

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 84th General Assembly
3 Regular Session, 2003

A Bill

HOUSE BILL 1291

4
5 By: Representative Dees
6
7

For An Act To Be Entitled

8
9 AN ACT TO AMEND THE ARKANSAS REVISED UNIFORM
10 ADOPTION ACT; AND FOR OTHER PURPOSES.
11

Subtitle

12
13 AN ACT TO AMEND THE ARKANSAS REVISED
14 UNIFORM ADOPTION ACT.
15
16

17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
18

19 SECTION 1. Arkansas Code § 9-9-205(a)(3), concerning jurisdiction,
20 venue and disclosure of an adopted child's name, is amended to read as
21 follows:

22 (3)(A) If the juvenile is the subject matter of an open case
23 filed under the Arkansas Juvenile Code of 1989, § 9-27-301 et seq., the
24 adoption petition shall be filed in that case.

25 (B) The juvenile division of circuit court shall retain
26 jurisdiction to issue orders of adoption, interlocutory or final, when a
27 juvenile is placed outside the State of Arkansas.
28

29 SECTION 2. Arkansas Code § 9-9-207(a), concerning persons for whom
30 consent for adoption is not required, is amended to read as follows:

31 (a) Consent to adoption is not required of:

32 (1) A parent who has deserted a child without affording means of
33 identification or who has abandoned a child;

34 (2) A parent of a child in the custody of another, if the parent
35 for a period of at least one (1) year has failed significantly without
36 justifiable cause to:



01232003MGF1151.JGR193

1 ~~(i)(A) to communicate~~ Communicate with the child; or
2 ~~(ii)(B) to provide~~ Provide for the care and support of the
3 child as required by law or judicial decree;

4 (3) The father of a minor if the father’s consent is not
5 required by § 9-9-206(a)(2);

6 (4) A parent who has relinquished his right to consent under §
7 9-9-220;

8 (5) A parent whose parental rights have been terminated by order
9 of court under § 9-9-220 or § 9-27-341;

10 (6) A parent judicially declared incompetent or mentally
11 defective if the court dispenses with the parent’s consent;

12 (7) Any parent of the individual to be adopted, if the
13 individual is an adult;

14 (8) Any legal guardian or lawful custodian of the individual to
15 be adopted, other than a parent, who has failed to respond in writing to a
16 request for consent for a period of sixty (60) days or who, after examination
17 of his written reasons for withholding consent, is found by the court to be
18 withholding his consent unreasonably; or

19 (9) The spouse of the individual to be adopted, if the failure
20 of the spouse to consent to the adoption is excused by the court by reason of
21 prolonged unexplained absence, unavailability, incapacity, or circumstances
22 constituting an unreasonable withholding of consent.

23

24 SECTION 3. Arkansas Code § 9-9-212 is amended to read as follows:

25 9-9-212. Hearing on petition - Requirements.

26 (a)(1) Before any hearing on a petition, the period in which the
27 relinquishment may be withdrawn under § 9-9-220 or in which consent may be
28 withdrawn under § 9-9-209, whichever is applicable, must have expired.

29 (2) No orders of adoption, interlocutory or final, may be
30 entered prior to the period for withdrawal.

31 (3) After the filing of a petition to adopt a minor, the court
32 shall fix a time and place for hearing the petition.

33 (4) At least twenty (20) days before the date of hearing, notice
34 of the filing of the petition and of the time and place of hearing shall be
35 given by the petitioner to:

36 ~~(1) any~~ (A) Any agency or person whose consent to the

1 adoption is required by this subchapter but who has not consented; and
 2 ~~(2)~~ a (B) A person whose consent is dispensed with upon any
 3 ground mentioned in § 9-9-207(a)(1), (2), (6), (8), and (9).

4 (5)(A) When the petitioner alleges that any person entitled to
 5 notice cannot be located, the court shall appoint an attorney ad litem who
 6 shall make a reasonable effort to locate and serve notice upon the person
 7 entitled to notice; and upon failing to so serve actual notice, the attorney
 8 ad litem shall publish a notice of the hearing directed to the person
 9 entitled to notice in a newspaper having general circulation in the county
 10 one (1) time a week for four (4) weeks, the last publication being at least
 11 seven (7) days prior to the hearing.

12 (B) ~~Prior to~~ Before the hearing, the attorney ad litem
 13 shall file a proof of publication and an affidavit reciting the efforts made
 14 to locate and serve actual notice upon the person entitled to notice.

15 ~~(b)(1)(A) Upon the filing of a petition for adoption, the court shall~~
 16 ~~order an investigation be made by the Department of Human Services or any~~
 17 ~~other licensed agency or person designated by the court, including any agency~~
 18 ~~licensed under former § 9-28-401 et seq. [repealed] and any licensed social~~
 19 ~~worker, including licensed social workers who are residents of the same state~~
 20 ~~of a petitioner so wishing to adopt a child in Arkansas. If such~~
 21 ~~investigation is performed by a nonresident, such investigator need not be~~
 22 ~~licensed to make child placements. Before placement of the child in the home~~
 23 of the petitioner, a home study shall be conducted by any child welfare
 24 agency licensed under The Child Welfare Agency Licensing Act, § 9-28-401 et
 25 seq., or any licensed certified social worker.

26 (B) Home studies on non-Arkansas residents may also be
 27 conducted by a person or agency in the same state as the person wishing to
 28 adopt as long as the person or agency is authorized under the law of that
 29 state to conduct home studies for adoptive purposes.

30 (2) The Department of Human Services shall not be ordered by any
 31 court, except the juvenile division of circuit court, to conduct a home
 32 study, unless:

33 (A) The court has first determined the responsible party
 34 to be indigent; and

35 (B) The person to be studied lives in the State of
 36 Arkansas.

1 (3) All ~~investigations~~ home studies shall be prepared and
 2 submitted in conformity with the regulations promulgated pursuant to Arkansas
 3 ~~Child Placement~~ The Child Welfare Agency Licensing Act, § 9-28-401 et seq.
 4 ~~{repealed}~~.

5 (4)(A) ~~The investigation need not be ordered if an investigation~~
 6 ~~report has been submitted and reviewed by the court with the petition for~~
 7 ~~adoption. The investigation shall inquire into the conditions and~~
 8 ~~antecedents of a minor sought to be adopted and of the petitioner for the~~
 9 ~~purpose of ascertaining whether the adoptive home is a suitable home for the~~
 10 ~~minor and whether the proposed adoption is in the best interest of the minor.~~
 11 The home study shall address whether the adoptive home is a suitable home,
 12 and shall include a recommendation as to the approval of the petitioner as an
 13 adoptive parent.

14 (B) A written report of the ~~investigation~~ home study shall
 15 be filed with the court ~~by the investigator~~ before the petition is heard.

16 (C) ~~The report of the investigation~~ home study shall
 17 contain an evaluation of the prospective adoption with a recommendation as to
 18 the granting of the petition for adoption and any other information the court
 19 requires regarding the petitioner or minor.

20 (D) The home study may be introduced in evidence in
 21 adoption proceedings without calling the person who conducted the home study
 22 as a witness unless:

23 (i) A motion challenging the home study has been
 24 filed within thirty (30) days of the trial in the matter; and

25 (ii) The movant posts bond in an amount sufficient
 26 to cover the costs of the person to appear and testify.

27 (5)(A) ~~The report of the investigation~~ home study shall include
 28 a state of residence criminal background check, if available, and national
 29 fingerprint-based criminal background check on the adoptive parents and all
 30 household members age sixteen (16) and older.

31 (B) If a prospective adoptive parent has lived in a state
 32 for at least six (6) years immediately prior to adoption, then only a state
 33 of residence criminal background check shall be required.

34 (6) A child maltreatment central registry check shall be
 35 required for all ~~family~~ household members age ~~fourteen (14)~~ ten (10) and
 36 older as a part of the ~~investigation~~ home study, if such a registry is

1 available in their state of residence.

2 (7) Additional national fingerprint-based criminal background
 3 checks are not required for international adoptions as they are already a
 4 part of the U. S. Department of Immigration and Naturalization (INS)
 5 requirements for adoption.

6 (8) Each prospective adoptive parent shall be responsible for
 7 payment of the costs of the criminal background checks and shall be required
 8 to cooperate with the requirements of the ~~Department of~~ Arkansas State Police
 9 and the child maltreatment central registry, if available, with regard to the
 10 criminal and central registry background checks, including but not limited to
 11 signing a release of information.

12 (9)(A) Upon completion of the criminal record checks, the
 13 ~~Department of~~ Arkansas State Police shall forward all information obtained to
 14 either the Department of Human Services if they are ~~making the investigation~~
 15 conducting the home study, ~~or~~ to the agency, to the licensed certified social
 16 worker, ~~or other person designated by the court who is making the~~
 17 ~~investigation~~, or to the court in which the adoption petition ~~has been or~~
 18 will be filed.

19 (B) The Arkansas State Police shall forward all
 20 information obtained from the national fingerprint-based criminal background
 21 checks to either the Department of Human Services, if they are doing the home
 22 study, or to the court in which the adoption petition will be filed.

23 (C) The ~~probate/chancery~~ circuit clerk of the county where
 24 the petition for adoption has been or will be filed shall keep a record of
 25 the national fingerprint-based criminal background checks for the court.

26 ~~The court shall further order that a report of the investigation shall~~
 27 ~~be filed with the court by the investigator within sixty (60) working days~~
 28 ~~from the issuance of the order for investigation, unless time therefor is~~
 29 ~~extended by the court. The court shall not enter any order respecting the~~
 30 ~~placement of the minor for adoption until the investigation report has been~~
 31 ~~submitted and reviewed by the court.~~

32 (c) Unless directed by the court, ~~an investigation and report a home~~
 33 study is not required in cases in which the person to be adopted is an adult.
 34 The court may also waive the requirement for ~~an investigation report a home~~
 35 study when a stepparent is the petitioner or the petitioner and the minor are
 36 related to each other in the second degree.

1 ~~(d) The Department of Human Services or the agency or persons~~
 2 ~~designated by the court to make the required investigation may request other~~
 3 ~~departments or agencies within or without this state to make investigations~~
 4 ~~of designated portions of the inquiry as may be appropriate and to make a~~
 5 ~~written report thereof as a supplemental report to the court and shall make~~
 6 ~~similar investigations and reports on behalf of other agencies or persons~~
 7 ~~designated by the courts of this state or another place.~~

8 ~~(e)~~(d)(1) After the filing of a petition to adopt an adult, the court
 9 by order shall direct that a copy of the petition and a notice of the time
 10 and place of the hearing be given to any person whose consent to the adoption
 11 is required but who has not consented.

12 (2) The court may order ~~an appropriate investigation~~ a home
 13 study to assist it in determining whether the adoption is in the best
 14 interest of the persons involved.

15 (3) The Department of Human Services shall not be ordered by any
 16 court, except the juvenile division of circuit court, to conduct a home study
 17 unless:

18 (A) The court has first determined the responsible party
 19 to be indigent; and

20 (B) The person to be studied lives in the State of
 21 Arkansas.

22 (4) All home studies shall be prepared and submitted in
 23 conformity with the regulations promulgated pursuant to The Child Welfare
 24 Agency Licensing Act, § 9-28-401 et seq.

25 ~~(f)~~(e)(1) Notice shall be given in the manner appropriate under rules
 26 of civil procedure for the service of process in a civil action in this state
 27 or in any manner the court by order directs.

28 (2) Proof of the giving of the notice shall be filed with the
 29 court before the petition is heard.

30 (3) Where consent is not required, notice may be by certified
 31 mail with return receipt requested.

32 ~~(g)~~ (f) When one (1) parent of a child or children is deceased, and
 33 the parent-child relationship has not been eliminated at the time of death,
 34 and adoption proceedings are instituted subsequent to such decease, the
 35 parents of the deceased parent shall be notified under the procedures
 36 prescribed in this subchapter of such adoption proceedings, except when the

1 parent-child relationship has been terminated pursuant to § 9-27-341 of the
2 Arkansas Juvenile Code of 1989.

3 (g)(1) Before placement for adoption, the licensed adoption agency or,
4 where an agency is not involved, the person, entity, or organization handling
5 the adoption, shall compile and provide to the prospective adoptive parents a
6 detailed, written health history and genetic and social history of the child
7 which excludes information which would identify birth parents or members of a
8 birth parent’s family.

9 (2) The detailed, written health history and genetic and social
10 history shall be set forth in a document that is separate from any document
11 containing information identifying the birth parents or members of a birth
12 parent’s family.

13 (3) The detailed, written health history and genetic and social
14 history shall be clearly identified as such, and shall be filed with the
15 clerk before the entry of the adoption decree.

16 (4) Upon order of the court for good cause shown, the clerk may
17 tender to a person identified by the court a copy of the detailed, written
18 health history and genetic and social history.

19

20 SECTION 4. Arkansas Code § 9-9-217 is amended to read as follows:

21 9-9-217. Confidentiality of hearings and records.

22 (a) Notwithstanding any other law concerning public hearings and
23 records:

24 (1) All hearings held in proceedings under this subchapter shall
25 be held in closed court without admittance of any person other than essential
26 officers of the court, the parties, their witnesses, counsel, persons who
27 have not previously consented to the adoption but are required to consent,
28 and representatives of the agencies present to perform their official duties.

29 (2)(A) Adoption records shall be closed, confidential, and
30 sealed unless authority to open them is provided by law or by order of the
31 court for good cause shown.

32 (B)(i) When an adoption is filed or heard in the juvenile
33 division of the ~~chancery~~ circuit court pursuant to §§ 9-27-301 - 9-27-345,
34 any portion of the court file relating to the adoption shall be maintained
35 separately from the file of other pending juvenile court matters concerning
36 the juvenile who is the subject of the adoption or the family of the

1 juvenile.

2 (ii) Once final disposition is made in the adoption
 3 proceedings, the adoption file shall be transferred from the clerk who is the
 4 custodian of records of the juvenile division of the ~~chancery circuit~~ court
 5 to the clerk who is the custodian of records of the probate division of the
 6 circuit court.

7 (iii) The entry of the adoption decree will not be
 8 entered in the juvenile court order book, but will be entered by the clerk of
 9 the probate court in the probate court order book.

10 (iv) The ~~probate circuit~~ clerk shall assign the file
 11 a docket number, shall prepare an application for a new birth record as
 12 provided herein, and shall maintain the file as if the case had originated in
 13 probate division of the circuit court.

14 (v) No filing fee shall be assessed by the clerk of
 15 the probate court upon the transfer and creation of the probate file.

16 (vi) Any adoption record currently in the custody of
 17 the clerk of the ~~chancery circuit~~ court shall be transferred to the clerk of
 18 the probate court, to be handled as provided herein.

19 (C)(i) In the event an adoption record is randomly
 20 selected to be audited for determination of compliance with requirements
 21 found in federal laws pertaining to periodic and dispositional review of
 22 foster care cases, the Administrator of Adoptions of the Department of Human
 23 Services is authorized to open such files notwithstanding any section in this
 24 subchapter prohibiting disclosure of adoption records.

25 (ii) It shall be the responsibility of the
 26 administrator to procure and provide from said file all records pertinent to
 27 the federal requirements under review.

28 (iii) The remainder of the record shall remain
 29 sealed. Such portions of the record which may be removed shall be returned
 30 to the sealed file upon completion of the federal audit.

31 (iv) No one shall be permitted to review the removed
 32 portion of the record except in an official capacity, and, except for uses
 33 required by the federal audit in compliance with state and federal statutes
 34 and regulations, such person shall be bound to keep the contents of such
 35 records confidential.

36 (D)(i) In the event the department has the opportunity to

1 enhance its federal funding by a review of its adoptions records, then the
2 administrator is authorized to open such files notwithstanding any section in
3 this subchapter.

4 (ii) It shall be the responsibility of the
5 administrator to procure and provide from said file all records pertinent to
6 the review.

7 (iii) The remainder of the record shall remain
8 sealed.

9 (iv) Such portion of the record that may be removed
10 shall be returned to the sealed file upon completion of the review.

11 (v) No one shall be permitted to review the removed
12 portion of the record except in an official capacity, and, except for uses
13 required to provide for the enhancement of possible federal funding in
14 compliance with state and federal statutes and regulations, such person shall
15 be bound to keep the contents of such records confidential.

16 (b) The provisions of this section shall not prohibit the disclosure
17 of information pursuant to § 9-9-501 et seq., commonly known as the Voluntary
18 Adoption Registry Act.

19 (c) All papers and records pertaining to adoptions prior to May 19,
20 1986, are declared to be confidential and shall be subject to disclosure only
21 pursuant to this section.

22 (d)(1) All records of any adoption finalized in this state shall be
23 maintained for ninety-nine (99) years by the agency, person, entity, or
24 organization that handled the adoption.

25 (2) If the agency, person, entity, or organization that handled
26 the adoption ceases to function, all adoption records shall be transferred to
27 the Department of Human Services or another licensed agency within this state
28 with notice to the Department of Human Services.

29
30 SECTION 5. Arkansas Code § 9-9-501(5), defining a term for the
31 voluntary adoption registry, is amended to read as follows:

32 (5) "Adult" means a person ~~twenty-one (21)~~ eighteen (18) or more years
33 of age;

34
35 SECTION 6. Arkansas Code § 9-9-504(e), concerning the registry of
36 adoptions, is amended to read as follows:

1 (e)(1) Any affidavits filed and other information collected shall be
 2 retained for ~~ten (10)~~ ninety-nine (99) years following the date of
 3 registration.

4 (2) Any qualified person may ~~renew his registration at ten-year~~
 5 ~~intervals~~ choose to remove his or her name from the registry at any time by
 6 filing a notarized affidavit with the registry.

7
 8 SECTION 7. Arkansas Code § 9-9-505(b)(2), concerning compilation of
 9 nonidentifying histories of adoptions, is amended to read as follows:

10 (2) Shall be available upon request, throughout the time
 11 specified in subdivision (b)(1) of this section, together with any additional
 12 nonidentifying information which may have been added on health or on genetic
 13 and social history, but which excludes information identifying any birth
 14 parent or member of a birth parent’s family or the adoptee or any adoptive
 15 parent of the adoptee, to the following persons only:

16 (A) The adoptive parents of the child or, in the event of
 17 death of the adoptive parents, the child’s guardian;

18 (B) The adoptee ~~upon reaching the age of eighteen (18)~~
 19 ~~years;~~

20 (C) In the event of the death of the adoptee, the
 21 adoptee’s ~~spouse as the legal parent of the adoptee’s child~~ children, the
 22 adoptee’s widow or widower, or the guardian of any child of the adoptee; ~~and~~

23 (D) The birth parent of the adoptee; and

24 (E) Any child welfare agency having custody of the
 25 adoptee.

26
 27 SECTION 8. EMERGENCY CLAUSE. It is found and determined by the
 28 General Assembly of the State of Arkansas that federal law only allows the
 29 Federal Bureau of Investigation to release criminal history records to
 30 certain entities, which does not include private entities as currently
 31 permitted under state law. The Department of Arkansas State Police entered
 32 into an agreement with the Federal Bureau of Investigation regarding federal
 33 fingerprint-based criminal record checks, which permits disclosure only as
 34 allowed by federal law, with a grace period from the Federal Bureau of
 35 Investigation to correct state law no later than May 1, 2003. Therefore, an
 36 emergency is declared to exist and this act being immediately necessary for

1 the preservation of the public peace, health and safety shall become
2 effective on:

3 (1) The date of its approval by the Governor;

4 (2) If the bill is neither approved nor vetoed by the Governor, it
5 shall become effective on the expiration of the period of time during which
6 the Governor may veto the bill; or

7 (3) If the bill is vetoed by the Governor and the veto is overridden,
8 it shall become effective on the date the last house overrides the veto.

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36