

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.

Act 437 of the Regular Session

1 State of Arkansas  
2 85th General Assembly  
3 Regular Session, 2005

As Engrossed: H2/9/05

**A Bill**

HOUSE BILL 1408

4  
5 By: Representative Key  
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**For An Act To Be Entitled**

8  
9 AN ACT TO CLARIFY THE LAW REGARDING ADOPTION  
10 CONSENT AND SUBSIDIZED ADOPTIONS; AND FOR OTHER  
11 PURPOSES.  
12

**Subtitle**

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14 AN ACT TO CLARIFY THE LAW REGARDING  
15 ADOPTION CONSENT AND SUBSIDIZED  
16 ADOPTIONS.  
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19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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21 SECTION 1. Arkansas Code § 9-9-206(a), concerning persons required to  
22 consent to adoption, is amended to read as follows:

23 (a) Unless consent is not required under § 9-9-207, a petition to  
24 adopt a minor may be granted only if written consent to a particular adoption  
25 has been executed by:

26 (1) The mother of the minor;

27 (2) The father of the minor if the father was married to the  
28 mother at the time the minor was conceived or at any time thereafter, the  
29 minor is his child by adoption, he has custody of the minor at the time the  
30 petition is filed, ~~or he has otherwise legitimated the minor according to the~~  
31 ~~laws of the place in which the adoption proceeding is brought~~ he has a  
32 written order granting him legal custody of the minor at the time the  
33 petition for adoption is filed, or he proves a significant custodial,  
34 personal, or financial relationship existed with the minor before the  
35 petition for adoption is filed;



1 (3) Any person lawfully entitled to custody of the minor or  
2 empowered to consent;

3 (4) The court having jurisdiction to determine custody of the  
4 minor, if the legal guardian or custodian of the person of the minor is not  
5 empowered to consent to the adoption;

6 (5) The minor, if more than ten (10) years of age, unless the  
7 court in the best interest of the minor dispenses with the minor's consent;  
8 and

9 (6) The spouse of the minor to be adopted.

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

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

14 (1) a parent who has deserted a child without affording means of  
15 identification or who has abandoned a child;

16 (2) a parent of a child in the custody of another, if the parent  
17 for a period of at least one (1) year has failed significantly without  
18 justifiable cause (i) to communicate with the child or (ii) to provide for  
19 the care and support of the child as required by law or judicial decree;

20 (3) the father of a minor if the father's consent is not  
21 required by § 9-9-206(a)(2);

22 (4) a parent who has relinquished his or her right to consent  
23 under § 9-9-220;

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

26 (6) a parent judicially declared incompetent or mentally  
27 defective if the court dispenses with the parent's consent;

28 (7) any parent of the individual to be adopted, if the  
29 individual is an adult;

30 (8) any legal guardian or lawful custodian of the individual to  
31 be adopted, other than a parent, who has failed to respond in writing to a  
32 request for consent for a period of sixty (60) days or who, after examination  
33 of his written reasons for withholding consent, is found by the court to be  
34 withholding his or her consent unreasonably; ~~or~~

35 (9) the spouse of the individual to be adopted, if the failure  
36 of the spouse to consent to the adoption is excused by the court by reason of

1 prolonged unexplained absence, unavailability, incapacity, or circumstances  
2 constituting an unreasonable withholding of consent;

3 (10) a putative father of a minor who signed an acknowledgement  
4 of paternity but who failed to establish a significant custodial, personal,  
5 or financial relationship with the juvenile prior to the time the petition  
6 for adoption is filed; or

7 (11) a putative father of a minor who is listed on the Putative  
8 Father Registry but who failed to establish a significant custodial,  
9 personal, or financial relationship with the juvenile prior to the time the  
10 petition for adoption is filed.

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12 SECTION 3. Arkansas Code § 9-9-209(b)(1), concerning withdrawal for  
13 consent for adoption, is amended to read as follows:

14 (b)(1) A consent to adopt may be withdrawn within ten (10) calendar  
15 days after it is signed or the child is born, whichever is later, by filing  
16 an affidavit with the probate clerk of the circuit court in the county  
17 designated by the consent as the county in which the guardianship petition  
18 will be filed, if there is a guardianship, or where the petition for adoption  
19 will be filed, if there is no guardianship. If the ten-day period ends on a  
20 weekend or a legal holiday, the person may file the affidavit the next  
21 working day. No fee shall be charged for the filing of the affidavit. The  
22 court may waive the ten-day period for filing a withdrawal of consent ~~shall~~  
23 ~~not apply to~~ for agencies as defined by § 9-9-202(5), minors over ten (10)  
24 years of age who consented to the adoption, or biological parents if a step-  
25 parent is adopting.

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27 SECTION 4. Arkansas Code § 9-9-212(f), concerning hearings on  
28 petitions of adoption, is amended to read as follows:

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

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36 SECTION 5. Arkansas Code § 9-9-215(a), concerning the effect of a

1 decree of adoption, is amended to read as follows:

2 (a) A final decree of adoption and an interlocutory decree of adoption  
3 which has become final, whether issued by a court of this state or of any  
4 other place, have the following effect as to matters within the jurisdiction  
5 or before a court of this state:

6 (1) Except with respect to a spouse of the petitioner and  
7 relatives of the spouse, to relieve the ~~natural~~ biological parents of the  
8 adopted individual of all parental rights and responsibilities, and to  
9 terminate all legal relationships between the adopted individual and his  
10 ~~natural~~ biological relatives, including his ~~natural~~ biological parents, so  
11 that the adopted individual thereafter is a stranger to his former relatives  
12 for all purposes. This includes inheritance and the interpretation or  
13 construction of documents, statutes, and instruments, whether executed before  
14 or after the adoption is decreed, which do not expressly include the  
15 individual by name or by some designation not based on a parent and child or  
16 blood relationship. However, in cases where a ~~natural~~ biological or adoptive  
17 parent dies before a petition for adoption has been filed by a step-parent of  
18 the minor to be adopted the court may grant visitation rights to the parents  
19 of the deceased ~~natural~~ biological or adoptive parent of the child if such  
20 parents of the deceased ~~natural~~ biological or adoptive parent had a close  
21 relationship with the child prior to the filing of a petition for step-parent  
22 adoption, and if such visitation rights are in best interests of the child.  
23 The foregoing provision shall not apply to the parents of a deceased putative  
24 father who has not legally established his paternity prior to the filing of a  
25 petition for adoption by a step-parent. For the purposes of this section,  
26 "step-parent" means an individual who is the spouse or surviving spouse of  
27 the ~~natural~~ biological or adoptive parent of a child but who is not a ~~natural~~  
28 biological or adoptive parent of the child.

29 (2) To create the relationship of parent and child between  
30 petitioner and the adopted individual, as if the adopted individual were a  
31 legitimate blood descendant of the petitioner, for all purposes including  
32 inheritance and applicability of statutes, documents, and instruments,  
33 whether executed before or after the adoption is decreed, which do not  
34 expressly exclude an adopted individual from their operation or effect.

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36 SECTION 6. Arkansas Code § 9-9-215, concerning the effect of a decree

1 of adoption, concerning hearings on petitions of adoption, is amended to add  
2 an additional subsection to read as follows:

3 (c) Sibling visitation shall not terminate if the adopted child was in  
4 the custody of the Department of Human Services and had a sibling who was not  
5 adopted by the same family and before adoption the circuit court in the  
6 juvenile dependency-neglect or families in need of services case has  
7 determined that it is in the best interests of the siblings to continue  
8 visitation and has ordered visitation between the siblings to continue after  
9 the adoption.

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11 SECTION 7. Arkansas Code § 9-9-402 is amended to read as follows:

12 9-9-402. ~~Definition~~ Definitions.

13 ~~As used in this subchapter, unless the context otherwise requires, "child"~~  
14 ~~means a minor as defined by Arkansas statutes, who is:~~

15 ~~(1) In the custody of the Department of Human Services; and~~

16 ~~(2) Legally free for adoption; and~~

17 ~~(3) Has been determined to be a child with special needs, which~~  
18 ~~is defined as:~~

19 ~~(A) A child who has established significant emotional ties~~  
20 ~~with prospective adoptive parents while in their care as a foster child; or~~

21 ~~(B) A child who is not likely to be adopted by reason of~~  
22 ~~one (1) or more conditions, such as:~~

23 ~~(i) A physical or mental disability;~~

24 ~~(ii) An emotional disturbance;~~

25 ~~(iii) A recognized high risk of physical or mental~~  
26 ~~disability;~~

27 ~~(iv) Age;~~

28 ~~(v) A sibling relationship;~~

29 ~~(vi) A racial or ethnic factor; or~~

30 ~~(vii) Any combination of these conditions.~~

31 As used in this subchapter:

32 (1) "Child" means a minor as defined by Arkansas law;

33 (2) "Special needs" means a child who is not likely to be  
34 adopted by reason of one (1) or more of the following conditions:

35 (A) The child has special needs for medical or  
36 rehabilitative care;

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- (B) Age;
- (C) A racial or ethnic factor;
- (D) A sibling relationship; or
- (E) A child who is at high risk for developing a serious physical, mental, developmental, or emotional condition if documentation of the risk is provided by a medical professional specializing in the area of the condition for which the child is considered at risk.

SECTION 8. Arkansas Code § 9-9-404(a), concerning administration of the Department of Human Services' subsidized adoption program, is amended to read as follows:

(a) The Department of Human Services shall establish and administer an ongoing program of subsidized adoption by persons who are determined by the department to be eligible to adopt under this subchapter and who are financially unable to otherwise adopt ~~the child or children specified under § 9-9-402~~ as determined by the department using a means-based test.

SECTION 9. Arkansas Code § 9-9-407 is amended to read as follows:  
9-9-407. Eligibility.

~~(a) After reasonable efforts have been made and no appropriate adoptive family without the use of a subsidy has been found for a child, the Department of Human Services may certify the child as eligible for a subsidy in the event of adoption. In the case of a child who has established significant emotional ties with prospective adoptive parents while in their care as a foster child, the department may certify the child as eligible for a subsidy without searching for families willing to take the child without a subsidy. A family is initially eligible for a subsidy for purposes of adoption if:~~

(1)(A) No other potential adoptive family is willing and able to adopt the child without the use of a subsidy.

(B) In the case of a child who has established significant emotional ties with prospective adoptive parents while in their care as a foster child, the Department of Human Services may certify the child as eligible for a subsidy without searching for families willing to take the child without a subsidy.

1                   (C) In the case of a child who will be adopted by members  
2 of his or her biological family, the department may certify the child as  
3 eligible for a subsidy without searching for families willing to take the  
4 child without a subsidy;

5                   (2) The department has determined the family to be eligible  
6 pursuant to a means-based test;

7                   (3) The child is in the custody of the department; and

8                   (4) The child has been determined by the department to have  
9 special needs.

10                  (b)(1) Annually, the department shall redetermine eligibility on each  
11 state adoption subsidy.

12                  (2) A state adoption subsidy shall cease if the adoptive family  
13 is no longer:

14                                 (A) Eligible for the subsidy based on the means-based  
15 test; or

16                                 (B) Providing care and support for the adoptive child.

17                  ~~(b)(c)~~ A child who is a resident of Arkansas when eligibility for a  
18 subsidy is certified shall remain eligible and receive a subsidy, if  
19 necessary for adoption, regardless of the domicile or residence of the  
20 adopting parents at the time of application for adoption, placement, legal  
21 decree of adoption, or thereafter.

22                  (d) A family is eligible for a legal subsidy for purposes of adoption  
23 if:

24                                 (1) The child is in the custody of the Department of Human  
25 Services; or

26                                 (2)(A) The child was in the custody of the Department of Human  
27 Services;

28                                 (B) Legal custody was transferred to a relative or other  
29 person; and

30                                 (C) The juvenile division case remains open pending the  
31 child obtaining permanency.

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33                  SECTION 9. Arkansas Code § 9-9-408(b), concerning adoption subsidy  
34 agreements, is amended to read as follows:

35                  (b)(1) Adoption subsidies, the amount of which in individual cases  
36 shall be determined through agreement between the adoptive parents and the

1 department but shall be no more than the current foster care board rate, may  
2 commence with the adoption placement or at the appropriate time after the  
3 adoption decree and may vary with the circumstances of the adopting parents  
4 and the needs of the child as well as the availability of other resources to  
5 meet the child's needs.

6 (2)(A) State adoption subsidy agreements shall be for no more  
7 than one (1) year.

8 (B) The department shall redetermine eligibility each year  
9 as outlined in this subchapter and shall enter into an annual agreement only  
10 if the adoptive family remains eligible for an adoption subsidy.

11 (3)(A) In the case of the special needs child whose eligibility  
12 is based on a high risk for development of a serious physical, mental,  
13 developmental, or emotional condition, the adoption subsidy agreement shall  
14 provide for no adoption subsidy until the child actually develops the  
15 condition.

16 (B) No subsidy payment shall be made until adequate  
17 documentation is submitted by the adoptive parents to the department showing  
18 that the child has now developed the condition.

19 (C) Upon acceptance by the department that the child has  
20 developed the condition, the adoption subsidy shall be retroactive to the  
21 date the adoptive parents submitted adequate documentation that the child  
22 developed the condition.

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24 /s/ Key

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27 *APPROVED: 03/02/2005*  
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