

Stricken language would be deleted from, and underlined language would be added to present law.

1 State of Arkansas
2 92nd General Assembly
3 Regular Session, 2019
4

A BILL

5 By:
6 By:
7

For An Act To Be Entitled

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

Subtitle

13 TO AMEND THE LAW CONCERNING ADOPTIONS
14

15
16
17
18
19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
20

21 SECTION 1. Arkansas Code Title 9, Chapter 9, Section 101(b)(1), is amended to read as
22 follows:
23

24 (b)(1) A hospital or birthing center release form under this section must:
25

- 26 (A) Be executed in writing;
27 (B) Be witnessed by two (2) credible adults;
28 (C) Authorize the petitioner for adoption, the guardian of the minor child, the
29 licensed child placement agency, the division, or the attorney acting on behalf of any of the
30 foregoing entities to obtain any medical treatment, including circumcision of a male child,

Stricken language would be deleted from, and underlined language would be added to present law.

1 reasonably necessary for the care of the minor and to authorize any physician or medical services
2 provider to furnish additional services deemed reasonable and necessary; ~~and~~

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

4 (E) When a licensed child placement agency is not being utilized in the
5 adoption, be approved by either the hospital social worker or another social worker independent
6 of the adoptive parents after having counseled the biological parents on the permanency of
7 adoption, services available to low income parents, prohibitions against receiving unlawful pay for
8 placing a child up for adoption, and has obtained from the biological parents reasonable assurances
9 that giving up the child for adoption is their informed decision made free from any duress,
10 coercion, undue influence, intimidation, or force.

11 a. Any hospital or social worker that after due diligence makes a decision
12 under this subparagraph shall be granted absolute immunity from suit
13 and liability by any Arkansas Court regarding said decision, whether in
14 approval or disapproval of the release.

15
16 SECTION 2. Arkansas Code Title 9, Chapter 9, Section 205(a)(1) is amended to read as
17 follows:

18
19 (1) The state shall possess jurisdiction over the adoption of a minor if the person seeking
20 to adopt the child, or the child, is a resident of this state. No court shall approve an adoption unless
21 the petitioner has adequately plead facts concerning the residency requirements for jurisdiction to
22 vest in this state and the court finds by a preponderance of the evidence that the state has personal
23 jurisdiction over the petitioners and the person to be adopted.

24
25 SECTION 3. Arkansas Code Title 9, Chapter 9, Section 206(c) is amended to read as
26 follows:

27
28 Under no circumstances may a parent or guardian of a minor receive a fee, compensation,
29 or any other thing of value as a consideration for the relinquishment of a minor for adoption.
30 However, incidental costs for prenatal, delivery, and postnatal care may be assessed, including
31 reasonable housing costs, food, clothing, ~~general maintenance~~, and medical expenses, if they are

Stricken language would be deleted from, and underlined language would be added to present law.

1 reimbursements for expenses incurred or fees for services rendered that are reasonably related to
2 the adoption. Consistent with the provisions of Arkansas Code 9-9-225, the costs prescribed
3 therein may be assessed accordingly. Any parent or guardian who unlawfully accepts
4 compensation or any other thing of value as a consideration for the relinquishment of a minor shall
5 be guilty of a Class C felony. Any person who facilitates the unlawful compensation or any other
6 thing of value as a consideration for the relinquishment of a child shall be guilty of a Class A
7 felony.

8

9 SECTION 4. Arkansas Code Title 9, Chapter 9, Section 208 is amended to add subsection
10 (d) as follows:

11

12 (d) Except when given by a court, any consent must contain sufficient facts of the
13 residential history of the child to be adopted or the child's biological mother to establish
14 jurisdiction in this state.

15

16 SECTION 5. Arkansas Code Title 9, Chapter 9, Section 209(b)(3) is amended to read as
17 follows:

18

19 (3) The consent shall state that the person may waive the ten-day period for the withdrawal
20 of consent for an adoption and elect to limit the maximum time for the withdrawal of consent for
21 an adoption to five (5) days, except when the services of a licensed child placement agency are not
22 being utilized in any adoption other than an adoption within the second degree of consanguinity
23 or a step-parent adoption.

24

25 SECTION 6. Arkansas Code Title 9, Section 210(a)(4) is amended to read as follows:

26

27 (4) Allegations of fact establishing jurisdiction in this State to include the full name, age,
28 place, and duration of residence of the petitioner, and the full name, place, and residential history
29 of the biological mother for the past four (4) months if the child to be adopted is under six (6)
30 months of age.

31

Stricken language would be deleted from, and underlined language would be added to present law.

1 SECTION 7. Arkansas Code Title 9, Chapter 9, Section 211(a) is amended to read as
2 follows:

3
4 (a) Except as specified in subsection (b) of this section, the petitioner, in any proceeding
5 for the adoption of a minor, shall file, before the petition is heard, a full accounting report ~~in a~~
6 ~~manner acceptable to the court~~ of all disbursements of anything of value made or agreed to be
7 made by or on behalf of the petitioner in connection with the adoption. If the services of a licensed
8 child placement agency are not being utilized in any adoption other than one within the second
9 degree of consanguinity or a step-parent adoption, the biological parents shall file a similar
10 accounting report of all payments of anything of value made or agreed to be made by or on behalf
11 of the petitioner in connection with the adoption. Accounting reports shall be itemized and state
12 the date each disbursement of anything of value was made, a specific purpose for which said
13 disbursements were made, and the specific exemption provided in Arkansas Code 9-9-206(c)
14 under which said disbursements were made. The ~~petitioner parties~~ shall file a sworn affidavit
15 alleging the truthfulness of said accounting report showing any expenses incurred in connection
16 with:

- 17 (1) The birth of the minor;
- 18 (2) Placement of the minor with petitioner;
- 19 (3) Medical or hospital care received by the mother or by the minor during the
20 mother's prenatal care and confinement;
- 21 (4) Services relating to the adoption or to the placement of the minor for adoption
22 which were received by or on behalf of the petitioner, either natural parent of the minor, or any
23 other person; and
- 24 (5) Fees charged by all attorneys involved in the adoption, including those fees
25 charged by out-of-state attorneys.
- 26

27 SECTION 8. Arkansas Code Title 9, Chapter 9, Subchapter 2 is amended to add an
28 additional section to read as follows:

29
30 9-9-225. Services for Biological Parents.

31

Stricken language would be deleted from, and underlined language would be added to present law.

1 (a) When the services of a licensed child placement agency are not being utilized during
2 the course of a private adoption, except in the cases of an adoption within the second degree of
3 consanguinity or a step-parent adoption, the petitioner shall file the petition set forth in Arkansas
4 Code 9-9-210 as soon as the petitioner has been matched to a child for adoption, indicating therein
5 that no licensed child placement agency will be used in this adoption and whether the biological
6 parents are represented by counsel. If the biological parents are represented by counsel, said
7 counsel must not practice in the same office as counsel for the petitioner, shall not receive a referral
8 fee from counsel for the petitioner, shall not have contracted in any way with counsel for the
9 petitioner regarding the substance of this or any other petition for adoption, and shall have
10 otherwise taken steps to avoid the appearance of a conflict of interests or other impropriety.

11 (b) Upon receipt of a petition pursuant to subsection (a), the court shall order the petitioners
12 to pay into the registry of the court two thousand dollars (\$2,000.00) for the appointment of counsel
13 for the biological parents if the biological parents are unrepresented by counsel. The petitioner
14 shall have fourteen (14) calendar days from the date of said order to deposit said funds in the
15 registry of the court. Upon receiving notice that said funds have been deposited in the registry of
16 the court, the court shall appoint an attorney who has been qualified pursuant to Administrative
17 Order Number 15 of the Arkansas Supreme Court to represent the biological parents.

18 (c) An attorney appointed to represent the biological parents pursuant to subsection (b)
19 shall:

20 (1) perform the duties enumerated in Section 3 of Administrative Order Number 15
21 of the Arkansas Supreme Court to the extent that they are applicable;

22 (2) protect the right of the biological parents to consent to an adoption free from
23 duress, coercion, undue influence, intimidation, threats, or force;

24 (3) retain the services of a counselor, social worker, or community support
25 organization, including one for which the attorney works as an organization designed to
26 support biological parents as long as the professional independence of the attorney is not
27 compromised, to educate and counsel the biological parents on services available to them
28 through the Department of Human Services and other organizations in the event that the
29 biological parents desire to keep their child;

30 (4) protect the biological parents from any payment to them in violation of Arkansas
31 Code 9-9-206(c);

Stricken language would be deleted from, and underlined language would be added to present law.

1 (5) ensure that the biological parents are not victims under the Human Trafficking
2 Act of 2013;

3 (6) protect the biological parents from violation of any law, regulation, or treaty of
4 the United States or the State of Arkansas related to the petition for adoption;

5 (7) aid the biological parents in the preparation of an accounting report pursuant to
6 Arkansas Code 9-9-211;

7 (8) ensure that this state has jurisdiction to hear an adoption pursuant to 9-9-205 by
8 obtaining and reporting to the court in an appropriate manner a reasonably investigated
9 residential history of the child's biological mother; and

10 (9) otherwise represent, advocate for, and advise the biological parents consistent
11 with the best traditions of the practice of law.

12 (d) At any time during the pendency of the petition for adoption, the attorney appointed
13 pursuant to this section may petition the court for payment of reasonable costs and fees associated
14 with their duties required herein to be paid from the sums paid into the registry of the court, and
15 the court may order the parties to pay any additional sums to the appointed attorney as may be
16 equitable under the circumstances.

17
18 SECTION 9. Arkansas Code Title 5, subtitle 3, chapter 25, subchapter 2 is amended to add
19 an additional section to read as follows:

20
21 5-26-204 Unlawful Solicitation for Relinquishment of Rights.

22
23 (a) A person commits the offense of unlawful solicitation for relinquishment of rights
24 in the second degree if the person offers a pregnant woman, her spouse, her partner, or her putative
25 father anything of value in exchange for allowing the person to adopt the unborn child of the
26 pregnant woman, her spouse, her partner, or her putative father.

27 (1) A person found guilty of unlawful solicitation for relinquishment of rights in
28 the second degree shall be guilty of a class A misdemeanor unless the person is also found to have
29 utilized duress, coercion, undue influence, intimidation, threats, fraud, or force to influence the
30 pregnant woman, her spouse, her partner, or her putative father, in which case a person found
31 guilty under this subsection shall be guilty of a class D felony.

Stricken language would be deleted from, and underlined language would be added to present law.

1 **(b) A person commits the offense of unlawful solicitation for relinquishment of rights**
2 **in the first degree if the person offers a pregnant woman, her spouse, her partner, or her putative**
3 **father anything of value in exchange for allowing the person or another person to place up for**
4 **adoption the unborn child of the pregnant woman, her spouse, her partner, or her putative father.**

5 **(1) A person found guilty of unlawful solicitation for relinquishment of rights in**
6 **the first degree shall be guilty of a class C felony unless the person is also found to have utilized**
7 **duress, coercion, undue influence, intimidation, threats, fraud, or force to influence the pregnant**
8 **woman, her spouse, her partner, or her putative father, in which case a person found guilty under**
9 **this subsection shall be guilty of a class A felony.**

10
11 **SECTION 10: EMERGENCY CLAUSE. It is found and determined by the General**
12 **Assembly of the State of Arkansas that there are attorneys and doctors who are not licensed child**
13 **welfare or placement agencies acting on behalf of both biological and adoptive parents; that by so**
14 **doing the appearance of a conflict of interests exists; that in many cases an actual conflict of**
15 **interest exists; that some biological parents are voluntarily terminating their parental rights without**
16 **understanding the permanency of that decision or other options available to them; and that this act**
17 **is immediately necessary to protect the citizens of the State of Arkansas from these conflicting**
18 **interests. Therefore, an emergency is declared to exist, and this act being immediately necessary**
19 **for the preservation of the public peace, health, and safety shall become effective on:**

- 20 **(1) The date of its approval by the Governor;**
21 **(2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period**
22 **of time during which the Governor may veto the bill; or**
23 **(3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house**
24 **overrides the veto.**

25
26
27
28
29
30
31