

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
4

As Engrossed: S3/13/03

A Bill

HOUSE BILL 1291

5 By: Representative Dees
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7

For An Act To Be Entitled

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

Subtitle

12 AN ACT TO AMEND THE ARKANSAS REVISED
13 UNIFORM ADOPTION ACT.
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17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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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:



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

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

27 (6) A child maltreatment central registry check shall be
28 required for all ~~family~~ household members age ~~fourteen (14)~~ ten (10) and
29 older as a part of the ~~investigation~~ home study, if such a registry is
30 available in their state of residence.

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

35 (8) Each prospective adoptive parent shall be responsible for
36 payment of the costs of the criminal background checks and shall be required

1 to cooperate with the requirements of the ~~Department of~~ Arkansas State Police
2 and the child maltreatment central registry, if available, with regard to the
3 criminal and central registry background checks, including but not limited to
4 signing a release of information.

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

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

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

19 ~~The court shall further order that a report of the investigation shall~~
20 ~~be filed with the court by the investigator within sixty (60) working days~~
21 ~~from the issuance of the order for investigation, unless time therefor is~~
22 ~~extended by the court. The court shall not enter any order respecting the~~
23 ~~placement of the minor for adoption until the investigation report has been~~
24 ~~submitted and reviewed by the court.~~

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

30 ~~(d) The Department of Human Services or the agency or persons~~
31 ~~designated by the court to make the required investigation may request other~~
32 ~~departments or agencies within or without this state to make investigations~~
33 ~~of designated portions of the inquiry as may be appropriate and to make a~~
34 ~~written report thereof as a supplemental report to the court and shall make~~
35 ~~similar investigations and reports on behalf of other agencies or persons~~
36 ~~designated by the courts of this state or another place.~~

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

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

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

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

13 (B) The person to be studied lives in the State of
14 Arkansas.

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

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

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

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

25 ~~(g)~~ (f) When one (1) parent of a child or children is deceased, and
26 the parent-child relationship has not been eliminated at the time of death,
27 and adoption proceedings are instituted subsequent to such decease, the
28 parents of the deceased parent shall be notified under the procedures
29 prescribed in this subchapter of such adoption proceedings, except when the
30 parent-child relationship has been terminated pursuant to § 9-27-341 of the
31 Arkansas Juvenile Code of 1989.

32 (g)(1) Before placement for adoption, the licensed adoption agency or,
33 where an agency is not involved, the person, entity, or organization handling
34 the adoption, shall compile and provide to the prospective adoptive parents a
35 detailed, written health history and genetic and social history of the child
36 which excludes information which would identify birth parents or members of a

1 birth parent's family.

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

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

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

12
 13 SECTION 4. Arkansas Code § 9-9-217 is amended to read as follows:

14 9-9-217. Confidentiality of hearings and records.

15 (a) Notwithstanding any other law concerning public hearings and
 16 records:

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

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

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

31 (ii) Once final disposition is made in the adoption
 32 proceedings, the adoption file shall be transferred from the clerk who is the
 33 custodian of records of the juvenile division of the ~~chancery~~ circuit court
 34 to the clerk who is the custodian of records of the probate division of the
 35 circuit court.

36 (iii) The entry of the adoption decree will not be

1 entered in the juvenile court order book, but will be entered by the clerk of
2 the probate court in the probate court order book.

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

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

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

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

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

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

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

29 (D)(i) In the event the department has the opportunity to
30 enhance its federal funding by a review of its adoptions records, then the
31 administrator is authorized to open such files notwithstanding any section in
32 this subchapter.

33 (ii) It shall be the responsibility of the
34 administrator to procure and provide from said file all records pertinent to
35 the review.

36 (iii) The remainder of the record shall remain

1 sealed.

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

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

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

12 (c) All papers and records pertaining to adoptions prior to May 19,
13 1986, are declared to be confidential and shall be subject to disclosure only
14 pursuant to this section.

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

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

22

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

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

27

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

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

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

36

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

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

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

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

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

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

17 (E) Any child welfare agency having custody of the
18 adoptee.

19
20 SECTION 8. Arkansas Code 9-9-205(a)(2) is amended to read as follows:

21 (2) For purposes of this subchapter:

22 (A) A child under the age of six (6) months shall be
23 considered a resident of this state if the:

24 (i) Child’s birth mother resided in Arkansas for
25 more than four (4) months immediately preceding the birth of the child;

26 (ii) Child was born in this state or in any border
27 city which adjoins the Arkansas state line or is separated only by a
28 navigable river from an Arkansas city which adjoins the Arkansas state line;
29 and

30 (iii) Child remains in this state until the
31 interlocutory decree has been entered, or in the case of a nonresident
32 adoptive family, upon the receipt of Interstate Compact on the Placement of
33 Children approval, the child and the prospective adoptive parents may go back
34 to their state of residence and subsequently may return to Arkansas for a
35 hearing on the petition for adoption.

36 (B) A child over the age of six (6) months shall be

1 considered a resident of this state if the child:

2 (i) Has resided in this state for a period of six
3 (6) months;

4 (ii) Currently resides in Arkansas; and

5 (iii) Is present in this state at the time the
6 petition for adoption is filed and heard by a court having appropriate
7 jurisdiction.

8 (C) A person seeking to adopt is a resident of this state;
9 if:

10 (i) The person occupies a dwelling within the state;

11 (ii) Has a present intent to remain within the state
12 for a period of time; and

13 (iii) Manifests the genuineness of that intent by
14 establishing an ongoing physical presence within the state together with
15 indicia that the person's presence within the state is something other than
16 merely transitory in nature.

17
18 SECTION 9. EMERGENCY CLAUSE. It is found and determined by the
19 General Assembly of the State of Arkansas that federal law only allows the
20 Federal Bureau of Investigation to release criminal history records to
21 certain entities, which does not include private entities as currently
22 permitted under state law. The Department of Arkansas State Police entered
23 into an agreement with the Federal Bureau of Investigation regarding federal
24 fingerprint-based criminal record checks, which permits disclosure only as
25 allowed by federal law, with a grace period from the Federal Bureau of
26 Investigation to correct state law no later than May 1, 2003. Therefore, an
27 emergency is declared to exist and this act being immediately necessary for
28 the preservation of the public peace, health and safety shall become
29 effective on:

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

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

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

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/s/ Dees