

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 85th General Assembly
3 Regular Session, 2005
4

As Engrossed: H2/9/05

A Bill

HOUSE BILL 1408

5 By: Representative Key
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For An Act To Be Entitled

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

Subtitle

13 AN ACT TO CLARIFY THE LAW REGARDING
14 ADOPTION CONSENT AND SUBSIDIZED
15 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;

36 (3) Any person lawfully entitled to custody of the minor or



1 empowered to consent;

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

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

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

9

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

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

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

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

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

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

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

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

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

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

34 (9) the spouse of the individual to be adopted, if the failure
35 of the spouse to consent to the adoption is excused by the court by reason of
36 prolonged unexplained absence, unavailability, incapacity, or circumstances

1 constituting an unreasonable withholding of consent;

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

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

10
11 SECTION 3. Arkansas Code § 9-9-209(b)(1), concerning withdrawal for
12 consent for adoption, is amended to read as follows:

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

25
26 SECTION 4. Arkansas Code § 9-9-212(f), concerning hearings on
27 petitions of adoption, is amended to read as follows:

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

34
35 SECTION 5. Arkansas Code § 9-9-215(a), concerning the effect of a
36 decree of adoption, is amended to read as follows:

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

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

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

35 SECTION 6. Arkansas Code § 9-9-215, concerning the effect of a decree
36 of adoption, concerning hearings on petitions of adoption, is amended to add

1 an additional subsection to read as follows:

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

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

11 9-9-402. ~~Definition~~ Definitions.

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

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

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

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

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

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

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

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

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

26 ~~(iv) Age;~~

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

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

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

30 As used in this subchapter:

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

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

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

36

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

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

12 (a) The Department of Human Services shall establish and administer an
13 ongoing program of subsidized adoption by persons who are determined by the
14 department to be eligible to adopt under this subchapter and who are
15 financially unable to otherwise adopt ~~the child or children specified under §~~
16 9-9-402 as determined by the department using a means-based test.

17
18 SECTION 9. Arkansas Code § 9-9-407 is amended to read as follows:
19 9-9-407. Eligibility.

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

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

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

36 (C) In the case of a child who will be adopted by members

1 of his or her biological family, the department may certify the child as
2 eligible for a subsidy without searching for families willing to take the
3 child without a subsidy;

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

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

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

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

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

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

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

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

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

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

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

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

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

31
32 SECTION 9. Arkansas Code § 9-9-408(b), concerning adoption subsidy
33 agreements, is amended to read as follows:

34 (b)(1) Adoption subsidies, the amount of which in individual cases
35 shall be determined through agreement between the adoptive parents and the
36 department but shall be no more than the current foster care board rate, may

1 commence with the adoption placement or at the appropriate time after the
2 adoption decree and may vary with the circumstances of the adopting parents
3 and the needs of the child as well as the availability of other resources to
4 meet the child's needs.

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

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

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

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

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

22
23 /s/ Key
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