

ARKANSAS SENATE
92nd General Assembly - Regular Session, 2019
Amendment Form

Subtitle of House Bill No. 1488

TO AMEND THE LAW CONCERNING THE ADOPTION PROCESS WHEN A LICENSED CHILD
PLACEMENT AGENCY IS NOT USED; AND TO DECLARE AN EMERGENCY.

Amendment No. 1 to House Bill 1488

Amend House Bill No. 1488 as engrossed, H2/21/19 (version: 02/21/2019 9:41:36 AM)

Add Senators L. Eads and B. Ballinger as cosponsors of the bill

AND

Delete the title in its entirety and substitute:

"AN ACT TO AMEND THE LAW CONCERNING THE OFFENSE OF TRAFFICKING; TO CREATE AN OFFENSE FOR THE UNLAWFUL SOLICITATION FOR THE RELINQUISHMENT OF PARENTAL RIGHTS; TO AMEND THE LAW CONCERNING ADOPTION; TO DECLARE AN EMERGENCY; AND FOR OTHER PURPOSES."

AND

Delete the subtitle in its entirety and substitute:

"TO AMEND THE LAW CONCERNING THE OFFENSE OF TRAFFICKING; TO CREATE AN OFFENSE FOR THE UNLAWFUL SOLICITATION FOR THE RELINQUISHMENT OF PARENTAL RIGHTS; TO AMEND THE LAW CONCERNING ADOPTION; AND TO DECLARE AN EMERGENCY."

AND

Delete everything after the enacting clause and substitute the following:

"SECTION 1. Arkansas Code § 5-18-103(a), concerning the elements for the offense of trafficking of persons, is amended to read as follows:

(a) A person commits the offense of trafficking of persons if he or she knowingly:

(1) Recruits, harbors, transports, obtains, entices, solicits, isolates, provides, or maintains a person knowing that the person will be subjected to involuntary servitude;

(2) Benefits financially or benefits by receiving anything of value from participation in a venture under subdivision (a)(1) of this section;

(3) Subjects a person to involuntary servitude;



(4) Recruits, entices, solicits, isolates, harbors, transports, provides, maintains, or obtains a minor for commercial sexual activity; ~~or~~

(5) Sells or offers to sell travel services that he or she knows ~~includes~~ include an activity prohibited under subdivisions (a)(1)-(4) of this section;

(6) Recruits, entices, solicits, isolates, harbors, transports, provides, maintains, or obtains a pregnant woman for the purpose of causing the pregnant woman by the use of or threatened use of physical force to place the baby who is not yet born for adoption; or

(7) Benefits financially or benefits by receiving anything of value from participating in an act described under subdivision (a)(6) of this section.

SECTION 2. Arkansas Code Title 5, Chapter 26, Subchapter 2, is amended to add an additional section to read as follows:

5-26-204. Unlawful solicitation for the relinquishment of parental rights.

(a)(1) A person commits the offense of unlawful solicitation for the relinquishment of parental rights in the first degree if in exchange for consenting to the person or another person placing a baby who is not yet born for adoption the person offers anything of value to the:

(A) Biological mother of the baby who is not yet born;

(B) Biological or putative father of the baby who is not yet born;

(C) Spouse, partner, or other relative of the biological mother of the baby who is not yet born; or

(D) Spouse, partner, or other relative of the biological or putative father of the baby who is not yet born.

(2) Unlawful solicitation for the relinquishment of parental rights in the first degree is a:

(A) Class A felony if the person uses duress, coercion, undue influence, intimidation, a threat, fraud, or physical force to influence an individual listed in subdivisions (a)(1)(A)-(D) of this section to allow the person or another person to place the baby who is not yet born for adoption; or

(B) Class C felony if otherwise committed.

(b)(1) A person commits the offense of unlawful solicitation for the relinquishment of parental rights in the second degree if in exchange for consenting to the person adopting a baby who is not yet born the person offers anything of value to the:

(A) Biological mother of the baby who is not yet born;

(B) Biological or putative father of the baby who is not yet born;

(C) Spouse, partner, or other relative of the biological mother of the baby who is not yet born; or

(D) Spouse, partner, or other relative of the biological or putative father of the baby who is not yet born.

(2) Unlawful solicitation for the relinquishment of parental rights in the second degree is a:

(A) Class D felony if the person uses duress, coercion, undue influence, intimidation, a threat, fraud, or physical force to

influence an individual listed in subdivisions (b)(1)(A)-(D) of this section to consent to the person or another person adopting the baby who is not yet born; or

(B) Class A misdemeanor if otherwise committed.

SECTION 3. Arkansas Code § 9-9-206(c), concerning compensation that may be received by a parent or guardian of a minor who will be adopted, is amended to read as follows:

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

(2) Any parent or guardian who unlawfully purposely accepts compensation or any other thing of value that he or she knows to be unlawful as a consideration for the relinquishment of a minor shall be guilty of a Class C felony.

(3) A person other than an attorney, a doctor, an employee of a licensed placement agency acting within the scope of his or her employment, or a petitioner who purposely transfers to a parent or guardian unlawful compensation or any other thing of value as consideration for the relinquishment of a minor or baby who is not yet born is guilty of a Class C felony.

(4) A petitioner who purposely transfers to a parent or guardian unlawful compensation or any other thing of value as consideration for the relinquishment of a minor or baby who is not yet born is guilty of a Class A misdemeanor.

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

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

(C) It is not a defense to a civil penalty imposed under subdivision (c)(5)(B) of this section that the petitioner approved the

transfer that the court finds unreasonable or not reasonably related to the pregnancy or adoption.

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

SECTION 4. Arkansas Code § 9-9-208(a), concerning how consent to an adoption is executed, is amended to read as follows:

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

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

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

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

(4) If by a court, by appropriate order or certificate.

SECTION 5. Arkansas Code § 9-9-208, concerning how consent to an adoption is executed, is amended to add additional subsections to read as follows:

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

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

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

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

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

(2) The attorney or child placement agency shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(x) His or her inability to require the petitioner to allow him or her visitation with the baby who is not yet born after the time for him or her to revoke his or her consent expires;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) That the agency assists both parties;

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

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

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

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

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

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

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

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

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

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

SECTION 6. Arkansas Code § 9-9-210(a)(4), concerning petitions for adoption, is amended to read as follows:

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

(B) If the petitioner is not a resident of this state, a residential history, if known, of the biological mother of the minor child or baby who is not yet born to be adopted for the four (4) months immediately preceding the petition for adoption if the individual to be adopted is a child who is less than six (6) months of age;

SECTION 7. Arkansas Code § 9-9-211(a), concerning accounting reports that a petitioner must file with court before a petition for adoption is heard, is amended to read as follows:

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

~~(1)~~(A) The birth of the minor;

~~(2)~~(B) Placement of the minor with petitioner;

~~(3)~~(C) Medical or hospital care received by the mother or by the minor during the mother's prenatal care and confinement;

~~(4)~~(D) Services relating to the adoption or to the placement of the minor for adoption which were received by or on behalf of the petitioner, either natural parent of the minor, or any other person; and

~~(5)~~(E) Fees charged by all attorneys involved in the adoption, including those fees charged by out-of-state attorneys.

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

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

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

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

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

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

SECTION 8. EMERGENCY CLAUSE. It is found and determined by the General Assembly of the State of Arkansas that there are attorneys and doctors acting on behalf of both adoptive parents and biological parents who are not licensed as a child welfare agency or a child placement agency; that a conflict of interest or the appearance of a conflict of interest exists when attorneys and doctors act on behalf of both an adoptive parent and a biological parent; that a number of biological parents terminate their parental rights without understanding the permanency of their decision or without being aware or advised of other options that are available to them; that in some areas of Arkansas, more than one-half (1/2) of all adoptions heard by a court are adoptions in which the child and the petitioner do not share a familial relationship; that courts in Arkansas are overwhelmed by adoptions in which the jurisdiction of this state is questionable; and that this act is immediately necessary because it will facilitate avoiding potential conflicts of interest that may arise in the professional practice of attorneys and doctors, prevent adoptions that violate the jurisdictional requirements of this state, and deter biological parents from agreeing to a termination of parental rights without being aware of or advised as to the permanency of their decision or of the alternative options available to them. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on:

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

(2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or

(3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

The Amendment was read the first time, rules suspended and read the second time and _____

By: Senator L. Eads

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Secretary