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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

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19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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21 SECTION 1. This act shall be known as the Arkansas Adoption Reform Act of 2019.
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23 SECTION 2. Arkansas Code Title 9, Chapter 9, Section 101(b)(1), is amended to read as
24 follows:
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26 (b)(1) A hospital or birthing center release form under this section must:
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- 28 (A) Be executed in writing;
29 (B) Be witnessed by two (2) credible adults;
30 (C) Authorize the petitioner for adoption, the guardian of the minor child, the
31 licensed child placement agency, the division, or the attorney acting on behalf of any of the

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1 foregoing entities to obtain any medical treatment, including circumcision of a male child,
2 reasonably necessary for the care of the minor and to authorize any physician or medical services
3 provider to furnish additional services deemed reasonable and necessary; ~~and~~

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

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

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

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17 SECTION 3. Arkansas Code Title 9, Chapter 9, Section 205(a)(1) is amended to read as
18 follows:

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

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26 SECTION 4. Arkansas Code Title 9, Chapter 9, Section 206(c) is amended to read as
27 follows:

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29 Under no circumstances may a parent or guardian of a minor or unborn child receive a fee,
30 compensation, or any other thing of value as a consideration for the relinquishment of a minor for
31 adoption. However, incidental costs for prenatal, delivery, and postnatal care may be assessed,

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1 including reasonable housing costs, food, clothing, ~~general maintenance~~, and medical expenses, if
2 they are reimbursements for expenses incurred or fees for services rendered that are reasonably
3 related to the adoption, capped at ten-thousand dollars (\$10,000.00). Upon the petition of any
4 party, the Court may increase the amounts payable as expenses reasonably related to the adoption
5 in excess of \$10,000.00 upon a finding by a preponderance of the evidence that the health of the
6 biological parent or the unborn child is in jeopardy. Costs consistent with the provisions of
7 Arkansas Code 9-9-225 may be assessed accordingly outside of the cap on biological parent
8 expenses. Any parent or guardian who unlawfully accepts compensation or any other thing of
9 value as a consideration for the relinquishment of a minor shall be guilty of a Class C felony. Any
10 person who facilitates the unlawful compensation or any other thing of value as a consideration
11 for the relinquishment of a child shall be guilty of a Class A felony.
12

13 SECTION 5. Arkansas Code Title 9, Chapter 9, Section 208 is amended to add subsection
14 (d) as follows:

15
16 (d) Except when given by a court, any consent must contain sufficient facts of the
17 residential history of the child to be adopted or the child's biological mother to establish
18 jurisdiction in this state.
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20 SECTION 6. Arkansas Code Title 9, Chapter 9, Section 209(b)(3) is amended to read as
21 follows:

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23 (3) The consent shall state that the person may waive the ten-day period for the withdrawal
24 of consent for an adoption and elect to limit the maximum time for the withdrawal of consent for
25 an adoption to five (5) days, except when the services of a licensed child placement agency are not
26 being utilized in any adoption other than an adoption within the second degree of consanguinity
27 or a step-parent adoption.
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29 SECTION 7. Arkansas Code Title 9, Chapter 9, Section 210 is amended to read as follows:

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

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1 (1) The date and place of birth of the individual to be adopted, if known, or if the
2 individual to be adopted is not yet born, a statement to that effect and the date an adoption plan
3 was made;

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

5 (3) The date the petitioner acquired custody of the minor and of placement of the
6 minor and the name of the person placing the minor, and a statement as to how petitioner acquired
7 custody of the minor unless the person to be adopted is unborn;

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

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

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

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

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

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

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

27 (B) Information is contained in the registry.

28 (b) A certified copy of the birth certificate or verification of birth record of the individual
29 to be adopted, if available, and the required consents and relinquishments shall be filed with the
30 clerk.

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1 (c) If the services of a Licensed Child Placement Agency are not being utilized and the
2 Arkansas Department of Human Services does not have jurisdiction, the petitioner shall file a plan
3 of adoption with the Court concurrently with the petition for adoption, which states:

4 (1) The background of the parties' interaction, including the date the parties met,
5 the date the parties first began discussing the possibility of an adoption, the date the petitioner first
6 paid any sum of money to the biological parent(s) consistent with Ark. Code Ann. § 9-9-206(c),
7 the date the plan of adoption was finalized, and the mailing address of both parties;

8 (2) A plan for the payment and accounting of expenses to be paid consistent with
9 Ark. Code Ann. § 9-9-206(c);

10 (3) A plan for the contingency that the biological parent(s) should revoke their
11 consent to the adoption, including the repayment of funds expended on behalf of the biological
12 parents consistent with Ark. Code Ann. § 9-9-206(c);

13 (4) A plan for communication between adoptive and biological parents, including
14 the provision of a certified translator in the event that the parties speak different languages;

15 (5) A plan for the payment of attorney fees and court costs, including those
16 prescribed by Ark. Code Ann. § 9-9-225;

17 (6) A plan for the provision of prenatal care if the person to be adopted has not yet
18 been born, including the name, address, and telephone number of the healthcare professional to
19 provide such care;

20 (7) A plan for the birth of the person to be adopted if the person to be adopted has
21 not yet been born, including the name, address, and telephone number of the hospital or birthing
22 center at which the parties intend the child to be born;

23 (8) A plan for the transfer of the person to be adopted to the petitioners after birth
24 if the person to be adopted has not yet been born;

25 (9) A plan for the provision of anything of value or services to the biological
26 parents after birth if the person to be adopted has not yet been born, or after adoption of the person
27 to be adopted; and

28 (10) A statement of any other agreement that has been made between the parties.

29 (d) The parties may amend their plan of adoption at any time and file the same with the
30 Court. If any party relocates their mailing address during the pendency of an adoption petition,
31 said party shall update their address with the Court with notice to the other party.

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1 (e) The Court may amend the plan of adoption at any time with notice to the parties,
2 conduct hearings at such times and on such issues as the Court deems necessary and issue such
3 other orders as are necessary to ensure an ethical adoption process, the lawful transfer of monies
4 and other things or services of value from adoptive to biological parents, and the best interests of
5 the person to be adopted. The Court may enforce the plan, as amended, and its orders by its inherent
6 contempt power. Upon motion of any party, the Court may dispense with the filing of a plan of
7 adoption if the person to be adopted is within the second degree of consanguinity of the petitioner
8 or the petitioner is the step-parent of the person to be adopted.

9
10 SECTION 8. Arkansas Code Title 9, Chapter 9, Section 211(a) is amended to read as
11 follows:

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

- 27 (1) The birth of the minor;
28 (2) Placement of the minor with petitioner;
29 (3) Medical or hospital care received by the mother or by the minor during the
30 mother's prenatal care and confinement;

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

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

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

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10 9-9-225. Services for Biological Parents.

11
12 (a) When the services of a licensed child placement agency are not being utilized during
13 the course of a private adoption, except in the cases of an adoption within the second degree of
14 consanguinity or a step-parent adoption, the petitioner shall file the petition set forth in Arkansas
15 Code 9-9-210 as soon as the petitioner has been matched to a child for adoption, indicating therein
16 that no licensed child placement agency will be used in this adoption and whether the biological
17 parents are represented by counsel. If the biological parents are represented by counsel, said
18 counsel must not practice in the same office as counsel for the petitioner, shall not receive a referral
19 fee from counsel for the petitioner, shall not have contracted in any way with counsel for the
20 petitioner regarding the substance of this or any other petition for adoption, and shall have
21 otherwise taken steps to avoid the appearance of a conflict of interests or other impropriety.

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

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

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

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

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

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

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

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

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

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

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

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

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30 SECTION 10. Arkansas Code Title 5, subtitle 3, chapter 25, subchapter 2 is amended to
31 add an additional section to read as follows:

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

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

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

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

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

SECTION 11: Arkansas Code Title 5, chapter 18, subchapter 103(a) 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; ~~or~~

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

3 (5) Recruits, harbors, transports, obtains, entices, solicits, isolates, provides, or
4 maintains a pregnant person knowing that the person will be forced to place the child up for
5 adoption; or

6 (6) Benefits financially or benefits by receiving anything of value from
7 participation in a venture under subdivision (a)(5) of this section.

8
9 SECTION 12: EMERGENCY CLAUSE. It is found and determined by the General
10 Assembly of the State of Arkansas that there are attorneys and doctors who are not licensed child
11 welfare or placement agencies acting on behalf of both biological and adoptive parents; that by so
12 doing the appearance of a conflict of interests exists; that in many cases an actual conflict of
13 interest exists; that some biological parents are voluntarily terminating their parental rights without
14 understanding the permanency of that decision or other options available to them; that in some
15 areas of the state more than half of all adoptions heard by courts are of children in no way related
16 to the petitioners; that Arkansas courts are being bogged down with adoptions of questionable
17 jurisdiction; and that this act is immediately necessary to protect the citizens of the State of
18 Arkansas from these conflicting interests. Therefore, an emergency is declared to exist, and this
19 act being immediately necessary for the preservation of the public peace, health, and safety shall
20 become effective on:

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

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

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

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