

1 INTERIM STUDY PROPOSAL 2019-134

2 State of Arkansas

3 92nd General Assembly

4 First Extraordinary Session, 2019

A Bill

JNL/JNL

HOUSE BILL

5
6 By: Representatives Kelly, Penzo

7 Filed with: House Committee on Aging, Children and Youth, Legislative and Military Affairs
8 pursuant to A.C.A. §10-3-217.

For An Act To Be Entitled

9
10 AN ACT TO AMEND THE LAW CONCERNING ADOPTIONS; AND FOR
11 OTHER PURPOSES.

Subtitle

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14 TO AMEND THE LAW CONCERNING ADOPTIONS.
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18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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20 SECTION 1. Arkansas Code § 9-9-206(c), concerning compensation that
21 may be received by a parent or guardian of a minor who will be adopted, is
22 amended to read as follows:

23 (c)(1) Under no circumstances may a parent or guardian of a minor or
24 baby who is not yet born receive a fee, compensation, or any other thing of
25 value as a consideration for the relinquishment of a minor for adoption.
26 However, incidental costs for prenatal, delivery, and postnatal care may be
27 assessed, including reasonable housing household and transportation costs,
28 food, clothing, ~~general maintenance~~, legal fees, and medical expenses, if
29 they are ~~reimbursements~~ for expenses budgeted, incurred or soon to be
30 incurred, fees for services rendered, or monies paid directly to a landlord,
31 mortgage, or automobile lender, repairman, mechanic, insurance company,
32 utility, retailer, attorney, or healthcare provider, that are reasonably
33 related to the pregnancy or adoption.

34 (2) Any parent or guardian who ~~unlawfully~~ purposely accepts
35 compensation or any other thing of value that he or she knows to be unlawful

1 as a consideration for the relinquishment of a minor shall be guilty of a
2 Class C felony.

3 (3) A person other than an attorney, a doctor, an employee of a
4 licensed placement agency acting within the scope of his or her employment,
5 or a petitioner who purposely transfers to a parent or guardian unlawful
6 compensation or any other thing of value as consideration for the
7 relinquishment of a minor or unborn child is guilty of a Class C felony.

8 (4) A petitioner who purposely transfers to a parent or guardian
9 unlawful compensation or any other thing of value as consideration for the
10 relinquishment of a minor or unborn child is guilty of a Class A misdemeanor.

11 (5)(A) After reviewing an expense report required under § 9-9-
12 221, the court may order the attorney, doctor, or licensed placement agency
13 that is responsible for the transfer of the funds of the petitioner to a
14 person whose consent to the adoption was required to appear and show cause
15 why the expense report should be found reasonable or is reasonably related to
16 the pregnancy or adoption.

17 (B) If the court finds that the transfer of the funds of
18 the petitioner to a person whose consent to the adoption was required was not
19 reasonable or reasonably related to the pregnancy or adoption, the court
20 shall order the attorney, doctor, or licensed placement agency that was
21 responsible for the transfer of the funds to pay a civil penalty that is
22 equal to the sum of the improperly transferred funds plus interest at the
23 rate of six percent (6%) per annum from the date of transfer to the date the
24 court orders payment of the civil penalty and ten percent (10%) per annum
25 from the date the court orders payment of the civil penalty until paid in
26 full.

27 (C) It is not a defense to a civil penalty imposed under
28 subdivision (c)(5)(B) of this section that the petitioner approved the
29 transfer that the court finds unreasonable or not reasonably related to the
30 pregnancy or adoption.

31 (D) Funds that are paid directly from the petitioner to
32 person whose consent to the adoption is required shall not be considered in
33 assessing a civil penalty under this subsection (c)(5)(B).

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35 SECTION 2. Arkansas Code § 9-9-208(a), concerning how consent to an
36 adoption is executed, is amended to read as follows:

1 (a) The required consent to adoption shall be executed at any time
2 after the birth of the child and in the manner following:

3 (1) If by the individual to be adopted, in the presence of the
4 court;

5 (2) If by an agency, by the executive head or other authorized
6 representative, in the presence of a person authorized to take
7 acknowledgments;

8 (3) If by any other person, in the presence of the court or in
9 the presence of a person authorized to take acknowledgments and an attorney
10 or a licensed placement agency as described under subsection (e) of this
11 section;

12 (4) If by a court, by appropriate order or certificate.
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14 SECTION 3. Arkansas Code § 9-9-208, concerning how consent to an
15 adoption is executed, is amended to add additional subsections to read as
16 follows:

17 (d)(1) If a petitioner is not a resident of this state, consent to
18 adoption shall include sufficient facts of the residential history of:

19 (A) The birth mother of the child for the four (4) months
20 immediately preceding the birth of the child if the child is under six (6)
21 months of age; or

22 (B) The child to be adopted if the child is more than six
23 (6) months of age.

24 (2) Subdivision (d)(1) of this section does not apply if a court
25 executes consent to the adoption.

26 (e)(1) Unless the location of the person whose consent to the adoption
27 is required is unknown after a reasonable effort to locate him or her, the
28 written consent of the person whose consent to an adoption is required under
29 § 9-9-206(a)(1) and (2) shall be executed with the assistance of a licensed
30 attorney, a child placement agency, or in the presence of a court.

31 (2) The attorney or child placement agency shall:

32 (A) Educate and inform the person whose consent to the
33 adoption is required of services reasonably available to him or her through
34 the Department of Human Services or another organization if the person
35 revokes his or her consent to the adoption;

1 (B)(i) Retain the services of a certified courtroom
2 interpreter if the person whose consent is required does not speak fluent
3 English to translate and interpret all:

4 (a) Communications required between the person
5 whose consent to the adoption is required and the attorney or an employee of
6 a licensed placement agency; and

7 (b) Documents that are required to be signed
8 by the person whose consent to the adoption is required.

9 (ii) If a certified courtroom interpreter is not
10 readily available, the attorney or an employee of a licensed placement agency
11 shall retain the services of a telephone, videoconference, or other
12 translation company.

13 (iii) If a translation company is not reasonably
14 available, the attorney or an employee of a licensed placement agency shall
15 use a person who is chosen by the person whose consent to the adoption is
16 required to translate the communications and documents.

17 (iv) If no other person is available to translate
18 and the attorney or an employee of a licensed placement agency is fluent in
19 both English and the native language of the person whose consent is required,
20 the attorney or the employee of the licensed placement agency may communicate
21 with the person using the native language of the person; and

22 (C) Advise the person whose consent to the adoption is
23 required, ask whether and to what extent the person understands the advice,
24 and, within his or her written consent, state the understanding of the person
25 regarding:

26 (i) The right of the person to consent to an
27 adoption that is free from duress, coercion, undue influence, intimidation,
28 threat, or physical force;

29 (ii) Any criminal sanctions associated with
30 receiving compensation or any other thing of value in connection with the
31 adoption that is prohibited by law;

32 (iii) The actions prohibited by the Human
33 Trafficking Act of 2013, § 5-18-101 et seq., and the options and services
34 available to the person if he or she is or has been a victim under the act;

35 (iv) The consequences of violating any state or
36 federal law, regulation, or treaty that relates to the petition for adoption;

1 (v) The consequences of falsely swearing to any
2 statement in the consent or any other testimony to a court, including
3 specifically any statement regarding his or her residential history;

4 (vi) The right of the person to parent the child to
5 be adopted if he or she chooses to do so;

6 (vii) His or her ability and decision to revoke his
7 or her consent within ten (10) days from the date of executing the consent
8 after the birth of the child or waive that time frame down to five (5) days;

9 (viii) The process by which and place at which he or
10 she can revoke the consent during that time frame;

11 (ix) His or her absolute waiver of the right to
12 revoke his or her consent to the adoption after that time has expired;

13 (x) His or her inability to require the petitioner
14 to allow him or her visitation with the unborn child after the time for him
15 or her to revoke his or her consent expires;

16 (xi) The problems and consequences associated with
17 executing the consent under the influence of a mind-altering drug, narcotic,
18 alcohol, or other substance, and whether the person is under the influence of
19 any such substance;

20 (xii) Whether any person promised him or her
21 anything to induce or forced him or her in any way to consent to the
22 adoption;

23 (xiii) Whether he or she understands the
24 alternatives to adoption reasonably available to him or her; and

25 (xiv) Whether consenting to the adoption is his or
26 her informed and voluntary consent.

27 (3) After complying with subsection (e)(2) of this section, the
28 attorney or child placement agency shall:

29 (A) Ensure that the person whose consent is required signs
30 a consent that includes all the information required under this section and a
31 verification of the accuracy of the facts and data included in the consent in
32 the presence of a notary;

33 (B) Certify as an officer of the court in the case of an
34 attorney, or under oath in the case of a licensed child placement agency,
35 that the attorney or child placement agency has complied with subdivision
36 (e)(2) of this section; and

1 (C) File the consent and certification or deliver the
2 consent and certification to the attorney for the petitioner who shall file
3 the consent and certification with the court presiding over the proceeding.

4 (4) If the attorney who assists the person whose consent to the
5 adoption is required in executing the consent also represents or advises the
6 petitioner, the attorney shall:

7 (A) Disclose in a written statement signed by both the
8 petitioner and the person whose consent to the adoption is required:

9 (i) The identity of each person who is represented
10 by the attorney;

11 (ii) Each person who is not represented by the
12 attorney;

13 (iii) Any previous dealings the attorney has had
14 with the petitioner or the person whose consent to the adoption is required;

15 (iv) Any limits on lawful expenses that the
16 petitioner is responsible for paying;

17 (B) File the signed disclosure required under subdivision
18 (e)(4)(A) of this section with the court presiding over the adoption
19 proceeding;

20 (C) Ensure that each person who signs the disclosure
21 required under subdivision (e)(4)(A) of this section has a copy of the
22 document that he or she has signed; and

23 (D) Certify as an officer of the court in writing for
24 record in the adoption proceeding that the attorney has taken reasonable
25 steps to prevent or ensure that the person whose consent is required did not
26 consent under any fraud, duress, undue influence, or coercion.

27 (5) If the licensed placement agency who assists the person
28 whose consent is required in executing the consent also assists the
29 petitioner in the adoption, the agency shall:

30 (A) Disclose in a written statement signed by both the
31 petitioner and the person whose consent to the adoption is required:

32 (i) That the agency assists both parties;

33 (ii) Any previous dealing the licensed placement
34 agency has had with the petitioner or the person whose consent to the
35 adoption is required; and

1 (iii) Any limits on lawful expenses the petitioner
2 will pay;

3 (B) Deliver the signed disclosure to the attorney for the
4 adoptive parents to be filed for record in the adoption proceeding;

5 (C) Ensure that each person who signs the disclosure
6 required under subdivision (e)(5)(A) of this section has a copy of the
7 document that he or she has signed; and

8 (D) Certify under oath in writing for record in the
9 adoption proceeding that the licensed placement agency has taken reasonable
10 steps to ensure that the person whose consent to the adoption is required did
11 not consent under any fraud, duress, undue influence, or coercion.

12 (6) If the person whose consent to the adoption is required
13 wishes to revoke his or her consent, the attorney or licensed placement
14 agency that assisted him or her in executing the consent shall assist him or
15 her in revoking it.

16 (7) If a court finds that the attorney or licensed placement
17 agency that assists both the petitioner and the person whose consent to the
18 adoption is:

19 (A) Negligent in the performance of the duties required
20 under this section, the court may award to an injured party to the adoption a
21 civil penalty of no more than two thousand five hundred dollars (\$2,500) in
22 addition to any actual damages;

23 (B) Grossly negligent in the performance of the duties
24 required under this section, the court may award to an injured party to the
25 adoption a civil penalty of no more than ten thousand dollars (\$10,000) in
26 addition to any actual damages; and

27 (C) In willful violation of the requirements of this
28 section, the court may award to an injured party to the adoption a civil
29 penalty of no more than fifteen thousand dollars (\$15,000) in addition to any
30 actual damages.

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32 SECTION 4. Arkansas Code § 9-9-210(a)(4), concerning petitions for
33 adoption, is amended to read as follows:

34 (4)(A) The If the petitioner is a resident of this state, the
35 full name, age, place, and duration of residence of the petitioner.

1 (B) If the petitioner is not a resident of this state, a
2 residential history, if known, of the biological mother of the minor child or
3 baby who is not yet born to be adopted for the four (4) months immediately
4 preceding the petition for adoption if the individual to be adopted is a
5 child who is less than six (6) months of age;
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7 SECTION 5. Arkansas Code § 9-9-211(a), concerning accounting reports
8 that a petitioner must file with court before a petition for adoption is
9 heard, is amended to read as follows:

10 (a)(1) Except as specified in subsection (b) of this section, the
11 petitioner, in any proceeding for the adoption of a minor, shall file, before
12 the petition is heard, a full accounting report ~~in a manner acceptable to the~~
13 ~~court~~ of all disbursements of anything of value made or agreed to be made by
14 or on behalf of the petitioner in connection with the adoption. The
15 petitioner shall file a sworn affidavit alleging the truthfulness of the
16 accounting report showing any expenses incurred in connection with:

- 17 ~~(1)~~(A) The birth of the minor;
- 18 ~~(2)~~(B) Placement of the minor with the petitioner;
- 19 ~~(3)~~(C) Medical or hospital care received by the mother or
20 by the minor during the mother's prenatal care and confinement;
- 21 ~~(4)~~(D) Services relating to the adoption or to the
22 placement of the minor for adoption which were received by or on behalf of
23 the petitioner, either natural parent of the minor, or any other person; and
24 ~~(5)~~(E) Fees charged by all attorneys involved in the
25 adoption, including those fees charged by out-of-state attorneys.

26 (2) An accounting report under this section shall be itemized
27 and state the:

28 (A) Date on which compensation or any other thing of value
29 is intended to be provided or was provided to the biological parent;

30 (B) Specific purpose for which compensation or any other
31 thing of value is intended to be provided or was provided to the biological
32 parent;

33 (C) Specific category of expense under § 9-9-206 for which
34 compensation or any other thing of value was provided or is intended to be
35 provided to the biological parent; and

1 (D) Concise factual basis by which compensation or any
2 other thing of value was provided or is intended to be provided to the
3 biological parent as reasonably related to the pregnancy or adoption that
4 authorizes the compensation or any other thing of value provided or intended
5 to be provided to the biological parent.

6 (3) A court may require the parties to provide additional
7 accounting reports that comply with the provisions of this section at any
8 time after the filing of a petition for adoption but before the conversion of
9 an interlocutory decree of adoption into a final decree of adoption or the
10 entry of a final decree of adoption.

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14 Referred by Representative Kelly

15 Prepared by: JNL/JNL
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