

1 HB495  
2 176073-2  
3 By Representative Hall  
4 RFD: Judiciary  
5 First Read: 05-APR-16

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8 SYNOPSIS: Under existing law, a final decree of  
9 adoption may not be collaterally attacked, except  
10 in cases of fraud or where the adoptee has been  
11 kidnapped, after one year from the entry of the  
12 final decree and all appeals, if any.

13 This bill would specify that in cases of  
14 fraud, the final decree of adoption may be attacked  
15 and set aside at any time before the minor child  
16 reaches the age of 18 years.

17  
18 A BILL  
19 TO BE ENTITLED  
20 AN ACT

21  
22 Relating to adoption; to amend Section 26-10A-25 of  
23 the Code of Alabama 1975, to specify that in cases of fraud, a  
24 final decree of adoption may be collaterally challenged and  
25 the adoption set aside at any time before the child reaches  
26 the age of 18 years.

27 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

1           Section 1. Section 26-10A-25 of the Code of Alabama  
2 1975, is amended to read as follows:

3           "§26-10A-25.

4           "(a) When the pre-placement investigation has been  
5 completed and approved or the investigation has been waived  
6 for good cause shown, the petition for adoption shall be set  
7 for a dispositional hearing as soon as possible or no later  
8 than 90 days after the filing of the petition. When there has  
9 not been a pre-placement investigation or the investigation  
10 has not been waived for good cause shown or when the adoptee  
11 is a special needs child, the petition for adoption shall be  
12 set for a dispositional hearing as soon as possible or no  
13 later than 120 days after the filing of the petition. Upon  
14 good cause shown, the court may extend the time for the  
15 dispositional hearing and entry of the final decree.

16           "(b) At the dispositional hearing, the court shall  
17 grant a final decree of adoption if it finds on clear and  
18 convincing evidence that:

19           "(1) The adoptee has been in the actual physical  
20 custody of the petitioners for a period of 60 days, unless for  
21 good cause shown, this requirement is waived by the court;

22           "(2) All necessary consents, relinquishments,  
23 terminations, or waivers have been obtained and, if  
24 appropriate, have been filed with the court;

25           "(3) Service of the notice of pendency of the  
26 adoption proceeding has been made or dispensed with as to all  
27 persons entitled to receive notice under Section 26-10A-17;

1           "(4) All contests brought under Section 26-10A-24  
2 have been resolved in favor of the petitioner;

3           "(5) That each petitioner is a suitable adopting  
4 parent and desires to establish a parent and child  
5 relationship between himself or herself and the adoptee;

6           (6) That the best interests of the adoptee are  
7 served by the adoption; and

8           "(7) All other requirements of this chapter have  
9 been met.

10           "(c) The court shall enter its finding in a written  
11 decree which shall also include the new name of the adoptee,  
12 and shall not include any other name by which the adoptee has  
13 been known or the names of the natural or presumed parents.  
14 The final decree shall further order that from the date of the  
15 decree, the adoptee shall be the child of the petitioners, and  
16 that the adoptee shall be accorded the status set forth in  
17 Section 26-10A-29.

18           "(d) A final decree of adoption may not be  
19 collaterally attacked, except in cases of fraud or where the  
20 adoptee has been kidnapped, after the expiration of one year  
21 from the entry of the final decree and after all appeals, if  
22 any. When the petitioner obtains the final decree of adoption  
23 by committing fraud on the court or the natural parents, the  
24 adoption may be overturned at any time before the child  
25 reaches the age of 18 years."

1                   Section 2. This act shall become effective on the  
2 first day of the third month following its passage and  
3 approval by the Governor, or its otherwise becoming law.