placements for
4 adoption in New Jersey. Such rules and regulations shall include,
5 but shall not be limited to standards of professional training and
6 experience of staff and requirements relating to responsibilities
7 of trustees, officers or other persons supervising or conducting the
8 placement for adoption program, adequacy of facilities, mainte-
9 nance and confidentiality of casework records and furnishing of
10 reports.

1 5. a. Surrender of a child to an approved agency for the purpose
2 of adoption shall be by a signed instrument acknowledged by the
3 person executing the same before an officer authorized to take
4 acknowledgments or proofs in the State in which the instrument is
5 executed, such officer first having made known the contents of the
6 instrument to the person making the acknowledgment and having
7 been satisfied as to the identity of the person executing the sur-
8 render, which the officer shall certify on the instrument of surrender
9 or on a paper attached thereto. Such surrender shall constitute
10 relinquishment of such person's parental rights in or guardianship
11 or custody of the child named therein and consent by such person
12 to adoption of the child. Such surrender shall be valid and binding
13 without regard to the age of the person executing the surrender.

14 b. Any approved agency may accept custody of a child by a duly
15 executed instrument of surrender from a parent or guardian of
16 the child or from another approved agency or any agency for the

17 care and protection of children approved by any other state, by the
18 United States or by any foreign country, which has duly obtained
19 the authority to place such child for adoption.

1 6. An action for adoption shall be instituted in either the
2 Superior Court or the County Court of the county in which the
3 prospective parent resides; provided, however, that:

4 a. Whenever the child to be adopted has been received into the
5 home of the prospective parent from an approved agency, the
6 action may be instituted in the County Court of any county in which
7 such approved agency has an office; and provided further that

8 b. Whenever a parent of the child to be adopted has been granted
9 a divorce from the other parent by the Superior Court, the action
10 shall be instituted in the Superior Court unless such court
11 previously has awarded custody of the child to an approved agency
12 or has consented to the institution of the action in a County Court.

1 7. a. Any person may institute an action for adoption, provided,
2 however, that a married person living with his spouse may do so
3 only with the written consent of his spouse or jointly with his
4 spouse in the same action or after having lived separate and apart
5 from his spouse for a continuous period of at least 1 year.

6 b. Each plaintiff, at the time of the institution of the action,
7 shall have attained the age of 18 years and shall be at least 10 years
8 older than the child to be adopted, provided, however, that the
9 court for good cause may waive either requirement, such waiver
10 to be recited in any judgment of adoption thereafter entered.

1 8. Whenever any person shall receive a child into his home for
2 the purpose of adoption other than from an approved agency, an
3 action for adoption shall be instituted with reasonable promptness.
4 Whenever any person shall receive a child into his home for
5 purposes other than adoption and it is later determined that an
6 adoption shall be sought, an action for adoption shall be instituted
7 with reasonable promptness following such determination.

1 9. In any adoption proceeding pursuant to this act, notice of the
2 complaint may not be waived and shall be served in accordance
3 with the Rules of Court on each parent of the child to be adopted,
4 except that notice shall not be served on any parent who has
5 executed a valid surrender to an approved agency pursuant to
6 section 5 or whose parental rights have been terminated in a
7 separate judicial proceeding by court order. Such notice shall
8 inform the parent of the purpose, date and place of the hearing,
9 of such parent's right to object to the adoption, of his right to
10 counsel and of his right to have counsel appointed to represent

11 him if he cannot afford to retain counsel. The court may dispense
12 with notice or, in its discretion, permit notice by publication only
13 on proof by affidavit of diligent inquiry establishing that notwith-
14 standing such inquiry the identity or location of such parent cannot
15 be ascertained. For the purposes of this section the defined term
16 "parent" shall include the husband of the mother of a child born
17 or conceived during the marriage and the alleged natural father
18 of a legitimate or illegitimate child.

1 10. a. Any parent who has not executed a surrender pursuant
2 to section 5 and whose parental rights have not been terminated
3 by court order shall have the right to object to the adoption of his
4 child. No judgment of adoption shall be entered over an objection
5 of such parent communicated to the court by personal appearance
6 or by letter unless the court finds that such parent has substantially
7 failed to perform the regular and expected parental functions of
8 care and support of the child, which shall include maintenance of
9 an emotional relationship with the child.

10 b. Any guardian of a child to be adopted who has not executed
11 a surrender pursuant to section 5 and any other person standing in
12 loco parentis of such child shall be given notice of the action and
13 in accordance with the Rules of Court shall have standing to object
14 to the adoption, which objection shall be given due consideration
15 by the court in determining whether the best interests of the child
16 would be promoted by the adoption.

1 11. a. When the child to be adopted has been received from an
2 approved agency, the prospective parent shall file with the court a
3 complaint for adoption after the child has been in the home of such
4 prospective parent for at least 6 months. The complaint shall be
5 accompanied by a consent to the plaintiff's adoption of the child
6 signed and acknowledged by an authorized officer or representative
7 of the approved agency; provided, however, that failure or refusal
8 on the part of such approved agency to give such consent, or with-
9 drawal of consent on the part of such approved agency, shall not
10 preclude an action for adoption.

11 b. Upon the filing of the complaint, the court shall set a date
12 for the adoption hearing not less than 10 nor more than 30 days
13 from the date of institution of the action and shall order the
14 approved agency concerned to file at least 5 days prior to the
15 hearing a two-part written report, part one of which shall describe
16 the circumstances surrounding the surrender of the child to the
17 agency and part two of which shall set forth the results of the
18 agency's evaluation of the child and of the plaintiff and his spouse,

19 if any, and the agency's assessment of the care being received by
20 the child and the adjustment of the child and the plaintiff as
21 members of a family. If the agency's report contains any material
22 findings or recommendations adverse to the plaintiff the agency
23 shall serve a copy of part two of its report upon the plaintiff at
24 least 5 days prior to the hearing. If the approved agency that
25 placed the child with the plaintiff has not consented to the adoption,
26 the court may appoint another approved agency to conduct an
27 investigation and make recommendations in the matter. Such ap-
28 pointment shall not deprive the placing agency of standing to
29 appear at the hearing and contest the adoption. Personal appear-
30 ance at the hearing by a representative of the approved agency
31 conducting the investigation may be dispensed with by the court
32 if the agency's report favors the adoption. If such appearance is
33 required, the approved agency shall be entitled to present testimony
34 and to cross-examine witnesses and shall be subject to cross-exami-
35 nation with respect to its report and recommendations in the
36 matter. The appearance of the child to be adopted shall not be
37 required unless ordered by the court or unless the inquiry pursuant
38 to section 13 indicates that the child is opposed to the adoption.

39 c. The adoption hearing shall be held in camera. If a parent
40 of the child has made an objection to the adoption, the court shall
41 take evidence relating to such objection. If the court finds against
42 the objecting parent in accordance with subsection (a) of section 10,
43 it shall make an order terminating the parental rights of such
44 parent and proceed with the hearing.

45 d. If, based upon the approved agency's report and the evidence
46 presented at the hearing, the court is satisfied that the best interests
47 of the child would be promoted by the adoption, the court shall
48 enter a judgment of adoption. If, based upon the approved
49 agency's report and the evidence presented at the hearing, the
50 court is not satisfied that the best interests of the child would be
51 promoted by the adoption, the court shall deny the adoption and
52 make such further order concerning the custody and guardianship
53 of the child as may be deemed proper in the circumstances.

1 12. a. When the child to be adopted has not been received from
2 an approved agency, the prospective parent shall file with the
3 court a complaint for adoption. Upon receipt of the complaint, the
4 court shall by its order

5 (1) Declare the child to be a ward of the court and declare that
6 the plaintiff shall have custody of such child subject to further
7 order of the court;

8 (2) Appoint an approved agency to make an investigation and
9 submit a written report to the court concerning the facts and cir-
10 cumstances surrounding the surrender of custody by the child's
11 parents and the placement of the child in the home of the plaintiff
12 and an evaluation of the child and of the plaintiff and
12A the spouse of the plaintiff if not the child's parent and if not a
13 party to the action, provided, however, that whenever the plaintiff
14 is a stepparent of the child, the court may dispense with the
15 agency investigation and report and take direct evidence at the
16 preliminary hearing of the facts and circumstances surrounding
17 the adoption;

18 (3) Direct the plaintiff to cooperate with the approved agency
19 making such investigation and report; and

20 (4) Fix a day for preliminary hearing not less than 2 or more
21 than 3 months from the date of the institution of the action; pro-
22 vided, however, that such hearing may be accelerated upon the
23 application of the approved agency and upon notice to the plaintiff
24 where the agency determines that removal of the child from the
25 plaintiff's home is required.

26 Whenever a plaintiff is a brother, sister, grandparent, aunt,
27 uncle, natural father or stepparent of the child, the order may limit
28 the investigation to an inquiry concerning the status of the parents
29 of the child and an evaluation of the plaintiff. At least 10 days
30 prior to the day fixed for the preliminary hearing the approved
31 agency shall file its report with the court and serve a copy thereof
32 on the plaintiff.

33 b. The preliminary hearing shall be in camera and shall have for
34 its purpose the determination of the circumstances under which
35 the child was relinquished by his parents and received into the
36 home of the plaintiff, the status of the parental rights of the par-
37 ents, the fitness of the child for adoption and the fitness of the
38 plaintiff to adopt the child and to provide a suitable home. If the
39 report of the approved agency pursuant to subsection a. contains
40 any material findings or recommendations adverse to the plaintiff,
41 the presence of a representative of the approved agency who has
42 personal knowledge of the investigation shall be required at the
43 preliminary hearing. If in the course of the preliminary hearing
44 the court shall determine that there is lack of jurisdiction or that
45 there is lack of qualification on the part of the plaintiff, the action
46 shall be dismissed forthwith. If in the course of the preliminary
47 hearing the court shall determine that the best interests of the
48 child would not be promoted by the adoption, the court shall deny

49 the adoption and make such further order concerning the custody
50 and guardianship of the child as may be deemed proper in the
51 circumstances.

52 c. If upon completion of the preliminary hearing the court finds
53 that:

54 (1) The parents of the child do not have rights as to custody of
55 the child by reason of their rights previously having been termi-
56 nated by court order, their failure to make timely objection to the
57 adoption pursuant to section 10 or their substantial failure to per-
58 form the regular and expected parental functions of care and
59 support of the child;

60 (2) The guardian, if any, should have no further control or
61 authority over the child;

62 (3) The child is fit for adoption; and

63 (4) The plaintiff is fit to adopt the child, it shall issue an order
64 stating its findings, declaring that no parent or guardian of the
65 child has any right to custody or guardianship of the child, fixing
66 a date for final hearing not less than 6 nor more than 9 months
67 from the date of the preliminary hearing and appointing an
68 approved agency to evaluate the placement in accordance with
69 subsection d. If the plaintiff is a brother, sister, grandparent, aunt,
70 uncle, natural father, stepparent or foster parent of the child, or
71 if the child has been in the home of the plaintiff for at least 2
72 years immediately preceding the commencement of the adoption
73 action, the court may dispense with such evaluation and final hear-
74 ing and enter a judgment of adoption.

75 d. The approved agency appointed pursuant to subsection c.
76 shall from time to time visit the home of the plaintiff and make such
77 further inquiry as may be necessary to observe and evaluate the
78 care being received by the child and the adjustment of the child
79 and the plaintiff as members of a family. At least 15 days prior to
80 the final hearing such approved agency shall file with the court a
81 written report of its findings, including a recommendation concern-
82 ing the adoption, and shall mail a copy of the report to the plaintiff.

83 If at any time following the preliminary hearing such approved
84 agency shall conclude that the best interests of the child would not
85 be promoted by the adoption, the court, after a hearing held upon
86 the application of such approved agency and upon notice to the
87 plaintiff, may modify or revoke any order entered in the action and
88 make such further order concerning the custody and guardianship
89 of the child as may be deemed proper in the circumstances.

90 e. At the final hearing the court shall proceed in camera; pro-
91 vided, however, that if the approved agency in its report pursuant
92 to subsection d. has recommended that the adoption be granted,
93 the final hearing may be dispensed with and, if the court is satisfied
94 that the best interests of the child would be promoted by the
95 adoption, a judgment of adoption may be entered forthwith.

96 The appearance of the approved agency at the final hearing shall
97 not be required unless its recommendations are adverse to the
98 plaintiff or unless ordered by the court. If such appearance is
99 required, the approved agency shall be entitled to present testimony
100 and to cross-examine witnesses and shall be subject to cross-
101 examination with respect to its report and recommendations in the
102 matter. The appearance of the child to be adopted shall not be
103 required unless ordered by the court or unless the inquiry, pursuant
104 to section 13, indicates that the child is opposed to the adoption.

105 f. If, based upon the report and the evidence presented, the
106 court is satisfied that the best interests of the child would be
107 promoted by the adoption, the court shall enter a judgment of
108 adoption. If, based upon such evidence, the court is not satisfied
109 that the best interests of the child would be promoted by the
110 adoption, the court shall deny the adoption and make such further
111 order concerning the custody and guardianship of the child as
112 may be deemed proper in the circumstances.

1 13. Each report of an approved agency pursuant to section 11
2 or 12 shall set forth the understanding and wishes of the child to
3 be adopted with respect to the proposed adoption, and no judgment
4 shall be entered pursuant to this act without the court's having
5 given due consideration to such understanding and wishes. The
6 foregoing requirement shall not apply in the case of a child under
7 the age of 8 years who, in the judgment of the approved agency, is
8 incapable of understanding and expressing an opinion regarding
9 the proposed adoption.

1 14. a. The entry of a judgment of adoption shall terminate all
2 relationships between the adopted child and his parents and all
3 rights, duties and obligations of any person that are founded upon
4 such relationships, including rights of inheritance under the
5 intestate laws of this State, except such rights as may have vested
6 prior to entry of the judgment of adoption; provided, however,
7 that when the plaintiff is a stepfather or stepmother of the adopted
8 child and the adoption is consummated with the consent and
9 approval of the mother or father, respectively, such adoption shall
10 not affect or terminate any relationship between the child and such

11 mother or father or any rights, duties or obligations based there-
12 upon. For good cause, the court may in the judgment provide that
13 the rights of inheritance from or through a deceased parent will
14 not be affected or terminated by the adoption.

15 b. The entry of a judgment of adoption shall establish the same
16 relationships, rights, duties and obligations between the child and
17 the adopting parent as if such child were born to such adopting
18 parent in lawful wedlock. For good cause, the court may direct the
19 entry of judgment nunc pro tunc as of the date the action was
20 instituted. In applying the intestate laws of this State, an adopted
21 child shall have the same rights of inheritance as if born to the
22 adopting parent in lawful wedlock. In the construction of any
23 testamentary or other document executed subsequent to the effec-
24 tive date of this act, an adopted child shall be deemed lawful issue
25 of the adopting parents unless such document shall otherwise
26 provide.

1 15. The clerk of each County Court shall file promptly with the
2 Superior Court a copy of each judgment of adoption entered pur-
3 suant to this act. The clerk of the Superior Court shall docket the
4 copies of such judgments and shall maintain an alphabetical index
5 of all judgments of adoption entered each year pursuant to this
6 act in the County Courts and the Superior Court of the State,
7 all of which records shall be sealed and thereafter shall be made
8 accessible only by court order.

1 16. a. All records of proceedings relating to adoption, including
2 the complaint, judgment and all petitions, affidavits, testimony,
3 reports, briefs, orders and other relevant documents, shall be filed
4 under seal by the clerk of the court and shall at no time be open to
5 inspection or copying unless the court, upon good cause shown,
6 shall otherwise order. An index to all adoption proceedings shall
7 be maintained by the clerk of the court, but no index of adoption
8 proceedings shall be open to inspection or copying or be made
9 public except upon order of the court.

10 b. Upon entry of a judgment of adoption, the clerk of the court
11 shall certify to the State Bureau of Vital Statistics, any successor
12 agency or any similar agency in the State or country of the child's
13 birth, the date of entry of the judgment, the names of the adopting
14 parent or parents, the name of the child, the date and place of birth
15 of the child and the new name of the child if changed by the judg-
16 ment of adoption.

1 17. The costs of all proceedings pursuant to this act shall be
2 borne by the plaintiff, including the costs incurred by an approved

3 agency acting pursuant to an order of the court; provided, however,
 4 that such approved agency may waive part of or all such costs.
 5 Payment of costs hereunder shall not be a condition precedent to
 6 entry of judgment.

1 18. a. No person, firm, partnership, corporation, association or
 2 agency shall make, offer to make or assist or participate in any
 3 placement for adoption and in connection therewith

4 (1) Pay, give or agree to give any money or any valuable con-
 5 sideration, or assume or discharge any financial obligation; or

6 (2) Take, receive, accept or agree to accept any money or any
 7 valuable consideration.

8 b. The prohibition of subsection a. shall not apply to the fees
 9 or services of any approved agency in connection with a placement
 10 for adoption, nor shall such prohibition apply to the payment or
 11 reimbursement of medical, hospital or other similar expenses
 12 incurred in connection with the birth or any illness of the child,
 13 or to the acceptance of such reimbursement by a parent of the child.

14 c. Any person, firm, partnership, corporation, association or
 15 agency violating this section shall be guilty of a high misdemeanor.

1 19. a. Any prospective parent who is not a brother, sister, aunt,
 2 uncle, grandparent, foster parent, natural father or stepparent of
 3 the child to be adopted shall file before the complaint is heard, in
 4 accordance with court rules, a detailed report which shall be signed
 5 and verified by each such prospective parent and shall disclose all
 6 sums of money or other valuable consideration paid, given or
 7 agreed to be given to any person, firm, partnership, corporation,
 8 association or agency by or on behalf of the prospective parent in
 9 connection with the adoption, and the names and addresses of each
 10 such person, firm, partnership, corporation, association or agency
 11 to whom such consideration was given or promised. The report,
 12 a copy of which shall be provided to the approved agency appointed
 13 pursuant to section 12, shall include but shall not be limited to
 14 any expenses incurred or to be incurred by or on behalf of such
 15 prospective parent in connection with

16 (1) The birth of the child;

17 (2) The placement for adoption of the child with the prospective
 18 parent;

19 (3) Medical or hospital care received by the mother or the child
 20 during the mother's pre- and postnatal period; and

21 (4) Services relating to the adoption or to the placement for
 22 adoption, including legal services, which were rendered or are to
 23 be rendered to or for the benefit of the prospective parent, either
 24 parent of the child or any other person or agency.

25 b. Whenever based upon a report filed pursuant to this section it
 26 shall appear to the court that any person may have violated
 27 sections 3 or 18 hereof, the court shall refer the matter to the
 28 appropriate county prosecutor.

1 20. P. L. 1953, c. 264 (C. 9:3-17 to 9:3-36), P. L. 1953, c. 265
 2 (C. 2A:96-6 to 2A:96-8), P. L. 1954, c. 112 (C. 9:3-19.1), and P. L.
 3 1955, c. 140 (C. 9:3-22.1) are hereby repealed subject to section 22.

1 21. If any provision of this act, or any application of any provi-
 2 sion, is held invalid, the invalidity shall not affect other applications
 3 of the provision, or other provisions of the act, which reasonably
 4 can be given effect despite the invalidity. To this end, the provi-
 5 sion of this act are declared severable.

1 22. This act shall take effect 30 days after enactment but it shall
 2 not apply to any action for adoption commenced prior to such
 3 effective date, for purposes of which P. L. 1953, c. 264 (C. 9:3-17 to
 4 9:3-36) as amended, shall remain in effect until final disposition.

STATEMENT

The present law governing adoption dates back to 1953. The purpose of this legislation is to simplify and clarify the provisions governing adoption proceedings, shorten the period of time necessary to complete an adoption, modernize the law with respect to the rights of parents and bring it into conformity with recent United States Supreme Court decisions, and facilitate enforcement of the law against unauthorized persons who for profit act as intermediaries in adoption placements.

SENATE LAW, PUBLIC SAFETY AND DEFENSE
COMMITTEE

STATEMENT TO

SENATE, No. 1631

with Senate committee amendments

STATE OF NEW JERSEY

DATED: APRIL 28, 1977

This bill is a revision of the law regarding adoption. Its general purpose is to clarify and simplify adoption proceedings and procedures. In doing so it enumerates important differences between independent and approved agency adoption.

First, the bill would prohibit anyone from offering to place or materially assisting in the placement of any child for adoption by anyone other than an enumerated relative, unless they are an approved agency by the Department of Human Services. Any violation of this section is a misdemeanor.

The Department of Human Services is given regulatory authority regarding the qualification of agencies. An amendment to this section prohibits such agencies from discriminating in the selection process on the basis of age, sex, race, national origin, religion or marital status, though these may be considered as factors in determining the best interests of a child.

Surrender to an approved agency for adoption is accomplished by a written instrument and agencies are authorized to accept children pursuant to the surrender. Jurisdiction over actions for adoption is in either the Superior Court or the County Court, depending on the circumstances.

Unless waived for good cause, a person must be at least 18 years old and 10 years older than the child to be adopted, in order to maintain an action for adoption. A married person living with his spouse must either have the written consent of such spouse, or the spouse must join in the action.

Notice is required to go to each parent of the child unless they have executed a valid surrender or their rights have been terminated. Only if a parent cannot be identified or found, may the court waive notice. An amendment to this section was included to define "parent" to include

a natural father who has acknowledged paternity, has been adjudicated as such, or who has developed a relationship with the child, or provided support for the child.

By amendment, the bill now provides that no judgment of adoption can be entered over a parental objection duly entered unless the court finds after a hearing, (1) a willful and substantial failure to perform regular and expected parental functions of care and support or (2) a finding that the parents actions would have justified, in an appropriate action, termination of parental rights.

The test for judgment of adoption over objection by a guardian is what is in the best interests of the child.

The bill provides for cases where the child has been received from an approved agency. This procedure includes filing requirements for a complaint to adopt and further requires that the court must appoint a guardian ad litem to protect the interests of the child. The hearing itself is to be held in camera. The test for an order of adoption is whether the best interests of the child would be promoted by the adoption.

The bill also establishes the procedures for independently placed children for adoption which require an approved agency investigation unless the plaintiff is a stepparent, in which case the court may dispense with the requirement. The court may limit the requirement to a status investigation in other cases with relatives. Pursuant to these adoption proceedings, a preliminary hearing is to be held in camera. If the plaintiff is not an enumerated relative, the court must appoint a guardian ad litem. By amendment parental rights may be terminated by a finding of intentional abandonment or very substantial neglect without a reasonable expectation of reversal.

Following the preliminary hearing the court establishes a date for a final hearing from 6 to 9 months if it finds that the plaintiff is fit to adopt. Pursuant to such proceedings the approved agency must visit the home and make inquiries concerning the proposed adoption and report to the court at least 15 days before the scheduled final hearing.

Again, the final hearing is to be held in camera unless the court, on recommendation to approve, dispenses with the hearing. The test for an order for adoption is the same as with the agency placement proceedings: whether the best interests of the child are promoted.

Entry of a judgment of adoption terminates all relationships between the adopted child and his parents, including inheritance rights which have not vested, unless with respect to inheritance the court, on good cause shown, orders otherwise.

An adopted child has the same rights as if he was born to his adopted parents.

All records of adoption proceeding are required to be sealed unless the court orders them opened on good cause shown.

A reporting procedure regarding financial aspects of the placement is required to be filed by prospective parents. The bill prohibits, as a high misdemeanor, the changing of a fee, except as specifically provided for approved agencies under the bill, by anyone for making or placing or assisting in the placing of any child for adoption.

SENATE COMMITTEE AMENDMENTS TO

SENATE, No. 1631

STATE OF NEW JERSEY

ADOPTED APRIL 28, 1977

Amend page 1, section 2, line 4, omit "Institutions and Agencies", insert "Human Services".

Amend page 1, section 2, lines 6-8, omit ", provided," on line 6 and all of lines 7 and 8, insert " ;".

Amend page 1, section 2, lines 9-10, omit "exercise of continuing control over the person of a child", insert "the general right to exercise continuing control over the person of a child derived from court order or otherwise;"

Amend page 1, section 2, lines 11-13, omit "responsibility for and authority" on line 11 and all of lines 12 and 13, insert "the right to exercise continuing control over the person or property or both of a child which includes any specific right of control over an aspect of the child's upbringing derived from court order;"

Amend page 1, section 2, after line 13, insert:

"e. Guardian ad litem shall mean a qualified person, not necessarily an attorney, appointed by the court under the provisions of this act or at the discretion of the court to represent the interests of the child whether or not the child is a named party in the action;"

Amend page 1, section 2, line 14, omit "e.", insert "f."

Amend page 1, section 2, line 17, omit "f.", insert "g."

Amend page 1, section 2, line 20, omit "g.", insert "h."

Amend page 2, section 3, line 4, after "parent", insert "or guardian".

Amend page 2, section 3, line 15, omit "Institutions and Agencies", insert "Human Services".

Amend page 2, section 4, lines 1-2, omit "Institutions and Agencies", insert "Human Services".

Amend page 2, section 4, line 10, after "reports.", insert "No approved agency shall discriminate with regard to the selection of adoptive parents for any child on the basis of age, sex, race, national origin, religion or marital status provided, however, that these factors may be considered in determining whether the best interests of a child would be served by a particular placement for adoption or adoption."

Amend page 3, section 7, line 5, omit "1 year", insert "18 months".

Amend page 3, section 8, line 7, after "determination.", insert "Failure to so act shall not be a sole basis for refusal of the adoption."

Amend page 4, section 9, line 12, omit "or"; omit "permit notice by publication only".

Amend page 4, section 9, lines 17-18, omit "the alleged natural father" on line 17 and all of line 18, insert "the natural father of a child born out of wedlock who has acknowledged paternity has been determined to be the child's father by a court of law or has developed and maintained a relationship with the child or has regularly provided support for the child."

Amend page 4, section 10, line 4-9, omit "No judgment of adoption shall be entered over an objection" on line 4 and all of lines 5-9, insert "A judgment of adoption shall only be entered over an objection of such parent who has filed an answer contesting the adoption or who has personally appeared at the hearing upon a finding by the court after a plenary hearing that such parent has failed willfully and substantially to perform the regular and expected parental functions of care and support of the child or whose actions would, in an appropriate action, have justified the termination of his parental rights."

Amend page 4, section 11, line 13, after "action", insert "unless a longer period shall be required in order to obtain service of notice upon one or more of the parents".

Amend page 5, section 11, line 24, after "hearing", insert "and the court shall appoint a guardian ad litem for the child in the adoption proceeding".

Amend page 6, section 12, line 25, after "required", insert ", in which case the court shall appoint a guardian ad litem to represent the child at all future proceedings regarding the adoption."

Amend page 7, section 12, lines 57-59, omit "their substantial failure to per-" on line 57 and all of lines 58 and 59, insert "intentional abandonment or very substantial neglect of parental duties without a reasonable expectation of a reversal of that conduct in the future;"

Amend page 7, section 12, line 65, after "guardianship of the child,", insert "terminating the parental rights of such person,"

Amend page 7, section 12, line 73, after "action,", insert "and if the court is satisfied that the best interests of the child would be promoted by the adoption".

Amend page 7, section 12, line 74, after "adoption", insert "immediately upon completion of the preliminary hearing".

Amend page 7, section 12, line 85, after "court,", insert "shall appoint a guardian ad litem for the child and".

Amend page 10, section 17, line 6, after "judgment.", insert "Such costs shall not include the provision of counsel for any person, other than the plaintiff, entitled to the appointment of counsel hereunder.".

Amend page 10, section 19, lines 12-13, omit "approved agency appointed pursuant to section 12", insert "Division of Youth and Family Services".

Amend page 11, section 19, line 26, after "court", insert "or to the Division of Youth and Family Services".

Amend page 11, section 19, line 27, omit "shall", insert "or the division may".

[OFFICIAL COPY REPRINT]

SENATE, No. 1631

STATE OF NEW JERSEY

INTRODUCED AUGUST 12, 1976

By Senator MENZA

Referred to Committee on Judiciary

AN ACT concerning the adoption of children and revising and repealing various parts of the law relating to adoption.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. This act shall be liberally construed to the end that the
2 best interests of children be promoted. Due regard shall be given
3 to the rights of all persons affected by an adoption.

1 2. For the purposes of this act:

2 a. "Approved agency" shall mean a nonprofit corporation,
3 association or agency, including any public agency, approved by
4 the Department of ***[Institutions and Agencies]*** **Human*
5 *Services** for the purpose of placing children for adoption in New
5A Jersey;

6 b. "Child" shall mean a person under 18 years of age***[**, pro-
7 vided, however, that any person under 21 years of age may be
8 adopted under the provisions of this act]*;

9 c. "Custody" shall mean ***[**exercise of continuing control over
10 the person of a child;**]*** **the general right to exercise continuing*
11 *control over the person of a child derived from court order or*
12 *otherwise;**

13 d. "Guardianship" shall mean ***[**responsibility for and au-
14 thority over the person and property of a child as established by
15 a court order;**]*** **the right to exercise continuing control over the*
16 *person or property or both of a child which includes any specific*
17 *right of control over an aspect of the child's upbringing derived*
18 *from court order;**

19 *e. *Guardian ad litem* shall mean a qualified person, not neces-
20 sarily an attorney, appointed by the court under the provisions of
21 this act or at the discretion of the court to represent the interests
22 of the child whether or not the child is a named party in the action;*

EXPLANATION—Matter enclosed in bold-faced brackets **[thus]** in the above bill
is not enacted and is intended to be omitted in the law.

23 ***[e.]*** *f.* "Parent" shall mean a natural parent or natural
 24 parents, without regard to the marital status of either at the time
 25 of the child's birth or conception, or a parent or parents by
 26 adoption;

27 ***[f.]*** *g.* "Placement for adoption" shall mean the transfer
 28 of custody of a child to a person for the purpose of adoption by
 29 such person; and

30 ***[g.]*** *h.* "Plaintiff" shall mean a prospective parent or
 31 parents who have filed a complaint for adoption.

1 3. a. No person, firm, partnership, corporation, association or
 2 agency shall place, offer to place or materially assist in the place-
 3 ment of any child for adoption in New Jersey unless such person
 4 shall be the parent **or guardian** of the child, or such firm, partner-
 5 ship, corporation, association or agency shall be an approved
 6 agency; provided, however, that this prohibition shall not apply to
 7 the placement for adoption of a child with a brother, sister, aunt,
 8 uncle, grandparent, natural father or stepparent of such child. For
 9 the purposes of this section, material assistance in the placement
 10 for adoption of any child shall include but shall not be limited to
 11 acting as an agent, finder or intermediary for or between any
 12 parent and any prospective parent or a person acting on behalf of
 13 either in connection with a placement for adoption of such parent's
 14 child. The Superior Court, in an action by the Commissioner of
 15 the Department of ***[Institutions and Agencies]*** *Human
 16 Services*, may enjoin any party found by the court to have violated
 17 this section from any further violation of this section.

18 b. Any person, firm, partnership, corporation, association or
 19 agency violating this section shall be guilty of a misdemeanor.

1 4. The Commissioner of the Department of ***[Institutions and
 2 Agencies]*** *Human Services* shall promulgate rules and regula-
 3 tions relating to the qualification of agencies for approval to make
 4 placements for adoption in New Jersey. Such rules and regulations
 5 shall include, but shall not be limited to standards of professional
 6 training and experience of staff and requirements relating to
 7 responsibilities of trustees, officers or other persons supervising or
 8 conducting the placement for adoption program, adequacy of
 9 facilities, maintenance and confidentiality of casework records and
 10 furnishing of reports. **No approved agency shall discriminate
 11 with regard to the selection of adoptive parents for any child on the
 12 basis of age, sex, race, national origin, religion or marital status
 13 provided, however, that these factors may be considered in deter-
 14 mining whether the best interests of a child would be served by a
 15 particular placement for adoption or adoption.**

1 5. a. Surrender of a child to an approved agency for the purpose
 2 of adoption shall be by a signed instrument acknowledged by the
 3 person executing the same before an officer authorized to take
 4 acknowledgments or proofs in the State in which the instrument is
 5 executed, such officer first having made known the contents of the
 6 instrument to the person making the acknowledgment and having
 7 been satisfied as to the identity of the person executing the sur-
 8 render, which the officer shall certify on the instrument of surrender
 9 or on a paper attached thereto. Such surrender shall constitute
 10 relinquishment of such person's parental rights in or guardianship
 11 or custody of the child named therein and consent by such person
 12 to adoption of the child. Such surrender shall be valid and binding
 13 without regard to the age of the person executing the surrender.

14 b. Any approved agency may accept custody of a child by a duly
 15 executed instrument of surrender from a parent or guardian of
 16 the child or from another approved agency or any agency for the
 17 care and protection of children approved by any other state, by the
 18 United States or by any foreign country, which has duly obtained
 19 the authority to place such child for adoption.

1 6. An action for adoption shall be instituted in either the
 2 Superior Court or the County Court of the county in which the
 3 prospective parent resides; provided, however, that:

4 a. Whenever the child to be adopted has been received into the
 5 home of the prospective parent from an approved agency, the
 6 action may be instituted in the County Court of any county in which
 7 such approved agency has an office; and provided further that

8 b. Whenever a parent of the child to be adopted has been granted
 9 a divorce from the other parent by the Superior Court, the action
 10 shall be instituted in the Superior Court unless such court
 11 previously has awarded custody of the child to an approved agency
 12 or has consented to the institution of the action in a County Court.

1 7. a. Any person may institute an action for adoption, provided,
 2 however, that a married person living with his spouse may do so
 3 only with the written consent of his spouse or jointly with his
 4 spouse in the same action or after having lived separate and apart
 5 from his spouse for a continuous period of at least ***[1 year]***

5A **18 months**.

6 b. Each plaintiff, at the time of the institution of the action,
 7 shall have attained the age of 18 years and shall be at least 10 years
 8 older than the child to be adopted, provided, however, that the
 9 court for good cause may waive either requirement, such waiver
 10 to be recited in any judgment of adoption thereafter entered.

1 8. Whenever any person shall receive a child into his home for
 2 the purpose of adoption other than from an approved agency, an
 3 action for adoption shall be instituted with reasonable promptness.
 4 Whenever any person shall receive a child into his home for
 5 purposes other than adoption and it is later determined that an
 6 adoption shall be sought, an action for adoption shall be instituted
 7 with reasonable promptness following such determination.
 8 **Failure to so act shall not be a sole basis for refusal of the*
 9 *adoption.**

1 9. In any adoption proceeding pursuant to this act, notice of the
 2 complaint may not be waived and shall be served in accordance
 3 with the Rules of Court on each parent of the child to be adopted,
 4 except that notice shall not be served on any parent who has
 5 executed a valid surrender to an approved agency pursuant to
 6 section 5 or whose parental rights have been terminated in a
 7 separate judicial proceeding by court order. Such notice shall
 8 inform the parent of the purpose, date and place of the hearing,
 9 of such parent's right to object to the adoption, of his right to
 10 counsel and of his right to have counsel appointed to represent
 11 him if he cannot afford to retain counsel. The court may dispense
 12 with notice **[or]**, in its discretion, **[permit notice by publication*
 13 *only]** on proof by affidavit of diligent inquiry establishing that
 14 notwithstanding such inquiry the identity or location of such parent
 15 cannot be ascertained. For the purposes of this section the defined
 16 term "parent" shall include the husband of the mother of a child
 17 born or conceived during the marriage and **[the alleged natural*
 18 *father of a legitimate or illegitimate child.]** **the natural father of*
 19 *a child born out of wedlock who has acknowledged paternity or has*
 20 *been determined to be the child's father by a court of law or has*
 21 *developed and maintained a relationship with the child or has*
 22 *regularly provided support for the child.**

1 10. a. Any parent who has not executed a surrender pursuant
 2 to section 5 and whose parental rights have not been terminated
 3 by court order shall have the right to object to the adoption of his
 4 child. **[No judgment of adoption shall be entered over an objection*
 5 *of such parent communicated to the court by personal appearance*
 6 *or by letter unless the court finds that such parent has substantially*
 7 *failed to perform the regular and expected parental functions of*
 8 *care and support of the child, which shall include maintenance of*
 9 *an emotional relationship with the child.]** **A judgment of adop-*
 9A *tion shall only be entered over an objection of such parent who has*
 9B *filed an answer contesting the adoption or who has personally*
 9C *appeared at the hearing upon a finding by the court after a plenary*

9D *hearing that such parent has failed willfully and substantially to*
 9E *perform the regular and expected parental functions of care and*
 9F *support of the child or whose actions would, in an appropriate*
 9G *action, have justified the termination of his parental rights.**

10 b. Any guardian of a child to be adopted who has not executed
 11 a surrender pursuant to section 5 and any other person standing in
 12 loco parentis of such child shall be given notice of the action and
 13 in accordance with the Rules of Court shall have standing to object
 14 to the adoption, which objection shall be given due consideration
 15 by the court in determining whether the best interests of the child
 16 would be promoted by the adoption.

1 11. a. When the child to be adopted has been received from an
 2 approved agency, the prospective parent shall file with the court a
 3 complaint for adoption after the child has been in the home of such
 4 prospective parent for at least 6 months. The complaint shall be
 5 accompanied by a consent to the plaintiff's adoption of the child
 6 signed and acknowledged by an authorized officer or representative
 7 of the approved agency; provided, however, that failure or refusal
 8 on the part of such approved agency to give such consent, or with-
 9 drawal of consent on the part of such approved agency, shall not
 10 preclude an action for adoption.

11 b. Upon the filing of the complaint, the court shall set a date
 12 for the adoption hearing not less than 10 nor more than 30 days
 13 from the date of institution of the action **unless a longer period*
 14 *shall be required in order to obtain service of notice upon one or*
 15 *more of the parents** and shall order the approved agency con-
 16 cerned to file at least 5 days prior to the hearing a two-part written
 17 report, part one of which shall describe the circumstances surround-
 18 ing the surrender of the child to the agency and part two of which
 19 shall set forth the results of the agency's evaluation of the child
 20 and of the plaintiff and his spouse, if any, and the agency's assess-
 21 ment of the care being received by the child and the adjustment of
 22 the child and the plaintiff as members of a family. If the agency's
 23 report contains any material findings or recommendations adverse
 24 to the plaintiff the agency shall serve a copy of part two of its
 25 report upon the plaintiff at least 5 days prior to the hearing **and*
 26 *the court shall appoint a guardian ad litem for the child in the adop-*
 27 *tion proceeding**. If the approved agency that placed the child
 28 with the plaintiff has not consented to the adoption, the court may
 29 appoint another approved agency to conduct an investigation and
 30 make recommendations in the matter. Such appointment shall not
 31 deprive the placing agency of standing to appear at the hearing
 32 and contest the adoption. Personal appearance at the hearing by a

33 representative of the approved agency conducting the investigation
34 may be dispensed with by the court if the agency's report favors
35 the adoption. If such appearance is required, the approved agency
36 shall be entitled to present testimony and to cross-examine
37 witnesses and shall be subject to cross-examination with respect to
38 its report and recommendations in the matter. The appearance of
38A the child to be adopted shall not be required unless ordered by the
38B court or unless the inquiry pursuant to section 13 indicates that the
38C child is opposed to the adoption.

39 c. The adoption hearing shall be held in camera. If a parent
40 of the child has made an objection to the adoption, the court shall
41 take evidence relating to such objection. If the court finds against
42 the objecting parent in accordance with subsection (a) of section 10,
43 it shall make an order terminating the parental rights of such
44 parent and proceed with the hearing.

45 d. If, based upon the approved agency's report and the evidence
46 presented at the hearing, the court is satisfied that the best interests
47 of the child would be promoted by the adoption, the court shall
48 enter a judgment of adoption. If, based upon the approved
49 agency's report and the evidence presented at the hearing, the
50 court is not satisfied that the best interests of the child would be
51 promoted by the adoption, the court shall deny the adoption and
52 make such further order concerning the custody and guardianship
53 of the child as may be deemed proper in the circumstances.

1 12. a. When the child to be adopted has not been received from
2 an approved agency, the prospective parent shall file with the
3 court a complaint for adoption. Upon receipt of the complaint, the
4 court shall by its order

5 (1) Declare the child to be a ward of the court and declare that
6 the plaintiff shall have custody of such child subject to further
7 order of the court;

8 (2) Appoint an approved agency to make an investigation and
9 submit a written report to the court concerning the facts and cir-
10 cumstances surrounding the surrender of custody by the child's
11 parents and the placement of the child in the home of the plaintiff
12 and an evaluation of the child and of the plaintiff and
12A the spouse of the plaintiff if not the child's parent and if not a
13 party to the action, provided, however, that whenever the plaintiff
14 is a stepparent of the child, the court may dispense with the
15 agency investigation and report and take direct evidence at the
16 preliminary hearing of the facts and circumstances surrounding
17 the adoption;

18 (3) Direct the plaintiff to cooperate with the approved agency
19 making such investigation and report; and

20 (4) Fix a day for preliminary hearing not less than 2 or more
 21 than 3 months from the date of the institution of the action; pro-
 22 vided, however, that such hearing may be accelerated upon the
 23 application of the approved agency and upon notice to the plaintiff
 24 where the agency determines that removal of the child from the
 25 plaintiff's home is required*, *in which case the court shall appoint*
 25A *a guardian ad litem to represent the child at all future proceedings*
 25B *regarding the adoption.**

26 Whenever a plaintiff is a brother, sister, grandparent, aunt,
 27 uncle, natural father or stepparent of the child, the order may limit
 28 the investigation to an inquiry concerning the status of the parents
 29 of the child and an evaluation of the plaintiff. At least 10 days
 30 prior to the day fixed for the preliminary hearing the approved
 31 agency shall file its report with the court and serve a copy thereof
 32 on the plaintiff.

33 b. The preliminary hearing shall be in camera and shall have for
 34 its purpose the determination of the circumstances under which
 35 the child was relinquished by his parents and received into the
 36 home of the plaintiff, the status of the parental rights of the par-
 37 ents, the fitness of the child for adoption and the fitness of the
 38 plaintiff to adopt the child and to provide a suitable home. If the
 39 report of the approved agency pursuant to subsection a. contains
 40 any material findings or recommendations adverse to the plaintiff,
 41 the presence of a representative of the approved agency who has
 42 personal knowledge of the investigation shall be required at the
 43 preliminary hearing. If in the course of the preliminary hearing
 44 the court shall determine that there is lack of jurisdiction or that
 45 there is lack of qualification on the part of the plaintiff, the action
 46 shall be dismissed forthwith. If in the course of the preliminary
 47 hearing the court shall determine that the best interests of the
 48 child would not be promoted by the adoption, the court shall deny
 49 the adoption and make such further order concerning the custody
 50 and guardianship of the child as may be deemed proper in the
 51 circumstances.

52 c. If upon completion of the preliminary hearing the court finds
 53 that:

54 (1) The parents of the child do not have rights as to custody of
 55 the child by reason of their rights previously having been termi-
 56 nated by court order, their failure to make timely objection to the
 57 adoption pursuant to section 10 or ***their substantial failure to per-**
 58 **form the regular and expected parental functions of care and**
 59 **support of the child;*** *intentional abandonment or very sub-*
 59A *stantiol neglect of parental duties without a reasonable expectation*
 59B *of a reversal of that conduct in the future;**

60 (2) The guardian, if any, should have no further control or
61 authority over the child;

62 (3) The child is fit for adoption; and

63 (4) The plaintiff is fit to adopt the child, it shall issue an order
64 stating its findings, declaring that no parent or guardian of the
65 child has any right to custody or guardianship of the child, **terminating the parental rights of such person,** fixing a date for final
66 hearing not less than 6 nor more than 9 months from the date of the
67 preliminary hearing and appointing an approved agency to evaluate
68 the placement in accordance with subsection d. If the plaintiff is a
69 brother, sister, grandparent, aunt, uncle, natural father, step-
70 parent or foster parent of the child, or if the child has been in the
71 home of the plaintiff for at least 2 years immediately preceding the
72 commencement of the adoption action, **and if the court is satisfied*
73 *that the best interests of the child would be promoted by the adop-*
74 *tion** the court may dispense with such evaluation and final hear-
74A ing and enter a judgment of adoption **immediately upon comple-*
74B *tion of the preliminary hearing*.*

75 d. The approved agency appointed pursuant to subsection c.
76 shall from time to time visit the home of the plaintiff and make such
77 further inquiry as may be necessary to observe and evaluate the
78 care being received by the child and the adjustment of the child
79 and the plaintiff as members of a family. At least 15 days prior to
80 the final hearing such approved agency shall file with the court a
81 written report of its findings, including a recommendation concern-
82 ing the adoption, and shall mail a copy of the report to the plaintiff.

83 If at any time following the preliminary hearing such approved
84 agency shall conclude that the best interests of the child would not
85 be promoted by the adoption, the court, **shall appoint a guardian*
86 *ad litem for the child and** after a hearing held upon the applica-
87 tion of such approved agency and upon notice to the plaintiff, may
88 modify or revoke any order entered in the action and make such
89 further order concerning the custody and guardianship of the child
89A as may be deemed proper in the circumstances.

90 e. At the final hearing the court shall proceed in camera; pro-
91 vided, however, that if the approved agency in its report pursuant
92 to subsection d. has recommended that the adoption be granted,
93 the final hearing may be dispensed with and, if the court is satisfied
94 that the best interests of the child would be promoted by the
95 adoption, a judgment of adoption may be entered forthwith.

96 The appearance of the approved agency at the final hearing shall
97 not be required unless its recommendations are adverse to the
98 plaintiff or unless ordered by the court. If such appearance is

99 required, the approved agency shall be entitled to present testimony
100 and to cross-examine witnesses and shall be subject to cross-
101 examination with respect to its report and recommendations in the
102 matter. The appearance of the child to be adopted shall not be
103 required unless ordered by the court or unless the inquiry, pursuant
104 to section 13, indicates that the child is opposed to the adoption.

105 f. If, based upon the report and the evidence presented, the
106 court is satisfied that the best interests of the child would be
107 promoted by the adoption, the court shall enter a judgment of
108 adoption. If, based upon such evidence, the court is not satisfied
109 that the best interests of the child would be promoted by the
110 adoption, the court shall deny the adoption and make such further
111 order concerning the custody and guardianship of the child as
112 may be deemed proper in the circumstances.

1 13. Each report of an approved agency pursuant to section 11
2 or 12 shall set forth the understanding and wishes of the child to
3 be adopted with respect to the proposed adoption, and no judgment
4 shall be entered pursuant to this act without the court's having
5 given due consideration to such understanding and wishes. The
6 foregoing requirement shall not apply in the case of a child under
7 the age of 8 years who, in the judgment of the approved agency, is
8 incapable of understanding and expressing an opinion regarding
9 the proposed adoption.

1 14. a. The entry of a judgment of adoption shall terminate all
2 relationships between the adopted child and his parents and all
3 rights, duties and obligations of any person that are founded upon
4 such relationships, including rights of inheritance under the
5 intestate laws of this State, except such rights as may have vested
6 prior to entry of the judgment of adoption; provided, however,
7 that when the plaintiff is a stepfather or stepmother of the adopted
8 child and the adoption is consummated with the consent and
9 approval of the mother or father, respectively, such adoption shall
10 not affect or terminate any relationship between the child and such
11 mother or father or any rights, duties or obligations based there-
12 upon. For good cause, the court may in the judgment provide that
13 the rights of inheritance from or through a deceased parent will
14 not be affected or terminated by the adoption.

15 b. The entry of a judgment of adoption shall establish the same
16 relationships, rights, duties and obligations between the child and
17 the adopting parent as if such child were born to such adopting
18 parent in lawful wedlock. For good cause, the court may direct the
19 entry of judgment nunc pro tunc as of the date the action was

20 instituted. In applying the intestate laws of this State, an adopted
21 child shall have the same rights of inheritance as if born to the
22 adopting parent in lawful wedlock. In the construction of any
23 testamentary or other document executed subsequent to the effective date of this act, an adopted child shall be deemed lawful issue
24 of the adopting parents unless such document shall otherwise
25 provide.

1 15. The clerk of each County Court shall file promptly with the
2 Superior Court a copy of each judgment of adoption entered pursuant to this act. The clerk of the Superior Court shall docket the
3 copies of such judgments and shall maintain an alphabetical index
4 of all judgments of adoption entered each year pursuant to this
5 act in the County Courts and the Superior Court of the State,
6 all of which records shall be sealed and thereafter shall be made
7 accessible only by court order.

1 16. a. All records of proceedings relating to adoption, including
2 the complaint, judgment and all petitions, affidavits, testimony,
3 reports, briefs, orders and other relevant documents, shall be filed
4 under seal by the clerk of the court and shall at no time be open to
5 inspection or copying unless the court, upon good cause shown,
6 shall otherwise order. An index to all adoption proceedings shall
7 be maintained by the clerk of the court, but no index of adoption
8 proceedings shall be open to inspection or copying or be made
9 public except upon order of the court.

10 b. Upon entry of a judgment of adoption, the clerk of the court
11 shall certify to the State Bureau of Vital Statistics, any successor
12 agency or any similar agency in the State or country of the child's
13 birth, the date of entry of the judgment, the names of the adopting
14 parent or parents, the name of the child, the date and place of birth
15 of the child and the new name of the child if changed by the judgment of adoption.

1 17. The costs of all proceedings pursuant to this act shall be
2 borne by the plaintiff, including the costs incurred by an approved
3 agency acting pursuant to an order of the court; provided, however,
4 that such approved agency may waive part of or all such costs.
5 Payment of costs hereunder shall not be a condition precedent to
6 entry of judgment. **Such costs shall not include the provision of*
7 *counsel for any person, other than the plaintiff, entitled to the*
8 *appointment of counsel hereunder.**

1 18. a. No person, firm, partnership, corporation, association or
2 agency shall make, offer to make or assist or participate in any
3 placement for adoption and in connection therewith

4 (1) Pay, give or agree to give any money or any valuable con-
5 sideration, or assume or discharge any financial obligation; or

6 (2) Take, receive, accept or agree to accept any money or any
7 valuable consideration.

8 b. The prohibition of subsection a. shall not apply to the fees
9 or services of any approved agency in connection with a placement
10 for adoption, nor shall such prohibition apply to the payment or
11 reimbursement of medical, hospital or other similar expenses
12 incurred in connection with the birth or any illness of the child,
13 or to the acceptance of such reimbursement by a parent of the child.

14 c. Any person, firm, partnership, corporation, association or
15 agency violating this section shall be guilty of a high misdemeanor.

1 19. a. Any prospective parent who is not a brother, sister, aunt,
2 uncle, grandparent, foster parent, natural father or stepparent of
3 the child to be adopted shall file before the complaint is heard, in
4 accordance with court rules, a detailed report which shall be signed
5 and verified by each such prospective parent and shall disclose all
6 sums of money or other valuable consideration paid, given or
7 agreed to be given to any person, firm, partnership, corporation,
8 association or agency by or on behalf of the prospective parent in
9 connection with the adoption, and the names and addresses of each
10 such person, firm, partnership, corporation, association or agency
11 to whom such consideration was given or promised. The report,
12 a copy of which shall be provided to the ***[**approved agency
13 appointed pursuant to section 12**]*** **Division of Youth and Family*
14 *Services**, shall include but shall not be limited to any expenses in-
15 curred or to be incurred by or on behalf of such prospective parent
15A in connection with

16 (1) The birth of the child;

17 (2) The placement for adoption of the child with the prospective
18 parent;

19 (3) Medical or hospital care received by the mother or the child
20 during the mother's pre- and postnatal period; and

21 (4) Services relating to the adoption or to the placement for
22 adoption, including legal services, which were rendered or are to
23 be rendered to or for the benefit of the prospective parent, either
24 parent of the child or any other person or agency.

25 b. Whenever based upon a report filed pursuant to this section it
26 shall appear to the court **or to the Division of Youth and Family*
27 *Services** that any person may have violated sections 3 or 18 hereof,
28 the court ***[**shall**]*** **or the division may** refer the matter to the
29 appropriate county prosecutor.

1 20. P. L. 1953, c. 264 (C. 9:3-17 to 9:3-36), P. L. 1953, c. 265
2 (C. 2A:96-6 to 2A:96-8), P. L. 1954, c. 112 (C. 9:3-19.1), and P. L.
3 1955, c. 140 (C. 9:3-22.1) are hereby repealed subject to section 22.

1 21. If any provision of this act, or any application of any provi-
2 sion, is held invalid, the invalidity shall not affect other applications
3 of the provision, or other provisions of the act, which reasonably
4 can be given effect despite the invalidity. To this end, the provi-
5 sion of this act are declared severable.

1 22. This act shall take effect 30 days after enactment but it shall
2 not apply to any action for adoption commenced prior to such
3 effective date, for purposes of which P. L. 1953, c. 264 (C. 9:3-17 to
4 9:3-36) as amended, shall remain in effect until final disposition.

ASSEMBLY INSTITUTIONS, HEALTH AND
WELFARE COMMITTEE

STATEMENT TO
SENATE, No. 1631
[OFFICIAL COPY REPRINT]

STATE OF NEW JERSEY

DATED: JULY 11, 1977

The Assembly committee released this bill which revises the State's adoption laws with several amendments.

The substantive amendments would:

1. Define "parent" to include the natural father of a child born out of wedlock who has acknowledged the child or to whom the court has ordered notice to be given in an adoption proceeding;

2. Provide that putative fathers who have maintained a financial or other relationship with a child shall be given notice of an adoption proceeding and shall have court-appointed counsel at such proceeding if necessary;

3. Reinstate language which was removed by Senate Committee amendments so that a judgment for adoption could be entered over the objection of a parent when the court determines that such parent had "substantially failed to perform the regular and expected parental functions of care and support of the child, which shall include maintenance of an emotional relationship with the child.";

4. Allow the court discretion in the appointment of a guardian ad litem in certain cases; and,

5. Reinstate language which would allow approved adoption agencies to receive copies of financial reports required by court rule so that such reports shall become a part of agencies' case files.

ASSEMBLY COMMITTEE AMENDMENTS TO

SENATE, No. 1631

[OFFICIAL COPY REPRINT]

STATE OF NEW JERSEY

ADOPTED JULY 11, 1977

Amend page 2, section 2f., line 24, omit "without regard to the marital status of either at the time", and insert "including the natural father of the child born out of wedlock who has acknowledged the child or to whom the court has ordered notice to be given".

Amend page 2, section 2f., line 25, omit "of the child's birth or conception".

Amend page 3, section 7a., line 2, omit "living with his spouse".

Amend page 4, section 9, line 7, omit "Such notice shall", and insert "If at any time during the proceedings it appears from the report of the agency or in any other way that the putative father has maintained a relationship with the child, financial or otherwise, the court shall order that notice be given to such putative father personally and that the hearing will not be held until 20 days after notice is given in the case of a resident and 35 days in the case of a nonresident.".

Amend page 4, section 9, lines 8-14, omit in their entirety.

Amend page 4, section 9, line 15, omit "cannot be ascertained.", and insert "Such notice shall inform the parent or putative father of the purpose, date, place of the hearing, of such person's right to appear and object to the adoption, of his right to counsel and of his right to have counsel appointed to represent him if he cannot afford to retain counsel.".

Amend page 4, section 9, line 17, omit "and".

Amend page 4, section 9, line 18, omit "**the natural father of*".

Amend page 4, section 9, lines 19-21, omit in their entirety.

Amend page 4, section 9, line 22, omit "*regularly provided support for the child*".

Amend page 4, section 10a., line 9, after "*child.】**", insert "No judgment of adoption shall be entered over an objection of such parent communicated to the court by personal appearance or by letter unless the court finds that such parent has substantially failed to perform the regular and expected parental functions of care and support of the child, which shall include maintenance of an emotional relationship with the child.".

Amend page 4, section 10, line 9, omit "*A judgment of adop-*".

Amend page 4, section 10, lines 9A-9C, omit in their entirety.

Amend page 5, section 10, lines 9D-9G, omit in their entirety.

Amend page 5, section 11b., line 27, after "*proceeding**", insert "if the court determines that such guardian is necessary to represent the best interest of the child".

Amend page 11, section 19a., line 13, after "section 12¹", insert "approved agency appointed pursuant to section 12 and the".

[ASSEMBLY REPRINT]
SENATE, No. 1631
[OFFICIAL COPY REPRINT]

with Assembly committee amendments adopted July 11, 1977

STATE OF NEW JERSEY

INTRODUCED AUGUST 12, 1976

By Senator MENZA

Referred to Committee on Judiciary

AN ACT concerning the adoption of children and revising and
repealing various parts of the law relating to adoption.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. This act shall be liberally construed to the end that the
2 best interests of children be promoted. Due regard shall be given
3 to the rights of all persons affected by an adoption.

1 2. For the purposes of this act:

2 a. "Approved agency" shall mean a nonprofit corporation,
3 association or agency, including any public agency, approved by
4 the Department of ***[Institutions and Agencies]*** **Human*
5 *Services** for the purpose of placing children for adoption in New
5A Jersey;

6 b. "Child" shall mean a person under 18 years of age***[**, pro-
7 vided, however, that any person under 21 years of age may be
8 adopted under the provisions of this act]**]***;

9 c. "Custody" shall mean ***[**exercise of continuing control over
10 the person of a child;**]*** **the general right to exercise continuing*
11 *control over the person of a child derived from court order or*
12 *otherwise;**

13 d. "Guardianship" shall mean ***[**responsibility for and au-
14 thority over the person and property of a child as established by
15 a court order;**]*** **the right to exercise continuing control over the*
16 *person or property or both of a child which includes any specific*
17 *right of control over an aspect of the child's upbringing derived*
18 *from court order;**

19 *e. *Guardian ad litem* shall mean a qualified person, not neces-
20 sarily an attorney, appointed by the court under the provisions of

EXPLANATION—Matter enclosed in bold-faced brackets **[thus]** in the above bill
is not enacted and is intended to be omitted in the law.

21 *this act or at the discretion of the court to represent the interests*
 22 *of the child whether or not the child is a named party in the action;**

23 ***[e.]*** *f.* “Parent” shall mean a natural parent or natural
 24 parents, ****[without regard to the marital status of either at the**
 25 **time of the child’s birth or conception]**** ***including the natural*
 26 *father of the child born out of wedlock who has acknowledged the*
 26A *child or to whom the court has ordered notice to be given***, or a
 26B parent or parents by adoption;

27 ***[f.]*** *g.* “Placement for adoption” shall mean the transfer
 28 of custody of a child to a person for the purpose of adoption by
 29 such person; and

30 ***[g.]*** *h.* “Plaintiff” shall mean a prospective parent or
 31 parents who have filed a complaint for adoption.

1 3. a. No person, firm, partnership, corporation, association or
 2 agency shall place, offer to place or materially assist in the place-
 3 ment of any child for adoption in New Jersey unless such person
 4 shall be the parent **or guardian** of the child, or such firm, partner-
 5 ship, corporation, association or agency shall be an approved
 6 agency; provided, however, that this prohibition shall not apply to
 7 the placement for adoption of a child with a brother, sister, aunt,
 8 uncle, grandparent, natural father or stepparent of such child. For
 9 the purposes of this section, material assistance in the placement
 10 for adoption of any child shall include but shall not be limited to
 11 acting as an agent, finder or intermediary for or between any
 12 parent and any prospective parent or a person acting on behalf of
 13 either in connection with a placement for adoption of such parent’s
 14 child. The Superior Court, in an action by the Commissioner of
 15 the Department of ***[Institutions and Agencies]*** **Human*
 16 *Services**, may enjoin any party found by the court to have violated
 17 this section from any further violation of this section.

18 b. Any person, firm, partnership, corporation, association or
 19 agency violating this section shall be guilty of a misdemeanor.

1 4. The Commissioner of the Department of ***[Institutions and**
 2 **Agencies]*** **Human Services** shall promulgate rules and regula-
 3 tions relating to the qualification of agencies for approval to make
 4 placements for adoption in New Jersey. Such rules and regulations
 5 shall include, but shall not be limited to standards of professional
 6 training and experience of staff and requirements relating to
 7 responsibilities of trustees, officers or other persons supervising or
 8 conducting the placement for adoption program, adequacy of
 9 facilities, maintenance and confidentiality of casework records and
 10 furnishing of reports. **No approved agency shall discriminate*
 11 *with regard to the selection of adoptive parents for any child on the*

12 *basis of age, sex, race, national origin, religion or marital status*
 13 *provided, however, that these factors may be considered in deter-*
 14 *mining whether the best interests of a child would be served by a*
 15 *particular placement for adoption or adoption.**

1 5. a. Surrender of a child to an approved agency for the purpose
 2 of adoption shall be by a signed instrument acknowledged by the
 3 person executing the same before an officer authorized to take
 4 acknowledgments or proofs in the State in which the instrument is
 5 executed, such officer first having made known the contents of the
 6 instrument to the person making the acknowledgment and having
 7 been satisfied as to the identity of the person executing the sur-
 8 render, which the officer shall certify on the instrument of surrender
 9 or on a paper attached thereto. Such surrender shall constitute
 10 relinquishment of such person's parental rights in or guardianship
 11 or custody of the child named therein and consent by such person
 12 to adoption of the child. Such surrender shall be valid and binding
 13 without regard to the age of the person executing the surrender.

14 b. Any approved agency may accept custody of a child by a duly
 15 executed instrument of surrender from a parent or guardian of
 16 the child or from another approved agency or any agency for the
 17 care and protection of children approved by any other state, by the
 18 United States or by any foreign country, which has duly obtained
 19 the authority to place such child for adoption.

1 6. An action for adoption shall be instituted in either the
 2 Superior Court or the County Court of the county in which the
 3 prospective parent resides; provided, however, that:

4 a. Whenever the child to be adopted has been received into the
 5 home of the prospective parent from an approved agency, the
 6 action may be instituted in the County Court of any county in which
 7 such approved agency has an office; and provided further that

8 b. Whenever a parent of the child to be adopted has been granted
 9 a divorce from the other parent by the Superior Court, the action
 10 shall be instituted in the Superior Court unless such court
 11 previously has awarded custody of the child to an approved agency
 12 or has consented to the institution of the action in a County Court.

1 7. a. Any person may institute an action for adoption, provided,
 2 however, that a married person ****[living with his spouse]**** may
 3 do so only with the written consent of his spouse or jointly with his
 4 spouse in the same action or after having lived separate and apart
 5 from his spouse for a continuous period of at least ***[1 year]***

5A ***18 months***.

6 b. Each plaintiff, at the time of the institution of the action,
 7 shall have attained the age of 18 years and shall be at least 10 years
 8 older than the child to be adopted, provided, however, that the
 9 court for good cause may waive either requirement, such waiver
 10 to be recited in any judgment of adoption thereafter entered.

1 8. Whenever any person shall receive a child into his home for
 2 the purpose of adoption other than from an approved agency, an
 3 action for adoption shall be instituted with reasonable promptness.
 4 Whenever any person shall receive a child into his home for
 5 purposes other than adoption and it is later determined that an
 6 adoption shall be sought, an action for adoption shall be instituted
 7 with reasonable promptness following such determination.
 8 **Failure to so act shall not be a sole basis for refusal of the*
 9 *adoption.**

1 9. In any adoption proceeding pursuant to this act, notice of the
 2 complaint may not be waived and shall be served in accordance
 3 with the Rules of Court on each parent of the child to be adopted,
 4 except that notice shall not be served on any parent who has
 5 executed a valid surrender to an approved agency pursuant to
 6 section 5 or whose parental rights have been terminated in a
 7 separate judicial proceeding by court order. ****[Such notice shall**
 8 **inform the parent of the purpose, date and place of the hearing,**
 9 **of such parent's right to object to the adoption, of his right to**
 10 **counsel and of his right to have counsel appointed to represent**
 11 **him if he cannot afford to retain counsel. The court may dispense**
 12 **with notice *[,or]*, in its discretion, *[,permit notice by publication**
 13 **only]* on proof by affidavit of diligent inquiry establishing that**
 14 **notwithstanding such inquiry the identity or location of such parent**
 15 **cannot be ascertained.]**** ***If at any time during the proceedings*
 16 *it appears from the report of the agency or in any other way that*
 17 *the putative father has maintained a relationship with the child,*
 18 *financial or otherwise, the court shall order that notice be given*
 19 *to such putative father personally and that the hearing will not*
 20 *be held until 20 days after notice is given in the case of a resident*
 21 *and 35 days in the case of a nonresident. Such notice shall inform*
 22 *the parent or putative father of the purpose, date, place of hear-*
 23 *ing, of such person's right to appear and object to the adoption,*
 24 *of his right to counsel and of his right to have counsel appointed*
 25 *to represent him if he cannot afford to retain counsel.*** For the
 26 purposes of this section the defined term "parent" shall include
 27 the husband of the mother of a child born or conceived during the
 28 marriage ****[and]**** ***[the alleged natural father of a legitimate**

29 or illegitimate child.]* ***[the natural father of a child born out*
 30 *of wedlock who has acknowledged paternity or has been determined*
 31 *to be the child's father by a court of law or has developed and*
 32 *maintained a relationship with the child or has regularly provided*
 33 *support for the child].***

1 10. a. Any parent who has not executed a surrender pursuant
 2 to section 5 and whose parental rights have not been terminated
 3 by court order shall have the right to object to the adoption of his
 4 child. **[No judgment of adoption shall be entered over an objection*
 5 *of such parent communicated to the court by personal appearance*
 6 *or by letter unless the court finds that such parent has substantially*
 7 *failed to perform the regular and expected parental functions of*
 8 *care and support of the child, which shall include maintenance of*
 9 *an emotional relationship with the child.]* **No judgment of*
 10 *adoption shall be entered over an objection of such parent com-*
 11 *municated to the court by personal appearance or by letter*
 12 *unless the court finds that such parent has substantially failed to*
 13 *perform the regular and expected parental functions of care and*
 14 *support of the child, which shall include maintenance of an emo-*
 15 *tional relationship with the child.** ****[A judgment of adoption*
 16 *shall only be entered over an objection of such parent who has*
 17 *filed an answer contesting the adoption or who has personally*
 18 *appeared at the hearing upon a finding by the court after a plenary*
 19 *hearing that such parent has failed willfully and substantially to*
 20 *perform the regular and expected parental functions of care and*
 21 *support of the child or whose actions would, in an appropriate*
 22 *action, have justified the terminatoin of his parental rights.]****

23 b. Any guardian of a child to be adopted who has not executed
 24 a surrender pursuant to section 5 and any other person standing in
 25 loco parentis of such child shall be given notice of the action and
 26 in accordance with the Rules of Court shall have standing to object
 27 to the adoption, which objection shall be given due consideration
 28 by the court in determining whether the best interests of the child
 29 would be promoted by the adoption.

1 11. a. When the child to be adopted has been received from an
 2 approved agency, the prospective parent shall file with the court a
 3 complaint for adoption after the child has been in the home of such
 4 prospective parent for at least 6 months. The complaint shall be
 5 accompanied by a consent to the plaintiff's adoption of the child
 6 signed and acknowledged by an authorized officer or representative
 7 of the approved agency; provided, however, that failure or refusal
 8 on the part of such approved agency to give such consent, or with-

9 drawal of consent on the part of such approved agency, shall not
10 preclude an action for adoption.

11 b. Upon the filing of the complaint, the court shall set a date
12 for the adoption hearing not less than 10 nor more than 30 days
13 from the date of institution of the action **unless a longer period*
14 *shall be required in order to obtain service of notice upon one or*
15 *more of the parents** and shall order the approved agency con-
16 cerned to file at least 5 days prior to the hearing a two-part written
17 report, part one of which shall describe the circumstances surround-
18 ing the surrender of the child to the agency and part two of which
19 shall set forth the results of the agency's evaluation of the child
20 and of the plaintiff and his spouse, if any, and the agency's assess-
21 ment of the care being received by the child and the adjustment of
22 the child and the plaintiff as members of a family. If the agency's
23 report contains any material findings or recommendations adverse
24 to the plaintiff the agency shall serve a copy of part two of its
25 report upon the plaintiff at least 5 days prior to the hearing **and*
26 *the court shall appoint a guardian ad litem for the child in the adop-*
27 *tion proceeding* **if the court determines that such guardian is*
28 *necessary to represent the best interest of the child***. If the ap-
29 proved agency that placed the child with the plaintiff has not
30 consented to the adoption, the court may appoint another approved
31 agency to conduct an investigation and make recommendations in
32 the matter. Such appointment shall not deprive the placing agency
33 of standing to appear at the hearing and contest the adoption.
34 Personal appearance at the hearing by a representative of the
35 approved agency conducting the investigation may be dispensed
36 with by the court if the agency's report favors the adoption. If
37 such appearance is required, the approved agency shall be entitled
38 to present testimony and to cross-examine witnesses and shall be
38A subject to cross-examination with respect to its report and recom-
38B mendations in the matter. The appearance of the child to be
38C adopted shall not be required unless ordered by the court or unless
38D the inquiry pursuant to section 13 indicates that the child is op-
38E posed to the adoption.

39 c. The adoption hearing shall be held in camera. If a parent
40 of the child has made an objection to the adoption, the court shall
41 take evidence relating to such objection. If the court finds against
42 the objecting parent in accordance with subsection (a) of section 10,
43 it shall make an order terminating the parental rights of such
44 parent and proceed with the hearing.

45 d. If, based upon the approved agency's report and the evidence
 46 presented at the hearing, the court is satisfied that the best interests
 47 of the child would be promoted by the adoption, the court shall
 48 enter a judgment of adoption. If, based upon the approved
 49 agency's report and the evidence presented at the hearing, the
 50 court is not satisfied that the best interests of the child would be
 51 promoted by the adoption, the court shall deny the adoption and
 52 make such further order concerning the custody and guardianship
 53 of the child as may be deemed proper in the circumstances.

1 12. a. When the child to be adopted has not been received from
 2 an approved agency, the prospective parent shall file with the
 3 court a complaint for adoption. Upon receipt of the complaint, the
 4 court shall by its order

5 (1) Declare the child to be a ward of the court and declare that
 6 the plaintiff shall have custody of such child subject to further
 7 order of the court;

8 (2) Appoint an approved agency to make an investigation and
 9 submit a written report to the court concerning the facts and cir-
 10 cumstances surrounding the surrender of custody by the child's
 11 parents and the placement of the child in the home of the plaintiff
 12 and an evaluation of the child and of the plaintiff and
 12A the spouse of the plaintiff if not the child's parent and if not a
 13 party to the action, provided, however, that whenever the plaintiff
 14 is a stepparent of the child, the court may dispense with the
 15 agency investigation and report and take direct evidence at the
 16 preliminary hearing of the facts and circumstances surrounding
 17 the adoption;

18 (3) Direct the plaintiff to cooperate with the approved agency
 19 making such investigation and report; and

20 (4) Fix a day for preliminary hearing not less than 2 or more
 21 than 3 months from the date of the institution of the action; pro-
 22 vided, however, that such hearing may be accelerated upon the
 23 application of the approved agency and upon notice to the plaintiff
 24 where the agency determines that removal of the child from the
 25 plaintiff's home is required*, *in which case the court shall appoint*
 25A *a guardian ad litem to represent the child at all future proceedings*
 25B *regarding the adoption.**

26 Whenever a plaintiff is a brother, sister, grandparent, aunt,
 27 uncle, natural father or stepparent of the child, the order may limit
 28 the investigation to an inquiry concerning the status of the parents
 29 of the child and an evaluation of the plaintiff. At least 10 days
 30 prior to the day fixed for the preliminary hearing the approved
 31 agency shall file its report with the court and serve a copy thereof
 32 on the plaintiff.

33 b. The preliminary hearing shall be in camera and shall have for
 34 its purpose the determination of the circumstances under which
 35 the child was relinquished by his parents and received into the
 36 home of the plaintiff, the status of the parental rights of the par-
 37 ents, the fitness of the child for adoption and the fitness of the
 38 plaintiff to adopt the child and to provide a suitable home. If the
 39 report of the approved agency pursuant to subsection a. contains
 40 any material findings or recommendations adverse to the plaintiff,
 41 the presence of a representative of the approved agency who has
 42 personal knowledge of the investigation shall be required at the
 43 preliminary hearing. If in the course of the preliminary hearing
 44 the court shall determine that there is lack of jurisdiction or that
 45 there is lack of qualification on the part of the plaintiff, the action
 46 shall be dismissed forthwith. If in the course of the preliminary
 47 hearing the court shall determine that the best interests of the
 48 child would not be promoted by the adoption, the court shall deny
 49 the adoption and make such further order concerning the custody
 50 and guardianship of the child as may be deemed proper in the
 51 circumstances.

52 c. If upon completion of the preliminary hearing the court finds
 53 that:

54 (1) The parents of the child do not have rights as to custody of
 55 the child by reason of their rights previously having been termi-
 56 nated by court order, their failure to make timely objection to the
 57 adoption pursuant to section 10 or ***their substantial failure to per-**
 58 **form the regular and expected parental functions of care and**
 59 **support of the child;*** **intentional abandonment or very sub-*
 59A *stantial neglect of parental duties without a reasonable expectation*
 59B *of a reversal of that conduct in the future;**

60 (2) The guardian, if any, should have no further control or
 61 authority over the child;

62 (3) The child is fit for adoption; and

63 (4) The plaintiff is fit to adopt the child, it shall issue an order
 64 stating its findings, declaring that no parent or guardian of the
 65 child has any right to custody or guardianship of the child, **termi-*
 66 *nating the parental rights of such person,** fixing a date for final
 67 hearing not less than 6 nor more than 9 months from the date of the
 68 preliminary hearing and appointing an approved agency to evaluate
 69 the placement in accordance with subsection d. If the plaintiff is a
 70 brother, sister, grandparent, aunt, uncle, natural father, step-
 71 parent or foster parent of the child, or if the child has been in the
 72 home of the plaintiff for at least 2 years immediately preceding the
 73 commencement of the adoption action, **and if the court is satisfied*

74 *that the best interests of the child would be promoted by the adop-*
 74A *tion** the court may dispense with such evaluation and final hear-
 74B ing and enter a judgment of adoption **immediately upon comple-*
 74C *tion of the preliminary hearing*.*

75 d. The approved agency appointed pursuant to subsection c.
 76 shall from time to time visit the home of the plaintiff and make such
 77 further inquiry as may be necessary to observe and evaluate the
 78 care being received by the child and the adjustment of the child
 79 and the plaintiff as members of a family. At least 15 days prior to
 80 the final hearing such approved agency shall file with the court a
 81 written report of its findings, including a recommendation concern-
 82 ing the adoption, and shall mail a copy of the report to the plaintiff.

83 If at any time following the preliminary hearing such approved
 84 agency shall conclude that the best interests of the child would not
 85 be promoted by the adoption, the court, **shall appoint a guardian*
 86 *ad litem for the child and** after a hearing held upon the applica-
 87 tion of such approved agency and upon notice to the plaintiff, may
 88 modify or revoke any order entered in the action and make such
 89 further order concerning the custody and guardianship of the child
 89A as may be deemed proper in the circumstances.

90 e. At the final hearing the court shall proceed in camera; pro-
 91 vided, however, that if the approved agency in its report pursuant
 92 to subsection d. has recommended that the adoption be granted,
 93 the final hearing may be dispensed with and, if the court is satisfied
 94 that the best interests of the child would be promoted by the
 95 adoption, a judgment of adoption may be entered forthwith.

96 The appearance of the approved agency at the final hearing shall
 97 not be required unless its recommendations are adverse to the
 98 plaintiff or unless ordered by the court. If such appearance is
 99 required, the approved agency shall be entitled to present testimony
 100 and to cross-examine witnesses and shall be subject to cross-
 101 examination with respect to its report and recommendations in the
 102 matter. The appearance of the child to be adopted shall not be
 103 required unless ordered by the court or unless the inquiry, pursuant
 104 to section 13, indicates that the child is opposed to the adoption.

105 f. If, based upon the report and the evidence presented, the
 106 court is satisfied that the best interests of the child would be
 107 promoted by the adoption, the court shall enter a judgment of
 108 adoption. If, based upon such evidence, the court is not satisfied
 109 that the best interests of the child would be promoted by the
 110 adoption, the court shall deny the adoption and make such further
 111 order concerning the custody and guardianship of the child as
 112 may be deemed proper in the circumstances.

1 13. Each report of an approved agency pursuant to section 11
2 or 12 shall set forth the understanding and wishes of the child to
3 be adopted with respect to the proposed adoption, and no judgment
4 shall be entered pursuant to this act without the court's having
5 given due consideration to such understanding and wishes. The
6 foregoing requirement shall not apply in the case of a child under
7 the age of 8 years who, in the judgment of the approved agency, is
8 incapable of understanding and expressing an opinion regarding
9 the proposed adoption.

1 14. a. The entry of a judgment of adoption shall terminate all
2 relationships between the adopted child and his parents and all
3 rights, duties and obligations of any person that are founded upon
4 such relationships, including rights of inheritance under the
5 intestate laws of this State, except such rights as may have vested
6 prior to entry of the judgment of adoption; provided, however,
7 that when the plaintiff is a stepfather or stepmother of the adopted
8 child and the adoption is consummated with the consent and
9 approval of the mother or father, respectively, such adoption shall
10 not affect or terminate any relationship between the child and such
11 mother or father or any rights, duties or obligations based there-
12 upon. For good cause, the court may in the judgment provide that
13 the rights of inheritance from or through a deceased parent will
14 not be affected or terminated by the adoption.

15 b. The entry of a judgment of adoption shall establish the same
16 relationships, rights, duties and obligations between the child and
17 the adopting parent as if such child were born to such adopting
18 parent in lawful wedlock. For good cause, the court may direct the
19 entry of judgment nunc pro tunc as of the date the action was
20 instituted. In applying the intestate laws of this State, an adopted
21 child shall have the same rights of inheritance as if born to the
22 adopting parent in lawful wedlock. In the construction of any
23 testamentary or other document executed subsequent to the effec-
24 tive date of this act, an adopted child shall be deemed lawful issue
25 of the adopting parents unless such document shall otherwise
26 provide.

1 15. The clerk of each County Court shall file promptly with the
2 Superior Court a copy of each judgment of adoption entered pur-
3 suant to this act. The clerk of the Superior Court shall docket the
4 copies of such judgments and shall maintain an alphabetical index
5 of all judgments of adoption entered each year pursuant to this
6 act in the County Courts and the Superior Court of the State,
7 all of which records shall be sealed and thereafter shall be made
8 accessible only by court order.

1 16. a. All records of proceedings relating to adoption, including
2 the complaint, judgment and all petitions, affidavits, testimony,
3 reports, briefs, orders and other relevant documents, shall be filed
4 under seal by the clerk of the court and shall at no time be open to
5 inspection or copying unless the court, upon good cause shown,
6 shall otherwise order. An index to all adoption proceedings shall
7 be maintained by the clerk of the court, but no index of adoption
8 proceedings shall be open to inspection or copying or be made
9 public except upon order of the court.

10 b. Upon entry of a judgment of adoption, the clerk of the court
11 shall certify to the State Bureau of Vital Statistics, any successor
12 agency or any similar agency in the State or country of the child's
13 birth, the date of entry of the judgment, the names of the adopting
14 parent or parents, the name of the child, the date and place of birth
15 of the child and the new name of the child if changed by the judg-
16 ment of adoption.

1 17. The costs of all proceedings pursuant to this act shall be
2 borne by the plaintiff, including the costs incurred by an approved
3 agency acting pursuant to an order of the court; provided, however,
4 that such approved agency may waive part of or all such costs.
5 Payment of costs hereunder shall not be a condition precedent to
6 entry of judgment. **Such costs shall not include the provision of*
7 *counsel for any person, other than the plaintiff, entitled to the*
8 *appointment of counsel hereunder.**

1 18. a. No person, firm, partnership, corporation, association or
2 agency shall make, offer to make or assist or participate in any
3 placement for adoption and in connection therewith

4 (1) Pay, give or agree to give any money or any valuable con-
5 sideration, or assume or discharge any financial obligation; or

6 (2) Take, receive, accept or agree to accept any money or any
7 valuable consideration.

8 b. The prohibition of subsection a. shall not apply to the fees
9 or services of any approved agency in connection with a placement
10 for adoption, nor shall such prohibition apply to the payment or
11 reimbursement of medical, hospital or other similar expenses
12 incurred in connection with the birth or any illness of the child,
13 or to the acceptance of such reimbursement by a parent of the child.

14 c. Any person, firm, partnership, corporation, association or
15 agency violating this section shall be guilty of a high misdemeanor.

1 19. a. Any prospective parent who is not a brother, sister, aunt,
2 uncle, grandparent, foster parent, natural father or stepparent of
3 the child to be adopted shall file before the complaint is heard, in

4 accordance with court rules, a detailed report which shall be signed
 5 and verified by each such prospective parent and shall disclose all
 6 sums of money or other valuable consideration paid, given or
 7 agreed to be given to any person, firm, partnership, corporation,
 8 association or agency by or on behalf of the prospective parent in
 9 connection with the adoption, and the names and addresses of each
 10 such person, firm, partnership, corporation, association or agency
 11 to whom such consideration was given or promised. The report,
 12 a copy of which shall be provided to the *~~approved~~ agency
 13 appointed pursuant to section 12]* ***approved agency appointed*
 13A *pursuant to section 12 and the** *Division of Youth and Family*
 14 *Services**, shall include but shall not be limited to any expenses in-
 15 curred or to be incurred by or on behalf of such prospective parent
 15A in connection with

- 16 (1) The birth of the child;
- 17 (2) The placement for adoption of the child with the prospective
 18 parent;
- 19 (3) Medical or hospital care received by the mother or the child
 20 during the mother's pre- and postnatal period; and
- 21 (4) Services relating to the adoption or to the placement for
 22 adoption, including legal services, which were rendered or are to
 23 be rendered to or for the benefit of the prospective parent, either
 24 parent of the child or any other person or agency.

25 b. Whenever based upon a report filed pursuant to this section it
 26 shall appear to the court **or to the Division of Youth and Family*
 27 *Services** that any person may have violated sections 3 or 18 hereof,
 28 the court *~~shall~~* **or the division may** refer the matter to the
 29 appropriate county prosecutor.

1 20. P. L. 1953, c. 264 (C. 9:3-17 to 9:3-36), P. L. 1953, c. 265
 2 (C. 2A:96-6 to 2A:96-8), P. L. 1954, c. 112 (C. 9:3-19.1), and P. L.
 3 1955, c. 140 (C. 9:3-22.1) are hereby repealed subject to section 22.

1 21. If any provision of this act, or any application of any provi-
 2 sion, is held invalid, the invalidity shall not affect other applications
 3 of the provision, or other provisions of the act, which reasonably
 4 can be given effect despite the invalidity. To this end, the provi-
 5 sion of this act are declared severable.

1 22. This act shall take effect 30 days after enactment but it shall
 2 not apply to any action for adoption commenced prior to such
 3 effective date, for purposes of which P. L. 1953, c. 264 (C. 9:3-17 to
 4 9:3-36) as amended, shall remain in effect until final disposition.

ASSEMBLY AMENDMENTS TO
[ASSEMBLY REPRINT]
SENATE, No. 1631
[OFFICIAL COPY REPRINT]

STATE OF NEW JERSEY

ADOPTED NOVEMBER 21, 1977

Amend page 9, section 12, line 102, omit "The appearance of the child to be adopted shall not be".

Amend page 9, section 12, lines 103-104, omit in their entirety.

Amend page 10, section 13, lines 1-9, omit entirely and insert new section 13 as follows:

"13. If the child sought to be adopted is of the age of 10 years or over, the appearance of such child shall be required at the adoption hearing, and the child's wishes concerning the adoption shall be solicited by the court and given consideration if the child is of sufficient capacity to form an intelligent preference regarding the adoption."

[SECOND ASSEMBLY REPRINT]

SENATE, No. 1631

[OFFICIAL COPY REPRINT]

with Assembly committee amendments adopted July 11, 1977 and
Assembly amendment adopted November 21, 1977

STATE OF NEW JERSEY

INTRODUCED AUGUST 12, 1976

By Senator MENZA

Referred to Committee on Judiciary

AN ACT concerning the adoption of children and revising and
repealing various parts of the law relating to adoption.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. This act shall be liberally construed to the end that the
2 best interests of children be promoted. Due regard shall be given
3 to the rights of all persons affected by an adoption.

1 2. For the purposes of this act:

2 a. "Approved agency" shall mean a nonprofit corporation,
3 association or agency, including any public agency, approved by
4 the Department of ***[Institutions and Agencies]*** **Human*
5 *Services** for the purpose of placing children for adoption in New
5A Jersey;

6 b. "Child" shall mean a person under 18 years of age***[**, pro-
7 vided, however, that any person under 21 years of age may be
8 adopted under the provisions of this act]**]***;

9 c. "Custody" shall mean ***[**exercise of continuing control over
10 the person of a child;**]*** **the general right to exercise continuing*
11 *control over the person of a child derived from court order or*
12 *otherwise;**

13 d. "Guardianship" shall mean ***[**responsibility for and au-
14 thority over the person and property of a child as established by
15 a court order;**]*** **the right to exercise continuing control over the*
16 *person or property or both of a child which includes any specific*
17 *right of control over an aspect of the child's upbringing derived*
18 *from court order;**

19 *e. Guardian ad litem shall mean a qualified person, not neces-
20 sarily an attorney, appointed by the court under the provisions of

EXPLANATION—Matter enclosed in bold-faced brackets **[thus]** in the above bill
is not enacted and is intended to be omitted in the law.

21 *this act or at the discretion of the court to represent the interests*
 22 *of the child whether or not the child is a named party in the action;**

23 **[e.]* *f.* "Parent" shall mean a natural parent or natural*
 24 *parents, **[without regard to the marital status of either at the*
 25 *time of the child's birth or conception]** **including the natural*
 26 *father of the child born out of wedlock who has acknowledged the*
 26A *child or to whom the court has ordered notice to be given**, or a*
 26B *parent or parents by adoption;*

27 **[f.]* *g.* "Placement for adoption" shall mean the transfer*
 28 *of custody of a child to a person for the purpose of adoption by*
 29 *such person; and*

30 **[g.]* *h.* "Plaintiff" shall mean a prospective parent or*
 31 *parents who have filed a complaint for adoption.*

1 3. a. No person, firm, partnership, corporation, association or
 2 agency shall place, offer to place or materially assist in the place-
 3 ment of any child for adoption in New Jersey unless such person
 4 shall be the parent **or guardian** of the child, or such firm, partner-
 5 ship, corporation, association or agency shall be an approved
 6 agency; provided, however, that this prohibition shall not apply to
 7 the placement for adoption of a child with a brother, sister, aunt,
 8 uncle, grandparent, natural father or stepparent of such child. For
 9 the purposes of this section, material assistance in the placement
 10 for adoption of any child shall include but shall not be limited to
 11 acting as an agent, finder or intermediary for or between any
 12 parent and any prospective parent or a person acting on behalf of
 13 either in connection with a placement for adoption of such parent's
 14 child. The Superior Court, in an action by the Commissioner of
 15 the Department of **[Institutions and Agencies]* *Human*
 16 *Services**, may enjoin any party found by the court to have violated
 17 this section from any further violation of this section.

18 b. Any person, firm, partnership, corporation, association or
 19 agency violating this section shall be guilty of a misdemeanor.

1 4. The Commissioner of the Department of **[Institutions and*
 2 *Agencies]* *Human Services** shall promulgate rules and regula-
 3 tions relating to the qualification of agencies for approval to make
 4 placements for adoption in New Jersey. Such rules and regulations
 5 shall include, but shall not be limited to standards of professional
 6 training and experience of staff and requirements relating to
 7 responsibilities of trustees, officers or other persons supervising or
 8 conducting the placement for adoption program, adequacy of
 9 facilities, maintenance and confidentiality of casework records and
 10 furnishing of reports. **No approved agency shall discriminate*
 11 *with regard to the selection of adoptive parents for any child on the*

12 *basis of age, sex, race, national origin, religion or marital status*
 13 *provided, however, that these factors may be considered in deter-*
 14 *mining whether the best interests of a child would be served by a*
 15 *particular placement for adoption or adoption.**

1 5. a. Surrender of a child to an approved agency for the purpose
 2 of adoption shall be by a signed instrument acknowledged by the
 3 person executing the same before an officer authorized to take
 4 acknowledgments or proofs in the State in which the instrument is
 5 executed, such officer first having made known the contents of the
 6 instrument to the person making the acknowledgment and having
 7 been satisfied as to the identity of the person executing the sur-
 8 render, which the officer shall certify on the instrument of surrender
 9 or on a paper attached thereto. Such surrender shall constitute
 10 relinquishment of such person's parental rights in or guardianship
 11 or custody of the child named therein and consent by such person
 12 to adoption of the child. Such surrender shall be valid and binding
 13 without regard to the age of the person executing the surrender.

14 b. Any approved agency may accept custody of a child by a duly
 15 executed instrument of surrender from a parent or guardian of
 16 the child or from another approved agency or any agency for the
 17 care and protection of children approved by any other state, by the
 18 United States or by any foreign country, which has duly obtained
 19 the authority to place such child for adoption.

1 6. An action for adoption shall be instituted in either the
 2 Superior Court or the County Court of the county in which the
 3 prospective parent resides; provided, however, that:

4 a. Whenever the child to be adopted has been received into the
 5 home of the prospective parent from an approved agency, the
 6 action may be instituted in the County Court of any county in which
 7 such approved agency has an office; and provided further that

8 b. Whenever a parent of the child to be adopted has been granted
 9 a divorce from the other parent by the Superior Court, the action
 10 shall be instituted in the Superior Court unless such court
 11 previously has awarded custody of the child to an approved agency
 12 or has consented to the institution of the action in a County Court.

1 7. a. Any person may institute an action for adoption, provided,
 2 however, that a married person ****[living with his spouse]**** may
 3 do so only with the written consent of his spouse or jointly with his
 4 spouse in the same action or after having lived separate and apart
 5 from his spouse for a continuous period of at least ***[1 year]***
 5A ***18 months***.

6 b. Each plaintiff, at the time of the institution of the action,
 7 shall have attained the age of 18 years and shall be at least 10 years
 8 older than the child to be adopted, provided, however, that the
 9 court for good cause may waive either requirement, such waiver
 10 to be recited in any judgment of adoption thereafter entered.

1 8. Whenever any person shall receive a child into his home for
 2 the purpose of adoption other than from an approved agency, an
 3 action for adoption shall be instituted with reasonable promptness.
 4 Whenever any person shall receive a child into his home for
 5 purposes other than adoption and it is later determined that an
 6 adoption shall be sought, an action for adoption shall be instituted
 7 with reasonable promptness following such determination.
 8 **Failure to so act shall not be a sole basis for refusal of the*
 9 *adoption.**

1 9. In any adoption proceeding pursuant to this act, notice of the
 2 complaint may not be waived and shall be served in accordance
 3 with the Rules of Court on each parent of the child to be adopted,
 4 except that notice shall not be served on any parent who has
 5 executed a valid surrender to an approved agency pursuant to
 6 section 5 or whose parental rights have been terminated in a
 7 separate judicial proceeding by court order. ****[Such notice shall**
 8 **inform the parent of the purpose, date and place of the hearing,**
 9 **of such parent's right to object to the adoption, of his right to**
 10 **counsel and of his right to have counsel appointed to represent**
 11 **him if he cannot afford to retain counsel. The court may dispense**
 12 **with notice * [or] *, in its discretion, * [permit notice by publication**
 13 **only] * on proof by affidavit of diligent inquiry establishing that**
 14 **notwithstanding such inquiry the identity or location of such parent**
 15 **cannot be ascertained.]**** ***If at any time during the proceedings*
 16 *it appears from the report of the agency or in any other way that*
 17 *the putative father has maintained a relationship with the child,*
 18 *financial or otherwise, the court shall order that notice be given*
 19 *to such putative father personally and that the hearing will not*
 20 *be held until 20 days after notice is given in the case of a resident*
 21 *and 35 days in the case of a nonresident. Such notice shall inform*
 22 *the parent or putative father of the purpose, date, place of hear-*
 23 *ing, of such person's right to appear and object to the adoption,*
 24 *of his right to counsel and of his right to have counsel appointed*
 25 *to represent him if he cannot afford to retain counsel.*** For the
 26 purposes of this section the defined term "parent" shall include
 27 the husband of the mother of a child born or conceived during the
 28 marriage ****[and]**** ***[the alleged natural father of a legitimate**

29 or illegitimate child.]* ***[the natural father of a child born out*
 30 *of wedlock who has acknowledged paternity or has been determined*
 31 *to be the child's father by a court of law or has developed and*
 32 *maintained a relationship with the child or has regularly provided*
 33 *support for the child].***

1 10. a. Any parent who has not executed a surrender pursuant
 2 to section 5 and whose parental rights have not been terminated
 3 by court order shall have the right to object to the adoption of his
 4 child. **[No judgment of adoption shall be entered over an objection*
 5 *of such parent communicated to the court by personal appearance*
 6 *or by letter unless the court finds that such parent has substantially*
 7 *failed to perform the regular and expected parental functions of*
 8 *care and support of the child, which shall include maintenance of*
 9 *an emotional relationship with the child.]* **No judgment of*
 10 *adoption shall be entered over an objection of such parent com-*
 11 *municated to the court by personal appearance or by letter*
 12 *unless the court finds that such parent has substantially failed to*
 13 *perform the regular and expected parental functions of care and*
 14 *support of the child, which shall include maintenance of an emo-*
 15 *tional relationship with the child.** ***[A judgment of adoption*
 16 *shall only be entered over an objection of such parent who has*
 17 *filed an answer contesting the adoption or who has personally*
 18 *appeared at the hearing upon a finding by the court after a plenary*
 19 *hearing that such parent has failed willfully and substantially to*
 20 *perform the regular and expected parental functions of care and*
 21 *support of the child or whose actions would, in an appropriate*
 22 *action, have justified the terminatoin of his parental rights.]****

23 b. Any guardian of a child to be adopted who has not executed
 24 a surrender pursuant to section 5 and any other person standing in
 25 loco parentis of such child shall be given notice of the action and
 26 in accordance with the Rules of Court shall have standing to object
 27 to the adoption, which objection shall be given due consideration
 28 by the court in determining whether the best interests of the child
 29 would be promoted by the adoption.

1 11. a. When the child to be adopted has been received from an
 2 approved agency, the prospective parent shall file with the court a
 3 complaint for adoption after the child has been in the home of such
 4 prospective parent for at least 6 months. The complaint shall be
 5 accompanied by a consent to the plaintiff's adoption of the child
 6 signed and acknowledged by an authorized officer or representative
 7 of the approved agency; provided, however, that failure or refusal
 8 on the part of such approved agency to give such consent, or with-

9 drawal of consent on the part of such approved agency, shall not
10 preclude an action for adoption.

11 b. Upon the filing of the complaint, the court shall set a date
12 for the adoption hearing not less than 10 nor more than 30 days
13 from the date of institution of the action **unless a longer period*
14 *shall be required in order to obtain service of notice upon one or*
15 *more of the parents** and shall order the approved agency con-
16 cerned to file at least 5 days prior to the hearing a two-part written
17 report, part one of which shall describe the circumstances surround-
18 ing the surrender of the child to the agency and part two of which
19 shall set forth the results of the agency's evaluation of the child
20 and of the plaintiff and his spouse, if any, and the agency's assess-
21 ment of the care being received by the child and the adjustment of
22 the child and the plaintiff as members of a family. If the agency's
23 report contains any material findings or recommendations adverse
24 to the plaintiff the agency shall serve a copy of part two of its
25 report upon the plaintiff at least 5 days prior to the hearing **and*
26 *the court shall appoint a guardian ad litem for the child in the adop-*
27 *tion proceeding* **if the court determines that such guardian is*
28 *necessary to represent the best interest of the child***. If the ap-
29 proved agency that placed the child with the plaintiff has not
30 consented to the adoption, the court may appoint another approved
31 agency to conduct an investigation and make recommendations in
32 the matter. Such appointment shall not deprive the placing agency
33 of standing to appear at the hearing and contest the adoption.
34 Personal appearance at the hearing by a representative of the
35 approved agency conducting the investigation may be dispensed
36 with by the court if the agency's report favors the adoption. If
37 such appearance is required, the approved agency shall be entitled
38 to present testimony and to cross-examine witnesses and shall be
38A subject to cross-examination with respect to its report and recom-
38B mendations in the matter. The appearance of the child to be
38C adopted shall not be required unless ordered by the court or unless
38D the inquiry pursuant to section 13 indicates that the child is op-
38E posed to the adoption.

39 c. The adoption hearing shall be held in camera. If a parent
40 of the child has made an objection to the adoption, the court shall
41 take evidence relating to such objection. If the court finds against
42 the objecting parent in accordance with subsection (a) of section 10,
43 it shall make an order terminating the parental rights of such
44 parent and proceed with the hearing.

d. If, based upon the approved agency's report and the evidence presented at the hearing, the court is satisfied that the best interests of the child would be promoted by the adoption, the court shall enter a judgment of adoption. If, based upon the approved agency's report and the evidence presented at the hearing, the court is not satisfied that the best interests of the child would be promoted by the adoption, the court shall deny the adoption and make such further order concerning the custody and guardianship of the child as may be deemed proper in the circumstances.

12. a. When the child to be adopted has not been received from an approved agency, the prospective parent shall file with the court a complaint for adoption. Upon receipt of the complaint, the court shall by its order

(1) Declare the child to be a ward of the court and declare that the plaintiff shall have custody of such child subject to further order of the court;

(2) Appoint an approved agency to make an investigation and submit a written report to the court concerning the facts and circumstances surrounding the surrender of custody by the child's parents and the placement of the child in the home of the plaintiff and an evaluation of the child and of the plaintiff and the spouse of the plaintiff if not the child's parent and if not a party to the action, provided, however, that whenever the plaintiff is a stepparent of the child, the court may dispense with the agency investigation and report and take direct evidence at the preliminary hearing of the facts and circumstances surrounding the adoption;

(3) Direct the plaintiff to cooperate with the approved agency making such investigation and report; and

(4) Fix a day for preliminary hearing not less than 2 or more than 3 months from the date of the institution of the action; provided, however, that such hearing may be accelerated upon the application of the approved agency and upon notice to the plaintiff where the agency determines that removal of the child from the plaintiff's home is required*, *in which case the court shall appoint a guardian ad litem to represent the child at all future proceedings regarding the adoption.**

Whenever a plaintiff is a brother, sister, grandparent, aunt, uncle, natural father or stepparent of the child, the order may limit the investigation to an inquiry concerning the status of the parents of the child and an evaluation of the plaintiff. At least 10 days prior to the day fixed for the preliminary hearing the approved agency shall file its report with the court and serve a copy thereof on the plaintiff.

33 b. The preliminary hearing shall be in camera and shall have for
 34 its purpose the determination of the circumstances under which
 35 the child was relinquished by his parents and received into the
 36 home of the plaintiff, the status of the parental rights of the par-
 37 ents, the fitness of the child for adoption and the fitness of the
 38 plaintiff to adopt the child and to provide a suitable home. If the
 39 report of the approved agency pursuant to subsection a. contains
 40 any material findings or recommendations adverse to the plaintiff,
 41 the presence of a representative of the approved agency who has
 42 personal knowledge of the investigation shall be required at the
 43 preliminary hearing. If in the course of the preliminary hearing
 44 the court shall determine that there is lack of jurisdiction or that
 45 there is lack of qualification on the part of the plaintiff, the action
 46 shall be dismissed forthwith. If in the course of the preliminary
 47 hearing the court shall determine that the best interests of the
 48 child would not be promoted by the adoption, the court shall deny
 49 the adoption and make such further order concerning the custody
 50 and guardianship of the child as may be deemed proper in the
 51 circumstances.

52 c. If upon completion of the preliminary hearing the court finds
 53 that:

54 (1) The parents of the child do not have rights as to custody of
 55 the child by reason of their rights previously having been termi-
 56 nated by court order, their failure to make timely objection to the
 57 adoption pursuant to section 10 or *~~their substantial failure to per-~~
 58 form the regular and expected parental functions of care and
 59 support of the child;~~]~~* **intentional abandonment or very sub-*
 59A *stantial neglect of parental duties without a reasonable expectation*
 59B *of a reversal of that conduct in the future;**

60 (2) The guardian, if any, should have no further control or
 61 authority over the child;

62 (3) The child is fit for adoption; and

63 (4) The plaintiff is fit to adopt the child, it shall issue an order
 64 stating its findings, declaring that no parent or guardian of the
 65 child has any right to custody or guardianship of the child, **termi-*
 66 *nating the parental rights of such person,** fixing a date for final
 67 hearing not less than 6 nor more than 9 months from the date of the
 68 preliminary hearing and appointing an approved agency to evaluate
 69 the placement in accordance with subsection d. If the plaintiff is a
 70 brother, sister, grandparent, aunt, uncle, natural father, step-
 71 parent or foster parent of the child, or if the child has been in the
 72 home of the plaintiff for at least 2 years immediately preceding the
 73 commencement of the adoption action, **and if the court is satisfied*

74 *that the best interests of the child would be promoted by the adop-*
 74A *tion** the court may dispense with such evaluation and final hear-
 74B ing and enter a judgment of adoption **immediately upon comple-*
 74C *tion of the preliminary hearing*.*

75 d. The approved agency appointed pursuant to subsection c.
 76 shall from time to time visit the home of the plaintiff and make such
 77 further inquiry as may be necessary to observe and evaluate the
 78 care being received by the child and the adjustment of the child
 79 and the plaintiff as members of a family. At least 15 days prior to
 80 the final hearing such approved agency shall file with the court a
 81 written report of its findings, including a recommendation concern-
 82 ing the adoption, and shall mail a copy of the report to the plaintiff.
 83 If at any time following the preliminary hearing such approved
 84 agency shall conclude that the best interests of the child would not
 85 be promoted by the adoption, the court, **shall appoint a guardian*
 86 *ad litem for the child and** after a hearing held upon the applica-
 87 tion of such approved agency and upon notice to the plaintiff, may
 88 modify or revoke any order entered in the action and make such
 89 further order concerning the custody and guardianship of the child
 89A as may be deemed proper in the circumstances.

90 e. At the final hearing the court shall proceed in camera; pro-
 91 vided, however, that if the approved agency in its report pursuant
 92 to subsection d. has recommended that the adoption be granted,
 93 the final hearing may be dispensed with and, if the court is satisfied
 94 that the best interests of the child would be promoted by the
 95 adoption, a judgment of adoption may be entered forthwith.

96 The appearance of the approved agency at the final hearing shall
 97 not be required unless its recommendations are adverse to the
 98 plaintiff or unless ordered by the court. If such appearance is
 99 required, the approved agency shall be entitled to present testimony
 100 and to cross-examine witnesses and shall be subject to cross-
 101 examination with respect to its report and recommendations in the
 102 matter. ***[The appearance of the child to be adopted shall not be
 103 required unless ordered by the court or unless the inquiry, pursuant
 104 to section 13, indicates that the child is opposed to the adoption.]***

105 f. If, based upon the report and the evidence presented, the
 106 court is satisfied that the best interests of the child would be
 107 promoted by the adoption, the court shall enter a judgment of
 108 adoption. If, based upon such evidence, the court is not satisfied
 109 that the best interests of the child would be promoted by the
 110 adoption, the court shall deny the adoption and make such further
 111 order concerning the custody and guardianship of the child as
 112 may be deemed proper in the circumstances.

1 ***[13. Each report of an approved agency pursuant to section 11
 2 or 12 shall set forth the understanding and wishes of the child to
 3 be adopted with respect to the proposed adoption, and no judgment
 4 shall be entered pursuant to this act without the court's having
 5 given due consideration to such understanding and wishes. The
 6 foregoing requirement shall not apply in the case of a child under
 7 the age of 8 years who, in the judgment of the approved agency, is
 8 incapable of understanding and expressing an opinion regarding
 9 the proposed adoption.]***

10 ***13. If the child sought to be adopted is of the age of 10 years or
 11 over, the appearance of such child shall be required at the adoption
 12 hearing, and the child's wishes concerning the adoption shall be
 13 solicited by the court and given consideration if the child is of
 14 sufficient capacity to form an intelligent preference regarding the
 15 adoption.***

1 14. a. The entry of a judgment of adoption shall terminate all
 2 relationships between the adopted child and his parents and all
 3 rights, duties and obligations of any person that are founded upon
 4 such relationships, including rights of inheritance under the
 5 intestate laws of this State, except such rights as may have vested
 6 prior to entry of the judgment of adoption; provided, however,
 7 that when the plaintiff is a stepfather or stepmother of the adopted
 8 child and the adoption is consummated with the consent and
 9 approval of the mother or father, respectively, such adoption shall
 10 not affect or terminate any relationship between the child and such
 11 mother or father or any rights, duties or obligations based there-
 12 upon. For good cause, the court may in the judgment provide that
 13 the rights of inheritance from or through a deceased parent will
 14 not be affected or terminated by the adoption.

15 b. The entry of a judgment of adoption shall establish the same
 16 relationships, rights, duties and obligations between the child and
 17 the adopting parent as if such child were born to such adopting
 18 parent in lawful wedlock. For good cause, the court may direct the
 19 entry of judgment nunc pro tunc as of the date the action was
 20 instituted. In applying the intestate laws of this State, an adopted
 21 child shall have the same rights of inheritance as if born to the
 22 adopting parent in lawful wedlock. In the construction of any
 23 testamentary or other document executed subsequent to the effec-
 24 tive date of this act, an adopted child shall be deemed lawful issue
 25 of the adopting parents unless such document shall otherwise
 26 provide.

1 15. The clerk of each County Court shall file promptly with the
 2 Superior Court a copy of each judgment of adoption entered pur-
 3 suant to this act. The clerk of the Superior Court shall docket the

4 copies of such judgments and shall maintain an alphabetical index
5 of all judgments of adoption entered each year pursuant to this
6 act in the County Courts and the Superior Court of the State,
7 all of which records shall be sealed and thereafter shall be made
8 accessible only by court order.

1 16. a. All records of proceedings relating to adoption, including
2 the complaint, judgment and all petitions, affidavits, testimony,
3 reports, briefs, orders and other relevant documents, shall be filed
4 under seal by the clerk of the court and shall at no time be open to
5 inspection or copying unless the court, upon good cause shown,
6 shall otherwise order. An index to all adoption proceedings shall
7 be maintained by the clerk of the court, but no index of adoption
8 proceedings shall be open to inspection or copying or be made
9 public except upon order of the court.

10 b. Upon entry of a judgment of adoption, the clerk of the court
11 shall certify to the State Bureau of Vital Statistics, any successor
12 agency or any similar agency in the State or country of the child's
13 birth, the date of entry of the judgment, the names of the adopting
14 parent or parents, the name of the child, the date and place of birth
15 of the child and the new name of the child if changed by the judg-
16 ment of adoption.

1 17. The costs of all proceedings pursuant to this act shall be
2 borne by the plaintiff, including the costs incurred by an approved
3 agency acting pursuant to an order of the court; provided, however,
4 that such approved agency may waive part of or all such costs.
5 Payment of costs hereunder shall not be a condition precedent to
6 entry of judgment. **Such costs shall not include the provision of*
7 *counsel for any person, other than the plaintiff, entitled to the*
8 *appointment of counsel hereunder.**

1 18. a. No person, firm, partnership, corporation, association or
2 agency shall make, offer to make or assist or participate in any
3 placement for adoption and in connection therewith

4 (1) Pay, give or agree to give any money or any valuable con-
5 sideration, or assume or discharge any financial obligation; or

6 (2) Take, receive, accept or agree to accept any money or any
7 valuable consideration.

8 b. The prohibition of subsection a. shall not apply to the fees
9 or services of any approved agency in connection with a placement
10 for adoption, nor shall such prohibition apply to the payment or
11 reimbursement of medical, hospital or other similar expenses
12 incurred in connection with the birth or any illness of the child,
13 or to the acceptance of such reimbursement by a parent of the child.

14 c. Any person, firm, partnership, corporation, association or

15 agency violating this section shall be guilty of a high misdemeanor.

1 19. a. Any prospective parent who is not a brother, sister, aunt,
2 uncle, grandparent, foster parent, natural father or stepparent of
3 the child to be adopted shall file before the complaint is heard, in
4 accordance with court rules, a detailed report which shall be signed
5 and verified by each such prospective parent and shall disclose all
6 sums of money or other valuable consideration paid, given or
7 agreed to be given to any person, firm, partnership, corporation,
8 association or agency by or on behalf of the prospective parent in
9 connection with the adoption, and the names and addresses of each
10 such person, firm, partnership, corporation, association or agency
11 to whom such consideration was given or promised. The report,
12 a copy of which shall be provided to the *~~approved~~ agency
13 appointed pursuant to section 12]* ***approved agency appointed*
13A *pursuant to section 12 and the** *Division of Youth and Family*
14 *Services**, shall include but shall not be limited to any expenses in-
15 curred or to be incurred by or on behalf of such prospective parent
15A in connection with

16 (1) The birth of the child;

17 (2) The placement for adoption of the child with the prospective
18 parent;

19 (3) Medical or hospital care received by the mother or the child
20 during the mother's pre- and postnatal period; and

21 (4) Services relating to the adoption or to the placement for
22 adoption, including legal services, which were rendered or are to
23 be rendered to or for the benefit of the prospective parent, either
24 parent of the child or any other person or agency.

25 b. Whenever based upon a report filed pursuant to this section it
26 shall appear to the court **or to the Division of Youth and Family*
27 *Services** that any person may have violated sections 3 or 18 hereof,
28 the court **[shall]* *or the division may** refer the matter to the
29 appropriate county prosecutor.

1 20. P. L. 1953, c. 264 (C. 9:3-17 to 9:3-36), P. L. 1953, c. 265
2 (C. 2A:96-6 to 2A:96-8), P. L. 1954, c. 112 (C. 9:3-19.1), and P. L.
3 1955, c. 140 (C. 9:3-22.1) are hereby repealed subject to section 22.

1 21. If any provision of this act, or any application of any provi-
2 sion, is held invalid, the invalidity shall not affect other applications
3 of the provision, or other provisions of the act, which reasonably
4 can be given effect despite the invalidity. To this end, the provi-
5 sion of this act are declared severable.

1 22. This act shall take effect 30 days after enactment but it shall
2 not apply to any action for adoption commenced prior to such
3 effective date, for purposes of which P. L. 1953, c. 264 (C. 9:3-17 to
4 9:3-36) as amended, shall remain in effect until final disposition.

[SECOND OFFICIAL COPY REPRINT]

SENATE, No. 1631

STATE OF NEW JERSEY

INTRODUCED AUGUST 12, 1976

By Senator MENZA

Referred to Committee on Judiciary

AN ACT concerning the adoption of children and revising and
repealing various parts of the law relating to adoption.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. This act shall be liberally construed to the end that the
2 best interests of children be promoted. Due regard shall be given
3 to the rights of all persons affected by an adoption.

1 2. For the purposes of this act:

2 a. "Approved agency" shall mean a nonprofit corporation,
3 association or agency, including any public agency, approved by
4 the Department of ***[Institutions and Agencies]*** **Human*
5 *Services** for the purpose of placing children for adoption in New
5A Jersey;

6 b. "Child" shall mean a person under 18 years of age***[**, pro-
7 vided, however, that any person under 21 years of age may be
8 adopted under the provisions of this act]**]***;

9 c. "Custody" shall mean ***[**exercise of continuing control over
10 the person of a child;**]*** **the general right to exercise continuing*
11 *control over the person of a child derived from court order or*
12 *otherwise;**

13 d. "Guardianship" shall mean ***[**responsibility for and au-
14 thority over the person and property of a child as established by
15 a court order;**]*** **the right to exercise continuing control over the*
16 *person or property or both of a child which includes any specific*
17 *right of control over an aspect of the child's upbringing derived*
18 *from court order;**

19 *e. *Guardian ad litem shall mean a qualified person, not neces-*
20 *sarily an attorney, appointed by the court under the provisions of*

EXPLANATION—Matter enclosed in bold-faced brackets **[thus]** in the above bill
is not enacted and is intended to be omitted in the law.

21 *this act or at the discretion of the court to represent the interests*
 22 *of the child whether or not the child is a named party in the action;**

23 **[e.]* *f.* “Parent” shall mean a natural parent or natural*
 24 *parents, **[without regard to the marital status of either at the*
 25 *time of the child’s birth or conception]** **including the natural*
 26 *father of the child born out of wedlock who has acknowledged the*
 26A *child or to whom the court has ordered notice to be given***, or a
 26B *parent or parents by adoption;*

27 **[f.]* *g.* “Placement for adoption” shall mean the transfer*
 28 *of custody of a child to a person for the purpose of adoption by*
 29 *such person; and*

30 **[g.]* *h.* “Plaintiff” shall mean a prospective parent or*
 31 *parents who have filed a complaint for adoption.*

1 3. a. No person, firm, partnership, corporation, association or
 2 agency shall place, offer to place or materially assist in the place-
 3 ment of any child for adoption in New Jersey unless such person
 4 shall be the parent **or guardian** of the child, or such firm, partner-
 5 ship, corporation, association or agency shall be an approved
 6 agency; provided, however, that this prohibition shall not apply to
 7 the placement for adoption of a child with a brother, sister, aunt,
 8 uncle, grandparent, natural father or stepparent of such child. For
 9 the purposes of this section, material assistance in the placement
 10 for adoption of any child shall include but shall not be limited to
 11 acting as an agent, finder or intermediary for or between any
 12 parent and any prospective parent or a person acting on behalf of
 13 either in connection with a placement for adoption of such parent’s
 14 child. The Superior Court, in an action by the Commissioner of
 15 the Department of **[Institutions and Agencies]* *Human*
 16 *Services**, may enjoin any party found by the court to have violated
 17 this section from any further violation of this section.

18 b. Any person, firm, partnership, corporation, association or
 19 agency violating this section shall be guilty of a misdemeanor.

1 4. The Commissioner of the Department of **[Institutions and*
 2 *Agencies]* *Human Services** shall promulgate rules and regula-
 3 tions relating to the qualification of agencies for approval to make
 4 placements for adoption in New Jersey. Such rules and regulations
 5 shall include, but shall not be limited to standards of professional
 6 training and experience of staff and requirements relating to
 7 responsibilities of trustees, officers or other persons supervising or
 8 conducting the placement for adoption program, adequacy of
 9 facilities, maintenance and confidentiality of casework records and
 10 furnishing of reports. **No approved agency shall discriminate*
 11 *with regard to the selection of adoptive parents for any child on the*

12 *basis of age, sex, race, national origin, religion or marital status*
 13 *provided, however, that these factors may be considered in deter-*
 14 *mining whether the best interests of a child would be served by a*
 15 *particular placement for adoption or adoption.**

1 5. a. Surrender of a child to an approved agency for the purpose
 2 of adoption shall be by a signed instrument acknowledged by the
 3 person executing the same before an officer authorized to take
 4 acknowledgments or proofs in the State in which the instrument is
 5 executed, such officer first having made known the contents of the
 6 instrument to the person making the acknowledgment and having
 7 been satisfied as to the identity of the person executing the sur-
 8 render, which the officer shall certify on the instrument of surrender
 9 or on a paper attached thereto. Such surrender shall constitute
 10 relinquishment of such person's parental rights in or guardianship
 11 or custody of the child named therein and consent by such person
 12 to adoption of the child. Such surrender shall be valid and binding
 13 without regard to the age of the person executing the surrender.

14 b. Any approved agency may accept custody of a child by a duly
 15 executed instrument of surrender from a parent or guardian of
 16 the child or from another approved agency or any agency for the
 17 care and protection of children approved by any other state, by the
 18 United States or by any foreign country, which has duly obtained
 19 the authority to place such child for adoption.

1 6. An action for adoption shall be instituted in either the
 2 Superior Court or the County Court of the county in which the
 3 prospective parent resides; provided, however, that:

4 a. Whenever the child to be adopted has been received into the
 5 home of the prospective parent from an approved agency, the
 6 action may be instituted in the County Court of any county in which
 7 such approved agency has an office; and provided further that

8 b. Whenever a parent of the child to be adopted has been granted
 9 a divorce from the other parent by the Superior Court, the action
 10 shall be instituted in the Superior Court unless such court
 11 previously has awarded custody of the child to an approved agency
 12 or has consented to the institution of the action in a County Court.

1 7. a. Any person may institute an action for adoption, provided,
 2 however, that a married person ****[living with his spouse]**** may
 3 do so only with the written consent of his spouse or jointly with his
 4 spouse in the same action or after having lived separate and apart
 5 from his spouse for a continuous period of at least ***[1 year]***

5A ***18 months***.

6 b. Each plaintiff, at the time of the institution of the action,
 7 shall have attained the age of 18 years and shall be at least 10 years
 8 older than the child to be adopted, provided, however, that the
 9 court for good cause may waive either requirement, such waiver
 10 to be recited in any judgment of adoption thereafter entered.

1 8. Whenever any person shall receive a child into his home for
 2 the purpose of adoption other than from an approved agency, an
 3 action for adoption shall be instituted with reasonable promptness.
 4 Whenever any person shall receive a child into his home for
 5 purposes other than adoption and it is later determined that an
 6 adoption shall be sought, an action for adoption shall be instituted
 7 with reasonable promptness following such determination.
 8 **Failure to so act shall not be a sole basis for refusal of the*
 9 *adoption.**

1 9. In any adoption proceeding pursuant to this act, notice of the
 2 complaint may not be waived and shall be served in accordance
 3 with the Rules of Court on each parent of the child to be adopted,
 4 except that notice shall not be served on any parent who has
 5 executed a valid surrender to an approved agency pursuant to
 6 section 5 or whose parental rights have been terminated in a
 7 separate judicial proceeding by court order. ****[Such notice shall**
 8 **inform the parent of the purpose, date and place of the hearing,**
 9 **of such parent's right to object to the adoption, of his right to**
 10 **counsel and of his right to have counsel appointed to represent**
 11 **him if he cannot afford to retain counsel. The court may dispense**
 12 **with notice * [or] *, in its discretion, * [permit notice by publication**
 13 **only] * on proof by affidavit of diligent inquiry establishing that**
 14 **notwithstanding such inquiry the identity or location of such parent**
 15 **cannot be ascertained.]**** ***If at any time during the proceedings*
 16 *it appears from the report of the agency or in any other way that*
 17 *the putative father has maintained a relationship with the child,*
 18 *financial or otherwise, the court shall order that notice be given*
 19 *to such putative father personally and that the hearing will not*
 20 *be held until 20 days after notice is given in the case of a resident*
 21 *and 35 days in the case of a nonresident. Such notice shall inform*
 22 *the parent or putative father of the purpose, date, place of hear-*
 23 *ing, of such person's right to appear and object to the adoption,*
 24 *of his right to counsel and of his right to have counsel appointed*
 25 *to represent him if he cannot afford to retain counsel.*** For the
 26 purposes of this section the defined term "parent" shall include
 27 the husband of the mother of a child born or conceived during the
 28 marriage ****[and]**** *** [the alleged natural father of a legitimate**

29 or illegitimate child.]* ***[the natural father of a child born out*
 30 *of wedlock who has acknowledged paternity or has been determined*
 31 *to be the child's father by a court of law or has developed and*
 32 *maintained a relationship with the child or has regularly provided*
 33 *support for the child].***

1 10. a. Any parent who has not executed a surrender pursuant
 2 to section 5 and whose parental rights have not been terminated
 3 by court order shall have the right to object to the adoption of his
 4 child. **[No judgment of adoption shall be entered over an objection*
 5 *of such parent communicated to the court by personal appearance*
 6 *or by letter unless the court finds that such parent has substantially*
 7 *failed to perform the regular and expected parental functions of*
 8 *care and support of the child, which shall include maintenance of*
 9 *an emotional relationship with the child.]* **No judgment of*
 10 *adoption shall be entered over an objection of such parent com-*
 11 *municated to the court by personal appearance or by letter*
 12 *unless the court finds that such parent has substantially failed to*
 13 *perform the regular and expected parental functions of care and*
 14 *support of the child, which shall include maintenance of an emo-*
 15 *tional relationship with the child.** ***[A judgment of adoption*
 16 *shall only be entered over an objection of such parent who has*
 17 *filed an answer contesting the adoption or who has personally*
 18 *appeared at the hearing upon a finding by the court after a plenary*
 19 *hearing that such parent has failed willfully and substantially to*
 20 *perform the regular and expected parental functions of care and*
 21 *support of the child or whose actions would, in an appropriate*
 22 *action, have justified the terminatoin of his parental rights.]****

23 b. Any guardian of a child to be adopted who has not executed
 24 a surrender pursuant to section 5 and any other person standing in
 25 loco parentis of such child shall be given notice of the action and
 26 in accordance with the Rules of Court shall have standing to object
 27 to the adoption, which objection shall be given due consideration
 28 by the court in determining whether the best interests of the child
 29 would be promoted by the adoption.

1 11. a. When the child to be adopted has been received from an
 2 approved agency, the prospective parent shall file with the court a
 3 complaint for adoption after the child has been in the home of such
 4 prospective parent for at least 6 months. The complaint shall be
 5 accompanied by a consent to the plaintiff's adoption of the child
 6 signed and acknowledged by an authorized officer or representative
 7 of the approved agency; provided, however, that failure or refusal
 8 on the part of such approved agency to give such consent, or with-

9 drawal of consent on the part of such approved agency, shall not
10 preclude an action for adoption.

11 b. Upon the filing of the complaint, the court shall set a date
12 for the adoption hearing not less than 10 nor more than 30 days
13 from the date of institution of the action **unless a longer period*
14 *shall be required in order to obtain service of notice upon one or*
15 *more of the parents** and shall order the approved agency con-
16 cerned to file at least 5 days prior to the hearing a two-part written
17 report, part one of which shall describe the circumstances surround-
18 ing the surrender of the child to the agency and part two of which
19 shall set forth the results of the agency's evaluation of the child
20 and of the plaintiff and his spouse, if any, and the agency's assess-
21 ment of the care being received by the child and the adjustment of
22 the child and the plaintiff as members of a family. If the agency's
23 report contains any material findings or recommendations adverse
24 to the plaintiff the agency shall serve a copy of part two of its
25 report upon the plaintiff at least 5 days prior to the hearing **and*
26 *the court shall appoint a guardian ad litem for the child in the adop-*
27 *tion proceeding* **if the court determines that such guardian is*
28 *necessary to represent the best interest of the child***. If the ap-
29 proved agency that placed the child with the plaintiff has not
30 consented to the adoption, the court may appoint another approved
31 agency to conduct an investigation and make recommendations in
32 the matter. Such appointment shall not deprive the placing agency
33 of standing to appear at the hearing and contest the adoption.
34 Personal appearance at the hearing by a representative of the
35 approved agency conducting the investigation may be dispensed
36 with by the court if the agency's report favors the adoption. If
37 such appearance is required, the approved agency shall be entitled
38 to present testimony and to cross-examine witnesses and shall be
38A subject to cross-examination with respect to its report and recom-
38B mendations in the matter. The appearance of the child to be
38C adopted shall not be required unless ordered by the court or unless
38D the inquiry pursuant to section 13 indicates that the child is op-
38E posed to the adoption.

39 c. The adoption hearing shall be held in camera. If a parent
40 of the child has made an objection to the adoption, the court shall
41 take evidence relating to such objection. If the court finds against
42 the objecting parent in accordance with subsection (a) of section 10,
43 it shall make an order terminating the parental rights of such
44 parent and proceed with the hearing.

45 d. If, based upon the approved agency's report and the evidence
 46 presented at the hearing, the court is satisfied that the best interests
 47 of the child would be promoted by the adoption, the court shall
 48 enter a judgment of adoption. If, based upon the approved
 49 agency's report and the evidence presented at the hearing, the
 50 court is not satisfied that the best interests of the child would be
 51 promoted by the adoption, the court shall deny the adoption and
 52 make such further order concerning the custody and guardianship
 53 of the child as may be deemed proper in the circumstances.

1 12. a. When the child to be adopted has not been received from
 2 an approved agency, the prospective parent shall file with the
 3 court a complaint for adoption. Upon receipt of the complaint, the
 4 court shall by its order

5 (1) Declare the child to be a ward of the court and declare that
 6 the plaintiff shall have custody of such child subject to further
 7 order of the court;

8 (2) Appoint an approved agency to make an investigation and
 9 submit a written report to the court concerning the facts and cir-
 10 cumstances surrounding the surrender of custody by the child's
 11 parents and the placement of the child in the home of the plaintiff
 12 and an evaluation of the child and of the plaintiff and
 12A the spouse of the plaintiff if not the child's parent and if not a
 13 party to the action, provided, however, that whenever the plaintiff
 14 is a stepparent of the child, the court may dispense with the
 15 agency investigation and report and take direct evidence at the
 16 preliminary hearing of the facts and circumstances surrounding
 17 the adoption;

18 (3) Direct the plaintiff to cooperate with the approved agency
 19 making such investigation and report; and

20 (4) Fix a day for preliminary hearing not less than 2 or more
 21 than 3 months from the date of the institution of the action; pro-
 22 vided, however, that such hearing may be accelerated upon the
 23 application of the approved agency and upon notice to the plaintiff
 24 where the agency determines that removal of the child from the
 25 plaintiff's home is required*, *in which case the court shall appoint*
 25A *a guardian ad litem to represent the child at all future proceedings*
 25B *regarding the adoption.**

26 Whenever a plaintiff is a brother, sister, grandparent, aunt,
 27 uncle, natural father or stepparent of the child, the order may limit
 28 the investigation to an inquiry concerning the status of the parents
 29 of the child and an evaluation of the plaintiff. At least 10 days
 30 prior to the day fixed for the preliminary hearing the approved
 31 agency shall file its report with the court and serve a copy thereof
 32 on the plaintiff.

33 b. The preliminary hearing shall be in camera and shall have for
 34 its purpose the determination of the circumstances under which
 35 the child was relinquished by his parents and received into the
 36 home of the plaintiff, the status of the parental rights of the par-
 37 ents, the fitness of the child for adoption and the fitness of the
 38 plaintiff to adopt the child and to provide a suitable home. If the
 39 report of the approved agency pursuant to subsection a. contains
 40 any material findings or recommendations adverse to the plaintiff,
 41 the presence of a representative of the approved agency who has
 42 personal knowledge of the investigation shall be required at the
 43 preliminary hearing. If in the course of the preliminary hearing
 44 the court shall determine that there is lack of jurisdiction or that
 45 there is lack of qualification on the part of the plaintiff, the action
 46 shall be dismissed forthwith. If in the course of the preliminary
 47 hearing the court shall determine that the best interests of the
 48 child would not be promoted by the adoption, the court shall deny
 49 the adoption and make such further order concerning the custody
 50 and guardianship of the child as may be deemed proper in the
 51 circumstances.

52 c. If upon completion of the preliminary hearing the court finds
 53 that:

54 (1) The parents of the child do not have rights as to custody of
 55 the child by reason of their rights previously having been termi-
 56 nated by court order, their failure to make timely objection to the
 57 adoption pursuant to section 10 or ***[**their substantial failure to per-
 58 form the regular and expected parental functions of care and
 59 support of the child;**]*** **intentional abandonment or very sub-*
 59A *stantial neglect of parental duties without a reasonable expectation*
 59B *of a reversal of that conduct in the future;**

60 (2) The guardian, if any, should have no further control or
 61 authority over the child;

62 (3) The child is fit for adoption; and

63 (4) The plaintiff is fit to adopt the child, it shall issue an order
 64 stating its findings, declaring that no parent or guardian of the
 65 child has any right to custody or guardianship of the child, **termi-*
 66 *nating the parental rights of such person,** fixing a date for final
 67 hearing not less than 6 nor more than 9 months from the date of the
 68 preliminary hearing and appointing an approved agency to evaluate
 69 the placement in accordance with subsection d. If the plaintiff is a
 70 brother, sister, grandparent, aunt, uncle, natural father, step-
 71 parent or foster parent of the child, or if the child has been in the
 72 home of the plaintiff for at least 2 years immediately preceding the
 73 commencement of the adoption action, **and if the court is satisfied*

74 *that the best interests of the child would be promoted by the adop-*
 74A *tion** the court may dispense with such evaluation and final hear-
 74B ing and enter a judgment of adoption **immediately upon comple-*
 74C *tion of the preliminary hearing*.*

75 d. The approved agency appointed pursuant to subsection c.
 76 shall from time to time visit the home of the plaintiff and make such
 77 further inquiry as may be necessary to observe and evaluate the
 78 care being received by the child and the adjustment of the child
 79 and the plaintiff as members of a family. At least 15 days prior to
 80 the final hearing such approved agency shall file with the court a
 81 written report of its findings, including a recommendation concern-
 82 ing the adoption, and shall mail a copy of the report to the plaintiff.

83 If at any time following the preliminary hearing such approved
 84 agency shall conclude that the best interests of the child would not
 85 be promoted by the adoption, the court, **shall appoint a guardian*
 86 *ad litem for the child and** after a hearing held upon the applica-
 87 tion of such approved agency and upon notice to the plaintiff, may
 88 modify or revoke any order entered in the action and make such
 89 further order concerning the custody and guardianship of the child
 89A as may be deemed proper in the circumstances.

90 e. At the final hearing the court shall proceed in camera; pro-
 91 vided, however, that if the approved agency in its report pursuant
 92 to subsection d. has recommended that the adoption be granted,
 93 the final hearing may be dispensed with and, if the court is satisfied
 94 that the best interests of the child would be promoted by the
 95 adoption, a judgment of adoption may be entered forthwith.

96 The appearance of the approved agency at the final hearing shall
 97 not be required unless its recommendations are adverse to the
 98 plaintiff or unless ordered by the court. If such appearance is
 99 required, the approved agency shall be entitled to present testimony
 100 and to cross-examine witnesses and shall be subject to cross-
 101 examination with respect to its report and recommendations in the
 102 matter. ***[The appearance of the child to be adopted shall not be
 103 required unless ordered by the court or unless the inquiry, pursuant
 104 to section 13, indicates that the child is opposed to the adoption.]***

105 f. If, based upon the report and the evidence presented, the
 106 court is satisfied that the best interests of the child would be
 107 promoted by the adoption, the court shall enter a judgment of
 108 adoption. If, based upon such evidence, the court is not satisfied
 109 that the best interests of the child would be promoted by the
 110 adoption, the court shall deny the adoption and make such further
 111 order concerning the custody and guardianship of the child as
 112 may be deemed proper in the circumstances.

1 ***[13. Each report of an approved agency pursuant to section 11
 2 or 12 shall set forth the understanding and wishes of the child to
 3 be adopted with respect to the proposed adoption, and no judgment
 4 shall be entered pursuant to this act without the court's having
 5 given due consideration to such understanding and wishes. The
 6 foregoing requirement shall not apply in the case of a child under
 7 the age of 8 years who, in the judgment of the approved agency, is
 8 incapable of understanding and expressing an opinion regarding
 9 the proposed adoption.]***

10 ***13. If the child sought to be adopted is of the age of 10 years or
 11 over, the appearance of such child shall be required at the adoption
 12 hearing, and the child's wishes concerning the adoption shall be
 13 solicited by the court and given consideration if the child is of
 14 sufficient capacity to form an intelligent preference regarding the
 15 adoption.***

1 14. a. The entry of a judgment of adoption shall terminate all
 2 relationships between the adopted child and his parents and all
 3 rights, duties and obligations of any person that are founded upon
 4 such relationships, including rights of inheritance under the
 5 intestate laws of this State, except such rights as may have vested
 6 prior to entry of the judgment of adoption; provided, however,
 7 that when the plaintiff is a stepfather or stepmother of the adopted
 8 child and the adoption is consummated with the consent and
 9 approval of the mother or father, respectively, such adoption shall
 10 not affect or terminate any relationship between the child and such
 11 mother or father or any rights, duties or obligations based there-
 12 upon. For good cause, the court may in the judgment provide that
 13 the rights of inheritance from or through a deceased parent will
 14 not be affected or terminated by the adoption.

15 b. The entry of a judgment of adoption shall establish the same
 16 relationships, rights, duties and obligations between the child and
 17 the adopting parent as if such child were born to such adopting
 18 parent in lawful wedlock. For good cause, the court may direct the
 19 entry of judgment nunc pro tunc as of the date the action was
 20 instituted. In applying the intestate laws of this State, an adopted
 21 child shall have the same rights of inheritance as if born to the
 22 adopting parent in lawful wedlock. In the construction of any
 23 testamentary or other document executed subsequent to the effec-
 24 tive date of this act, an adopted child shall be deemed lawful issue
 25 of the adopting parents unless such document shall otherwise
 26 provide.

1 15. The clerk of each County Court shall file promptly with the
 2 Superior Court a copy of each judgment of adoption entered pur-
 3 suant to this act. The clerk of the Superior Court shall docket the

4 copies of such judgments and shall maintain an alphabetical index
5 of all judgments of adoption entered each year pursuant to this
6 act in the County Courts and the Superior Court of the State,
7 all of which records shall be sealed and thereafter shall be made
8 accessible only by court order.

1 16. a. All records of proceedings relating to adoption, including
2 the complaint, judgment and all petitions, affidavits, testimony,
3 reports, briefs, orders and other relevant documents, shall be filed
4 under seal by the clerk of the court and shall at no time be open to
5 inspection or copying unless the court, upon good cause shown,
6 shall otherwise order. An index to all adoption proceedings shall
7 be maintained by the clerk of the court, but no index of adoption
8 proceedings shall be open to inspection or copying or be made
9 public except upon order of the court.

10 b. Upon entry of a judgment of adoption, the clerk of the court
11 shall certify to the State Bureau of Vital Statistics, any successor
12 agency or any similar agency in the State or country of the child's
13 birth, the date of entry of the judgment, the names of the adopting
14 parent or parents, the name of the child, the date and place of birth
15 of the child and the new name of the child if changed by the judg-
16 ment of adoption.

1 17. The costs of all proceedings pursuant to this act shall be
2 borne by the plaintiff, including the costs incurred by an approved
3 agency acting pursuant to an order of the court; provided, however,
4 that such approved agency may waive part of or all such costs.
5 Payment of costs hereunder shall not be a condition precedent to
6 entry of judgment. **Such costs shall not include the provision of*
7 *counsel for any person, other than the plaintiff, entitled to the*
8 *appointment of counsel hereunder.**

1 18. a. No person, firm, partnership, corporation, association or
2 agency shall make, offer to make or assist or participate in any
3 placement for adoption and in connection therewith

4 (1) Pay, give or agree to give any money or any valuable con-
5 sideration, or assume or discharge any financial obligation; or

6 (2) Take, receive, accept or agree to accept any money or any
7 valuable consideration.

8 b. The prohibition of subsection a. shall not apply to the fees
9 or services of any approved agency in connection with a placement
10 for adoption, nor shall such prohibition apply to the payment or
11 reimbursement of medical, hospital or other similar expenses
12 incurred in connection with the birth or any illness of the child,
13 or to the acceptance of such reimbursement by a parent of the child.

14 c. Any person, firm, partnership, corporation, association or

15 agency violating this section shall be guilty of a high misdemeanor.

1 19. a. Any prospective parent who is not a brother, sister, aunt,
2 uncle, grandparent, foster parent, natural father or stepparent of
3 the child to be adopted shall file before the complaint is heard, in
4 accordance with court rules, a detailed report which shall be signed
5 and verified by each such prospective parent and shall disclose all
6 sums of money or other valuable consideration paid, given or
7 agreed to be given to any person, firm, partnership, corporation,
8 association or agency by or on behalf of the prospective parent in
9 connection with the adoption, and the names and addresses of each
10 such person, firm, partnership, corporation, association or agency
11 to whom such consideration was given or promised. The report,
12 a copy of which shall be provided to the *~~approved~~ agency
13 appointed pursuant to section 12]* ***approved agency appointed*
13A *pursuant to section 12 and the** *Division of Youth and Family*
14 *Services**, shall include but shall not be limited to any expenses in-
15 curred or to be incurred by or on behalf of such prospective parent
15A in connection with

16 (1) The birth of the child;

17 (2) The placement for adoption of the child with the prospective
18 parent;

19 (3) Medical or hospital care received by the mother or the child
20 during the mother's pre- and postnatal period; and

21 (4) Services relating to the adoption or to the placement for
22 adoption, including legal services, which were rendered or are to
23 be rendered to or for the benefit of the prospective parent, either
24 parent of the child or any other person or agency.

25 b. Whenever based upon a report filed pursuant to this section it
26 shall appear to the court **or to the Division of Youth and Family*
27 *Services** that any person may have violated sections 3 or 18 hereof,
28 the court *~~shall~~* **or the division may** refer the matter to the
29 appropriate county prosecutor.

1 20. P. L. 1953, c. 264 (C. 9:3-17 to 9:3-36), P. L. 1953, c. 265
2 (C. 2A:96-6 to 2A:96-8), P. L. 1954, c. 112 (C. 9:3-19.1), and P. L.
3 1955, c. 140 (C. 9:3-22.1) are hereby repealed subject to section 22.

1 21. If any provision of this act, or any application of any provi-
2 sion, is held invalid, the invalidity shall not affect other applications
3 of the provision, or other provisions of the act, which reasonably
4 can be given effect despite the invalidity. To this end, the provi-
5 sion of this act are declared severable.

1 22. This act shall take effect 30 days after enactment but it shall
2 not apply to any action for adoption commenced prior to such
3 effective date, for purposes of which P. L. 1953, c. 264 (C. 9:3-17 to
4 9:3-36) as amended, shall remain in effect until final disposition.

FROM THE OFFICE OF THE GOVERNOR

FOR IMMEDIATE RELEASE

FOR FURTHER INFORMATION

FEBRUARY 6, 1978

JOE SANTANGELO

1976-77

Governor Brendan Byrne today signed the following bills into law:

S-1631, sponsored by former Senator Alexander J. Menza, (D-Union), which is a major revision and codification of state law on adoptions.

The bill is designed to simplify and clarify adoption proceedings. It also places stricter control in the hands of the State Department of Human Services to guard against illegal baby trade. The bill prohibits the placement or assistance in placement of a child for adoption other than by a relative or adoption agency approved by the Department of Human Services.

Unless waived for good cause, a person must be at least 18 years old and at least 10 years older than the child to be adopted in order to adopt a child.

Any parent who has not executed written surrender statement and whose parental rights have not been terminated by court order shall have the right to object to the adoption of his child.

The bill provides that no adoption can be made over parental objection unless the court finds the parent has failed to provide regular and expected parental functions of care and support including maintenance of an emotional relationship.

The measure was an administration bill.

-more-

S-1605, sponsored by Senator John Russo, (D-Ocean), which increases the membership of the State Mosquito Control Commission; clarifies the inclusion of money needed for mosquito control in the county tax levy.

A-2009, sponsored by Senator William J. Hamilton, (D-Middlesex), former Assemblyman, which amends P.L. 1967, c. 304, to correct an inadvertent omission in the definition of "holder of a mortgage loan" on projects for redevelopment, renewal or rehabilitation.

A-2090, sponsored by Michael E. Esposito, (D-Hudson) former Assemblyman, which provides for the issuance of special license plates, "F.D.", for automobiles driven by members of fire departments.

A-3260, sponsored by Senator William J. Hamilton, (D-Middlesex), former Assemblyman, which permits colleges, schools or other institutions, which rents out a portion of its private retail establishment, to retain its tax exempt status.

A-3511, sponsored by Senator Walter E. Foran, (D-Mercer), former Assemblyman, which expands the provisions of the "Depressed Rural Centers Aid Act" to extend assistance to the Borough of Victory Gardens and Winfield Township.

A-3587, sponsored by Assemblyman Thomas Deverin, (D-Union), which authorizes the sale of the Denville Residential Center by the Department of Human Services.