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KEN BENNETT
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CHAPTER 109

SENATE BILL 1016

AN ACT

AMENDING SECTIONS 8-106 AND 8-109, ARIZONA REVISED STATUTES; RELATING TO ADOPTION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 8-106, Arizona Revised Statutes, is amended to read:

8-106. Consent to adoption; waiver; consent to the release of information; notification to potential fathers

A. The court shall not grant an adoption of a child unless consent to adopt has been obtained and filed with the court from the following:

1. The child's birth or adoptive mother, if living.

2. The child's father if any of the following is true:

(a) The father was married to the child's mother at the time of conception or at any time between conception and the child's birth unless his paternity is excluded or another man's paternity is established pursuant to title 25, chapter 6, article 1.

(b) The father has adopted the child.

(c) The father's paternity is established under title 25, chapter 6, article 1 or section 36-334.

3. A child who is twelve years of age or older and who gives consent in open court.

4. Any guardian of the person of the child who is appointed by a court and who is given authority by it to consent to the child's adoption.

5. An agency ~~or the division~~ that has been given consent to place the child for adoption by the parent or parents whose consent would be necessary under paragraph 1 or 2 of this subsection, or that has been given authority in other legal proceedings to place the child for adoption.

6. The guardian of any adult parent for whom a guardian is currently appointed.

7. THE DIVISION IF IT HAS BEEN GIVEN CONSENT TO PLACE THE CHILD FOR ADOPTION BY THE PARENT OR PARENTS WHOSE CONSENT WOULD OTHERWISE BE NECESSARY PURSUANT TO PARAGRAPH 1 OR 2 OF THIS SUBSECTION OR IF IT HAS BEEN GIVEN AUTHORITY IN OTHER LEGAL PROCEEDINGS TO PLACE THE CHILD FOR ADOPTION. THE COURT MAY WAIVE THE REQUIREMENT FOR CONSENT IF THE COURT DETERMINES, AFTER A HEARING ON ACTUAL NOTICE TO ALL PERSONS WHO MAY BE ADVERSELY AFFECTED, THAT WAIVING THE REQUIREMENT IS CLEARLY IN THE CHILD'S BEST INTEREST.

B. It is not necessary for a person to obtain consent to adopt from the following:

1. An adult parent for whom a guardian is currently appointed.

2. A parent whose parental rights have been terminated by court order.

3. A parent who has previously consented to an agency's or the division's placement of the child for adoption.

4. A person whose consent is not required under subsection A of this section.

C. The minority of the child or parent does not affect the child's or parent's competency to give consent in the instances set forth in this section.

D. A consent to adopt is irrevocable unless obtained by fraud, duress or undue influence.

E. An agency, the division or an attorney participating or assisting in a direct placement adoption pursuant to section 8-130 shall obtain from a birth parent, at the time consent for adoption is obtained, a notarized statement granting permission or withholding permission for the child being adopted, when the child reaches eighteen years of age, to obtain identifying and nonidentifying information about the child and the consenting birth parent. The agency, division or attorney shall inform the birth parent at the time of obtaining the notarized statement that the decision to grant permission or withhold permission may be changed at any time by filing a notarized statement with the court. The most recent notarized statement shall operate as consent for the court to grant or withhold identifying and nonidentifying information.

F. A notarized affidavit signed by the mother listing all potential fathers shall be filed with the court. The affidavit shall attest that all of the information contained in the affidavit is complete and accurate.

G. Notice shall be served on each potential father as provided for the service of process in civil actions. The notice shall be substantially in the form prescribed in subsection I of this section and shall inform the potential father of all of the following:

1. That adoption is planned.

2. The potential father's right to consent or withhold consent to the adoption.

3. The potential father's responsibility to initiate paternity proceedings under title 25, chapter 6, article 1, and to serve the mother within thirty days of completion of service.

4. The potential father's responsibility to proceed to judgment in the paternity action.

5. The potential father's right to seek custody.

6. The potential father's responsibility to begin to provide financial support for the child if paternity is established.

7. That the potential father's failure to file a paternity action pursuant to title 25, chapter 6, article 1, and to serve the mother and proceed to judgment in the paternity action as prescribed by this section, bars the potential father from bringing or maintaining any action to assert any interest in the child.

H. A mother may apply to the court for permission to omit her address from the affidavit and from the notice to potential fathers. The court shall grant this request if the mother shows to the court's satisfaction this is necessary to protect her safety.

I. The notice required pursuant to subsection G of this section shall be in substantially the following form:

1 Notice:
2 Notice is given to _____ that you have been identified
3 by _____, the natural mother, residing at
4 _____, as a potential father of a child to be
5 born or, born on _____, in _____.
6 You are informed of the following:
7 1. _____, the natural mother, plans to place the
8 child for adoption.
9 2. Under sections 8-106 and 8-107, Arizona Revised
10 Statutes, you have the right to consent or withhold consent to
11 the adoption.
12 3. Your written consent to the adoption is irrevocable
13 once you give it.
14 4. If you withhold consent to the adoption, you must
15 initiate paternity proceedings under title 25, chapter 6,
16 article 1, Arizona Revised Statutes, and serve the mother within
17 thirty days after completion of service of this notice.
18 5. You have the obligation to proceed to judgment in the
19 paternity action.
20 6. You have the right to seek custody.
21 7. If you are established as the child's father, you must
22 begin to provide financial support for the child.
23 8. If you do not file a paternity action under title 25,
24 chapter 6, article 1, Arizona Revised Statutes, and do not serve
25 the mother within thirty days after completion of the service of
26 this notice and pursue the action to judgment, you cannot bring
27 or maintain any action to assert any interest in the child.
28 9. The Indian child welfare act may supersede the Arizona
29 Revised Statutes regarding adoption and paternity.
30 10. You may wish to consult with an attorney to assist you
31 in responding to this notice.
32 J. A potential father who fails to file a paternity action and who
33 does not comply with all applicable service requirements within thirty days
34 after completion of service as prescribed in subsection G of this section
35 waives his right to be notified of any judicial hearing regarding the child's
36 adoption or the termination of parental rights and his consent to the
37 adoption or termination is not required.
38 Sec. 2. Section 8-109, Arizona Revised Statutes, is amended to read:
39 8-109. Petition to adopt; contents
40 A. The potential adoptive parent or parents, an agency or the division
41 may file a petition to adopt. The petition shall specify:
42 1. The full name, age and place of residence of the prospective
43 adoptive parent and, if married, the date and place of marriage and the
44 relationship if any to the child.

2. That a certificate of acceptability to adopt has been issued in favor of the prospective adoptive parent and the date of its issuance or the reason preadoption certification is not required.

3. The date when the prospective adoptive parent acquired custody of the child and from what person or agency, or, if not in custody, the present custodial circumstances.

4. The date and place of birth of the child.

5. The name of the child or the fictitious name to be used in the proceedings and, if a change of name is desired, the name.

6. That it is the desire of the prospective adoptive parent to adopt the child.

7. A full description and statement of the value of all property owned or possessed by the child.

8. If the child being adopted is a ward of the court, that written consent to adopt has been given by the division or the agency that has been given custody of the ward or any reason that consent need not be given. PURSUANT TO SECTION 8-106, SUBSECTION A, PARAGRAPH 7, THE COURT MAY WAIVE THIS REQUIREMENT AS IT RELATES TO THE DIVISION.

9. Full disclosure of any fees or anything of value given or paid to any person or organization in connection with the adoption of the child.

B. Any written consent required by this article may be attached to the petition or may be filed after the filing of the petition at or before the hearing.

APPROVED BY THE GOVERNOR JULY 10, 2009.

FILED IN THE OFFICE OF THE SECRETARY OF STATE JULY 13, 2009.