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2 92nd General Assembly
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4

As Engrossed: H2/21/19

A Bill

HOUSE BILL 1488

5 By: Representatives Penzo, Della Rosa, Christiansen, Coleman, C. Cooper, Hollowell, Lundstrum,
6 Pilkington, Rye, B. Smith
7

For An Act To Be Entitled

9 AN ACT TO AMEND THE LAW CONCERNING THE ADOPTION
10 PROCESS WHEN A LICENSED CHILD PLACEMENT AGENCY IS NOT
11 USED; TO DECLARE AN EMERGENCY; AND FOR OTHER
12 PURPOSES.
13
14

Subtitle

16 TO AMEND THE LAW CONCERNING THE ADOPTION
17 PROCESS WHEN A LICENSED CHILD PLACEMENT
18 AGENCY IS NOT USED; AND TO DECLARE AN
19 EMERGENCY.
20
21

22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
23

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

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

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

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

34 (3) Subjects a person to involuntary servitude;

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



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

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

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

11
12 SECTION 2. Arkansas Code Title 5, Chapter 26, Subchapter 2, is amended
13 to add an additional section to read as follows:

14 5-26-204. Unlawful solicitation for the relinquishment of parental
15 rights.

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

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

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

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

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

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

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

34 (B) Class C felony if otherwise committed.

35 (b)(1) A person commits the offense of unlawful solicitation for the
36 relinquishment of parental rights in the second degree if in exchange for

1 consenting to the person adopting a baby who is not yet born the person
 2 offers anything of value to the:

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

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

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

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

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

12 (A) Class D felony if the person uses duress, coercion,
 13 undue influence, intimidation, a threat, fraud, or physical force to
 14 influence an individual listed in subdivisions (b)(1)(A)-(D) of this section
 15 to consent to the person or another person adopting the baby who is not yet
 16 born; or

17 (B) Class A misdemeanor if otherwise committed.

18
 19 SECTION 3. Arkansas Code § 9-9-101(b), concerning the requirements for
 20 a hospital or birthing center release form and the liability of a hospital or
 21 birthing center, is amended to read as follows:

22 (b)(1) A hospital or birthing center release form under this section
 23 must:

24 (A) Be executed in writing;

25 (B) Be witnessed by two (2) credible adults;

26 (C) Authorize the petitioner for adoption, the guardian of
 27 the minor child, the licensed child placement agency, the division, or the
 28 attorney acting on the behalf of any of the foregoing entities to obtain any
 29 medical treatment, including circumcision of a male child, reasonably
 30 necessary for the care of the minor and to authorize any physician or medical
 31 services provider to furnish additional services deemed reasonable and
 32 necessary; ~~and~~

33 (D) Be verified before a person authorized to take oaths;
 34 and

35 (E)(i) Be approved by either a hospital social worker or a
 36 social worker who is independent of the adoptive parent when a licensed child

1 placement agency is not used for the adoption.

2 (ii) A hospital social worker or a social worker who
 3 is independent of the adoptive parent may approve a hospital or birthing
 4 center release form after:

5 (a) Counseling the biological mother on the
 6 permanency of adoption, services available to a low-income parent, and the
 7 prohibitions against receiving unlawful compensation or any other thing of
 8 value for placing a minor child for adoption; and

9 (b) Obtaining reasonable assurances from the
 10 biological mother that she placed the minor child for adoption based on her
 11 informed decision made free from duress, coercion, undue influence,
 12 intimidation, threat, fraud, or physical force.

13 (2)(A) If a hospital or birthing center surrenders custody of a
 14 minor child to the petitioner for adoption, the guardian of the minor child,
 15 a licensed child placement agency, the division, or the attorney acting on
 16 behalf of any of the foregoing entities, the hospital or birthing center
 17 releasing the minor shall not be liable to any person because of its acts if
 18 the hospital or birthing center has complied with this section.

19 (B) A hospital social worker or a social worker who is
 20 independent of an adoptive parent is immune from suit or liability if he or
 21 she exercises due diligence when deciding to approve or disapprove a release
 22 form under this section.

23
 24 SECTION 4. Arkansas Code § 9-9-202, concerning definitions applicable
 25 to the Revised Uniform Adoption Act, is amended to add an additional
 26 subdivision to read as follows:

27 (11) "Private adoption" means an adoption:

28 (A) In which neither the Department of Human Services nor
 29 a licensed agency is placing, planning to place, or assisting in placing a
 30 child for adoption; or

31 (B) That is within the third degree of consanguinity.

32
 33 SECTION 5. Arkansas Code § 9-9-205(a)(1), concerning when the state
 34 has jurisdiction over the adoption of a minor, is amended to read as follows:

35 ~~(a)(1)(A) Jurisdiction of adoption of minors:~~

36 ~~(1)~~ The state shall possess jurisdiction over the adoption of a

1 minor if the person seeking to adopt the child, or the child, is a resident
2 of this state.

3 (B) A court shall not approve an adoption unless the:

4 (i) Petitioner pleads adequate facts to establish
5 residency in the state that are sufficient for this state to have
6 jurisdiction over the adoption; and

7 (ii) Court finds by a preponderance of the evidence
8 that the state has jurisdiction over the petitioner and the child to be
9 adopted.

10
11 SECTION 6. Arkansas Code § 9-9-206(c), concerning compensation that
12 may be received by a parent or guardian of a minor who will be adopted, is
13 amended to read as follows:

14 (c) Under no circumstances may a parent or guardian of a minor or baby
15 who is not yet born receive a fee, compensation, or any other thing of value
16 as a consideration for the relinquishment of a minor for adoption. However,
17 incidental costs for prenatal, delivery, and postnatal care may be assessed,
18 including reasonable housing costs, food, clothing, ~~general maintenance~~, and
19 medical expenses, if they are reimbursements for expenses incurred or fees
20 for services rendered that are reasonably related to the adoption and the
21 total amount to be reimbursed is no more than ten thousand dollars (\$10,000).
22 Upon the petition of a party to the adoption, the court may increase the
23 reimbursement limit to more than ten thousand dollars (\$10,000) for an
24 expense reasonably related to the adoption if it is an expense authorized
25 under § 9-9-225 or the court finds by a preponderance of the evidence that
26 there is a substantial risk of harm to the health of the biological parent or
27 the unborn child. Any parent or guardian who unlawfully accepts compensation
28 or any other thing of value as a consideration for the relinquishment of a
29 minor shall be guilty of a Class C felony. A person who facilitates a parent
30 or guardian receiving unlawful compensation or any other thing of value as
31 consideration for the relinquishment of a minor or baby who is not yet born
32 is guilty of a Class A felony.

33
34 SECTION 7. Arkansas Code § 9-9-208, concerning how consent to an
35 adoption is executed, is amended to add an additional subsection to read as
36 follows:

1 (d)(1) A consent to adoption shall include sufficient facts of the
2 residential history of the biological parent of the child to be adopted, or
3 the residential history of the child to be adopted, for the state to
4 establish jurisdiction over the adoption.

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

7
8 SECTION 8. Arkansas Code § 9-9-209(b)(3), concerning a waiver of the
9 ten-day period for the withdrawal of consent to an adoption, is amended to
10 read as follows:

11 (3)(A) The consent shall state that the person may waive the
12 ten-day period for the withdrawal of consent for an adoption and elect to
13 limit the maximum time for the withdrawal of consent for an adoption to five
14 (5) days.

15 (B) Subdivision (b)(3)(A) of this section does not apply
16 if the:

17 (i) Services of a licensed child placement agency
18 are not used for the adoption; and

19 (ii) The adoption is not initiated by a stepparent
20 adoption or by a relative within the third degree of consanguinity.

21
22 SECTION 9. Arkansas Code § 9-9-210 is amended to read as follows:

23 9-9-210. Petition for adoption.

24 (a) A petition for adoption signed and verified by the petitioner,
25 shall be filed with the clerk of the court within thirty (30) days of making
26 a plan for adoption, and state:

27 (1)(A) The date and place of birth of the individual to be
28 adopted, if known~~+~~.

29 (B) In the case of a baby who is not yet born, the
30 petition for adoption shall state:

31 (i) That the specific adoption is of a baby who is
32 not yet born; and

33 (ii) The date on which the adoption plan for the
34 baby who is not yet born was created;

35 (2) The name to be used for the individual to be adopted;

36 (3) The date the petitioner:

1 (A) Acquired custody of the minor and of placement of the
2 minor and the name of the person placing the minor; and a statement as to how
3 the petitioner acquired custody of the minor+.

4 (i) A statement as to how the petitioner acquired
5 custody of the minor is not required if the individual to be adopted is a
6 baby who is not yet born; or

7 (B) Was selected to adopt the minor by the child placement
8 agency licensed by the Child Welfare Agency Review Board;

9 (4)(A) The Sufficient facts to establish the jurisdiction of
10 this state over the adoption, including without limitation the full name,
11 age, place, and duration of residence of the petitioner.

12 (B) A statement of sufficient facts to establish the
13 jurisdiction of this state over the adoption shall also include a residential
14 history of the biological mother of the minor child or baby who is not yet
15 born to be adopted for the four (4) months immediately preceding the petition
16 for adoption if the individual to be adopted is a child who is less than six
17 (6) months of age;

18 (5) The marital status of the petitioner, including the date and
19 place of marriage, if married;

20 (6) That the petitioner has facilities and resources, including
21 those available under a subsidy agreement, suitable to provide for the
22 nurture and care of the minor to be adopted and that it is the desire of the
23 petitioner to establish the relationship of parent and child with the
24 individual to be adopted;

25 (7) A description and estimate of value of any property of the
26 individual to be adopted;

27 (8) The name of any person whose consent to the adoption is
28 required, but who has not consented, and facts or circumstances which excuse
29 the lack of his or her normally required consent, to the adoption; and

30 (9) In cases involving a child born to a mother unmarried at the
31 time of the child's birth, a statement that an inquiry has been made to the
32 Putative Father Registry and either:

33 (A) No information has been filed in regard to the child
34 born to this mother; or

35 (B) Information is contained in the registry.

36 (b) A certified copy of the birth certificate or verification of birth

1 record of the individual to be adopted, if available, and the required
2 consents and relinquishments shall be filed with the clerk.

3 (c)(1) A petitioner shall file a plan of adoption with the court
4 concurrently with the petition for adoption if the:

5 (A) Services of a licensed child placement agency are not
6 used for the adoption; and

7 (B) Department of Human Services does not have custody of
8 the child to be adopted.

9 (2) A plan of adoption shall include:

10 (A) Background information on the interaction between the
11 parties to the adoption that includes without limitation the:

12 (i) Date the parties to the adoption met;

13 (ii) Date the parties to the adoption initiated
14 discussions about the adoption;

15 (iii) Date the petitioner first compensated the
16 biological parent in accordance with § 9-9-206(c);

17 (iv) Date the plan of adoption was finalized; and

18 (v) Mailing address of the parties to the adoption;

19 (B) A plan for the accounting and payment of expenses that
20 are authorized under § 9-9-206(c);

21 (C) A contingency plan for the repayment of funds expended
22 for the benefit of the biological parent in accordance with § 9-9-206(c) if
23 the biological parent revokes his or her consent to the adoption;

24 (D) A plan for communication between the adoptive parent
25 and biological parent that includes providing a certified interpreter, as
26 appropriate, for the biological parent;

27 (E) A plan for the payment of attorney's fees and court
28 costs, including court costs authorized under § 9-9-225;

29 (F) If the individual to be adopted is a baby who is not
30 yet born, a plan for the:

31 (i) Provision of prenatal care for the biological
32 mother of the baby who is not yet born that includes the name, address, and
33 telephone number of the healthcare professional who will provide the
34 biological mother with prenatal care;

35 (ii) Birth of the baby who is not yet born that
36 includes the name, address, and telephone number of the hospital or birthing

1 center that will be used for the birth of the baby who is not yet born;

2 (iii) Transfer of the baby who is not yet to the
3 adoptive parent after the birth of the baby who is not yet born; and

4 (iv) Provision of services, compensation, or any
5 other thing of value to the biological parent after the birth or adoption of
6 the baby who is not yet born;

7 (G) A plan for the provision of services, compensation, or
8 any other thing of value to the biological parent after the adoption of the
9 individual to be adopted; and

10 (H) A statement concerning any other agreement between the
11 parties to the adoption.

12 (3) A plan of adoption may be amended at any time by:

13 (A) The court with notice to the parties to the adoption;
14 or

15 (B)(i) A petitioner with the consent of the biological
16 parent.

17 (ii) The petitioner shall file the amended plan of
18 adoption with the court.

19 (d) A court may:

20 (1) Conduct hearings concerning the plan of adoption if deemed
21 necessary by the court;

22 (2) Issue orders that are necessary to ensure an ethical
23 adoption process;

24 (3) Issue orders that are necessary to ensure the lawful
25 provision of services, compensation, or any other thing of value from the
26 adoptive parent to the biological parent;

27 (4) Issue orders to ensure that the best interest of the child
28 to be adopted is maintained during the adoption process; and

29 (5) Use contempt powers to enforce an order issued under this
30 section.

31 (e) Upon a motion of a party to the adoption, the court may waive
32 compliance with subsection (c) of this section if the petitioner is the
33 stepparent or a relative within the third degree of consanguinity of the
34 individual to be adopted.

35 (f) If a party to the adoption relocates during the pendency of the
36 petition for adoption, the party shall update his or her mailing address with

1 the court and provide notice of the change of address to the other party.

2
3 SECTION 10. Arkansas Code § 9-9-211(a), concerning accounting reports
4 that a petitioner must file with court before a petition for adoption is
5 heard, is amended to read as follows:

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

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

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

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

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

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

22 (2) If the services of a licensed child placement agency are not
23 used for an adoption that is not an adoption by a stepparent or by a relative
24 within the third degree of consanguinity, the biological parent shall file a
25 full accounting report of compensation or any other thing of value that was
26 provided or will be provided to the biological parent by or on behalf of the
27 petitioner in connection with the adoption.

28 (3) An accounting report under subdivision (a)(2) of this
29 section shall be itemized and state the:

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

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

35 (C) Specific exemption under § 9-9-206(c) that authorizes
36 the compensation or any other thing of value provided or intended to be

1 provided to the biological parent.

2 (4) A court may require the parties to provide additional
3 accounting reports that comply with the provisions of this section.

4
5 SECTION 11. Arkansas Code Title 9, Chapter 9, Subchapter 2, is amended
6 to add an additional section to read as follows:

7 9-9-225. Services for the biological parent of a child to be adopted.

8 (a)(1) Except in cases of a private adoption by a stepparent or a
9 relative within the third degree of consanguinity, if the services of a
10 licensed child placement agency are not used for the private adoption, the
11 petitioner shall file a petition for adoption immediately after the
12 petitioner is matched with a child for adoption.

13 (2) A petition for adoption filed in accordance with subdivision
14 (a)(1) of this section shall state:

15 (A) That a licensed child placement agency will not be
16 used for the private adoption; and

17 (B) Whether the biological parent of the child to be
18 adopted is represented by counsel.

19 (b) An attorney who represents a biological parent in a private
20 adoption shall:

21 (1) Not practice in the same office as counsel for the
22 petitioner;

23 (2) Not receive a referral fee from counsel for the petitioner;

24 (3) Not contract with counsel for the petitioner in connection
25 with the private adoption or another petition for adoption; and

26 (4) Exercise due diligence in avoiding a conflict of interest
27 and the appearance of impropriety.

28 (c)(1) Upon receiving a petition for adoption that is filed in
29 accordance with subdivision (a)(1) of this section, if the biological parent
30 of the child to be adopted is unrepresented by counsel, the court shall order
31 the petitioner to pay two thousand dollars (\$2,000) into the registry of the
32 court for the appointment of counsel for the biological parent.

33 (2) The petitioner shall pay the deposit into the registry of
34 the court within fourteen (14) days from the date the court enters the order.

35 (d)(1) Upon receiving notice that the petitioner has paid the deposit
36 into the registry of the court, the court shall appoint an attorney who is

1 qualified under Supreme Court Administrative Order No. 15 to represent the
2 biological parent.

3 (2) An attorney who is appointed to represent a biological
4 parent under this section shall:

5 (A) Perform the duties enumerated in Supreme Court
6 Administrative Order No. 15, § 3, to the extent applicable;

7 (B) Protect the right of the biological parent to consent
8 to an adoption that is free from duress, coercion, undue influence,
9 intimidation, threat, or physical force;

10 (C) Retain the services of a counselor, social worker, or
11 another community support organization that does not compromise the
12 professional independence of the attorney to provide, educate, and counsel
13 the biological parent on services available to the biological parent through
14 the Department of Human Services or another organization if the biological
15 parent revokes his or her consent to the adoption;

16 (D) Protect the biological parent from receiving
17 compensation or any other thing of value in connection with the adoption that
18 is prohibited by law;

19 (E) Ensure that the biological parent is not a victim
20 under the Human Trafficking Act of 2013, § 5-18-101 et seq.;

21 (F) Protect the biological parent from violating any state
22 or federal law, regulation, or treaty that relates to the petition for
23 adoption;

24 (G) Aid the biological parent in the preparation of an
25 accounting report required under § 9-9-211(a)(2);

26 (H) Ensure that this state has jurisdiction to hear the
27 adoption under § 9-9-205 by obtaining a reasonably investigated residential
28 history of the biological mother of the child to be adopted, and reporting
29 the residential history to the court; and

30 (I) Otherwise represent, advocate for, and advise the
31 biological parent in a manner that is consistent with the best practice of
32 law.

33 (3)(A) An attorney who is appointed to represent a biological
34 parent under this section may petition the court for payment of reasonable
35 costs and fees associated with his or her duties at any time during the
36 pendency of the petition for adoption.

1 (B) Any payment of reasonable costs and fees granted by
2 the court shall be paid from the funds deposited into the registry of the
3 court by the petitioner under subsection (c) of this section.

4 (C) The court may order the parties to pay the appointed
5 attorney additional sums as may be equitable under the circumstances.

6 (e) A court may waive the appointment of counsel for a biological
7 parent as provided under this section if:

8 (1) The biological parent executes a consent to the adoption
9 before or at the same time that the petition to adopt is filed;

10 (2) The ten-day period in which the biological parent may
11 withdraw his or her consent to the adoption has passed; and

12 (3) The petitioner establishes to the satisfaction of the court
13 that:

14 (A) An active familial relationship existed between at
15 least one (1) biological parent and one (1) adoptive parent for at least
16 three (3) consecutive years immediately preceding the date on which the
17 petition to adopt was filed; or

18 (B) An active familial relationship existed in which both
19 of the adoptive parents stood in loco parentis over the child to be adopted
20 for more than one (1) year.

21
22 SECTION 12. EMERGENCY CLAUSE. It is found and determined by the
23 General Assembly of the State of Arkansas that there are attorneys and
24 doctors acting on behalf of both adoptive parents and biological parents who
25 are not licensed as a child welfare agency or a child placement agency; that
26 a conflict of interest or the appearance of a conflict of interest exists
27 when attorneys and doctors act on behalf of both an adoptive parent and a
28 biological parent; that a number of biological parents terminate their
29 parental rights without understanding the permanency of their decision or
30 without being aware or advised of other options that are available to them;
31 that in some areas of Arkansas, more than one-half (1/2) of all adoptions
32 heard by a court are adoptions in which the child and the petitioner do not
33 share a familial relationship; that courts in Arkansas are overwhelmed by
34 adoptions in which the jurisdiction of this state is questionable; and that
35 this act is immediately necessary because it will facilitate avoiding
36 potential conflicts of interest that may arise in the professional practice

1 of attorneys and doctors, prevent adoptions that violate the jurisdictional
2 requirements of this state, and deter biological parents from agreeing to a
3 termination of parental rights without being aware of or advised as to the
4 permanency of their decision or of the alternative options available to them.
5 Therefore, an emergency is declared to exist, and this act being immediately
6 necessary for the preservation of the public peace, health, and safety shall
7 become effective on:

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

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

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

14
15 */s/Penzo*
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