

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

A Bill

HOUSE BILL 1408

4
5 By: Representative Key
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7

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

13
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;

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.

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 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 (B) The child is a caucasian child nine (9) years of age

1 or older;

2 (C) The child is a child of color two (2) years of age or
3 older;

4 (D) The child is a member of a sibling group of three (3)
5 or more children being placed together who share at least one (1) biological
6 parent and who have either lived together or otherwise developed a bond
7 before the adoptive placement; or

8 (E) A child who is at high risk for developing a serious
9 physical, mental, developmental, or emotional condition if documentation of
10 the risk is provided by a medical professional specializing in the area of
11 the condition for which the child is considered at risk.

12

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

16 (a) The Department of Human Services shall establish and administer an
17 ongoing program of subsidized adoption by persons who are determined by the
18 department to be eligible to adopt under this subchapter and who are
19 financially unable to otherwise adopt ~~the child or children specified under §~~
20 ~~9-9-402~~ as determined by the department using a means-based test.

21

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

23 9-9-407. Eligibility.

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

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

35 (B) In the case of a child who has established significant
36 emotional ties with prospective adoptive parents while in their care as a

1 foster child, the Department of Human Services may certify the child as
2 eligible for a subsidy without searching for families willing to take the
3 child without a subsidy.

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

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

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

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

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

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

17 (A) Eligible for the subsidy based on the means-based
18 test; or

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

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

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

27 (1) The child is in the custody of the Department of Human
28 Services; or

29 (2)(A) The child was in the custody of the Department of Human
30 Services;

31 (B) Legal custody was transferred to a relative or other
32 person; and

33 (C) The juvenile division case remains open pending the
34 child obtaining permanency.

35
36 SECTION 9. Arkansas Code § 9-9-408(b), concerning adoption subsidy

1 agreements, is amended to read as follows:

2 (b)(1) Adoption subsidies, the amount of which in individual cases
 3 shall be determined through agreement between the adoptive parents and the
 4 department but shall be no more than the current foster care board rate, may
 5 commence with the adoption placement or at the appropriate time after the
 6 adoption decree and may vary with the circumstances of the adopting parents
 7 and the needs of the child as well as the availability of other resources to
 8 meet the child's needs.

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

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

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

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

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

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