

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

State of Arkansas
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As Engrossed: H2/21/19
A Bill

HOUSE BILL 1488

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

For An Act To Be Entitled

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

Subtitle

TO AMEND THE LAW CONCERNING THE ADOPTION
PROCESS WHEN A LICENSED CHILD PLACEMENT
AGENCY IS NOT USED; AND TO DECLARE AN
EMERGENCY.

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

SECTION 1. Arkansas Code § 5-18-103(a), concerning the elements for
the offense of trafficking of persons, 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;

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



(5) ~~Includes~~ include an activity prohibited under subdivisions (a)(1)-(4) of this section;

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

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

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

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

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

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

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

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

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

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

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

(B) Class C felony if otherwise committed.

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

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

- (A) Biological mother of the baby who is not yet born;
- (B) Biological or putative father of the baby who is not yet born;
- (C) Spouse, partner, or other relative of the biological mother of the baby who is not yet born; or
- (D) Spouse, partner, or other relative of the biological or putative father of the baby who is not yet born.

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

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

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

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

- (A) Be executed in writing;
- (B) Be witnessed by two (2) credible adults;
- (C) Authorize the petitioner for adoption, the guardian of the minor child, the licensed child placement agency, the division, or the attorney acting on the behalf of any of the foregoing entities to obtain any medical treatment, including circumcision of a male child, reasonably necessary for the care of the minor and to authorize any physician or medical services provider to furnish additional services deemed reasonable and necessary; ~~and~~
- (D) Be verified before a person authorized to take oaths; and
- (E)(i) Be approved by either a hospital social worker or a social worker who is independent of the adoptive parent when a licensed child

placement agency is not used for the adoption.

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

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

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

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

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

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

(11) "Private adoption" means an adoption:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9-9-210. Petition for adoption.

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

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

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

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

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

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

(3) The date the petitioner:

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

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

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

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

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

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

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

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

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

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

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

(B) Information is contained in the registry.

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

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

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

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

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

(2) A plan of adoption shall include:

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

(i) Date the parties to the adoption met;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) A court may:

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

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

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

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

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

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

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

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

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

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

- ~~(1)~~(A) The birth of the minor;
- ~~(2)~~(B) Placement of the minor with petitioner;
- ~~(3)~~(C) Medical or hospital care received by the mother or by the minor during the mother's prenatal care and confinement;
- ~~(4)~~(D) Services relating to the adoption or to the placement of the minor for adoption which were received by or on behalf of the petitioner, either natural parent of the minor, or any other person; and
- ~~(5)~~(E) Fees charged by all attorneys involved in the adoption, including those fees charged by out-of-state attorneys.

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

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

- (A) Date on which compensation or any other thing of value is intended to be provided or was provided to the biological parent;
- (B) Specific purpose for which compensation or any other thing of value is intended to be provided or was provided to the biological parent; and
- (C) Specific exemption under § 9-9-206(c) that authorizes the compensation or any other thing of value provided or intended to be

provided to the biological parent.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

/s/Penzo