

State of Arizona  
Senate  
Forty-fifth Legislature  
Second Regular Session  
2002

CHAPTER 173

# SENATE BILL 1287

AN ACT

AMENDING SECTIONS 8-106, 8-106.01, 8-134 AND 8-533, ARIZONA REVISED STATUTES;  
RELATING TO ADOPTION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

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

4 8-106. Consent to adoption; who shall consent; waiver; consent  
5 to the release of information; notification to  
6 potential fathers

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

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

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

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

15 (b) The father has adopted the child.

16 (c) The father's paternity is established under title 25, chapter 6,  
17 article 1 or section 36-322.

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

20 4. Any guardian of the person of the child WHO IS appointed by a court  
21 and given authority by it to consent to the child's adoption.

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

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

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

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

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

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

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

36 C. The minority of the child or parent shall DOES not affect the  
37 child's or parent's competency to give consent in the instances set forth in  
38 this section.

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

41 E. An agency, the division or an attorney participating or assisting  
42 in a direct placement adoption pursuant to section 8-130 shall obtain from  
43 a birth parent giving consent at the time consent for adoption is obtained  
44 a notarized statement granting or withholding permission for the child being  
45 adopted to:



1           1. \_\_\_\_\_, THE NATURAL MOTHER, PLANS TO PLACE THE  
2 CHILD FOR ADOPTION.

3           2. UNDER SECTIONS 8-106 AND 8-107, ARIZONA REVISED  
4 STATUTES, YOU HAVE THE RIGHT TO CONSENT OR WITHHOLD CONSENT TO  
5 THE ADOPTION.

6           3. YOUR WRITTEN CONSENT TO THE ADOPTION IS IRREVOCABLE  
7 ONCE YOU GIVE IT.

8           4. IF YOU WITHHOLD CONSENT TO THE ADOPTION, YOU MUST  
9 INITIATE PATERNITY PROCEEDINGS UNDER TITLE 25, CHAPTER 6,  
10 ARTICLE 1, ARIZONA REVISED STATUTES, AND TO SERVE THE MOTHER  
11 WITHIN THIRTY DAYS AFTER COMPLETION OF SERVICE OF THIS NOTICE.

12           5. YOU HAVE THE OBLIGATION TO PROCEED TO JUDGMENT IN THE  
13 PATERNITY ACTION.

14           6. YOU HAVE THE RIGHT TO SEEK CUSTODY.

15           7. IF YOU ARE ESTABLISHED AS THE CHILD'S FATHER, YOU MUST  
16 BEGIN TO PROVIDE FINANCIAL SUPPORT FOR THE CHILD.

17           8. IF YOU DO NOT FILE A PATERNITY ACTION UNDER TITLE 25,  
18 CHAPTER 6, ARTICLE 1 AND DO NOT SERVE THE MOTHER WITHIN THIRTY  
19 DAYS AFTER COMPLETION OF THE SERVICE OF THIS NOTICE AND PURSUE  
20 THE ACTION TO JUDGMENT, YOU CANNOT BRING OR MAINTAIN ANY ACTION  
21 TO ASSERT ANY INTEREST IN THE CHILD.

22           9. THE INDIAN CHILD WELFARE ACT MAY SUPERSEDE THE ARIZONA  
23 REVISED STATUTES REGARDING ADOPTION AND PATERNITY.

24           10. YOU MAY WISH TO CONSULT WITH AN ATTORNEY TO ASSIST YOU  
25 IN RESPONDING TO THIS NOTICE.

26           Sec. 2. Section 8-106.01, Arizona Revised Statutes, is amended to  
27 read:

28           8-106.01. Putative fathers registry; claim of paternity;  
29                                   adoptive interest

30           A. A person who is seeking paternity, who wants to receive notice of  
31 adoption proceedings and who is the father or claims to be the father of a  
32 child shall file notice of a claim of paternity and of his willingness and  
33 intent to support the child to the best of his ability with the state  
34 registrar of vital statistics in the department of health services. The  
35 department of health services shall provide forms for the purpose of filing  
36 the notice of a claim of paternity. Forms shall be made available in the  
37 department of health services, the office of the clerk of the board of  
38 supervisors in each county, every hospital, every licensed child placement  
39 agency, the department of economic security, sheriff's offices, jails,  
40 prisons, state department of corrections facilities and department of  
41 juvenile corrections facilities.

42           B. The notice of a claim of paternity may be filed before the birth  
43 of the child but shall be filed within thirty days after the birth of the  
44 child. The notice of a claim of paternity shall be signed by the putative  
45 father and shall include his name and address, the name and last known

1 address of the birth mother and either the birth date of the child or the  
2 probable month and year of the expected birth of the child. The putative  
3 father who files a notice of a claim of paternity under this section shall  
4 notify the registrar of vital statistics of any change of his address. The  
5 department of health services shall maintain a confidential registry for this  
6 purpose. The department shall only respond to written inquiries of the  
7 confidential registry that are received from the court, the division, a  
8 licensed adoption agency or a licensed attorney participating or assisting  
9 in a direct placement adoption. The department shall provide a certificate  
10 signed by the state registrar of vital statistics stating that a diligent  
11 search has been made of the registry of notices of claims of paternity from  
12 putative fathers listing all filings found or stating that no filing has been  
13 found pertaining to the father of the child in question.

14 C. If the court determines the claimant is not the child's father it  
15 shall notify the department of health services and shall order the department  
16 to remove that person's name from the putative fathers registry.

17 D. If the mother denies that the putative father filing the notice of  
18 a claim of paternity is the father, the department of health services shall  
19 notify the putative father of his responsibility to establish paternity.

20 E. A putative father who does not file a notice of a claim of  
21 paternity as required under this section waives his right to be notified of  
22 any judicial hearing regarding the child's adoption and his consent to the  
23 adoption is not required, unless he proves, by clear and convincing evidence,  
24 both of the following:

25 1. It was not possible for him to file a notice of a claim of  
26 paternity within the period of time specified in subsection B of this  
27 section.

28 2. He filed a notice of a claim of paternity within thirty days after  
29 it became possible for him to file.

30 F. Lack of knowledge of the pregnancy is not an acceptable reason for  
31 failure to file. THE FACT THAT THE PUTATIVE FATHER HAD SEXUAL INTERCOURSE  
32 WITH THE MOTHER IS DEEMED TO BE NOTICE TO THE PUTATIVE FATHER OF THE  
33 PREGNANCY.

34 G. When a certificate provided pursuant to subsection B of this  
35 section is received by the court, the division, a licensed adoption agency  
36 or a licensed attorney participating or assisting in a direct placement  
37 adoption from the department that lists filings of a putative father or  
38 fathers, the putative father or fathers who filed timely notices of claims  
39 of paternity and who have not previously been served shall be served with the  
40 notice prescribed in section 8-106, subsection G. A putative father who  
41 fails to file a paternity action pursuant to title 25, chapter 6, article 1  
42 within thirty days of completion of service of the notice prescribed in  
43 section 8-106 is barred from bringing or maintaining any action to assert any  
44 interest in the child.

1 H. If in any adoption proceeding there is not a showing that a  
2 putative father has consented to the adoption or has waived his rights  
3 regarding the proposed adoption, the petitioner shall file with the court,  
4 before the court enters a final decree of adoption, a certificate from the  
5 department of health services signed by the state registrar of vital  
6 statistics stating that a diligent search has been made of the registry of  
7 notices of claims of paternity from putative fathers and that no filing has  
8 been found pertaining to the father of the child in question.

9 Sec. 3. Section 8-134, Arizona Revised Statutes, is amended to read:

10 8-134. Confidential intermediary

11 A. Any of the following persons may use the services of a confidential  
12 intermediary who is listed with the court:

13 1. The adoptive parents of an adoptee who is at least eighteen years  
14 of age or, if the adoptive parents are deceased, the adoptee's guardian.

15 2. An adoptee if he THE ADOPTEE is twenty-one or more years of age.

16 3. If an adoptee is deceased, the adoptee's spouse if he THE SPOUSE  
17 is the legal parent or guardian of any child of the adoptee.

18 4. If an adoptee is deceased, any progeny of the adoptee who is  
19 twenty-one or more years of age.

20 5. Either of the birth parents of an adoptee.

21 6. If the birth parent of an adoptee is deceased, the parent of the  
22 birth parent.

23 7. A biological sibling of the adoptee if the sibling is twenty-one  
24 or more years of age.

25 B. An adoption agency licensed by this state, the division or an  
26 individual who meets the requirements adopted pursuant to subsections F and  
27 G of this section may serve as a confidential intermediary.

28 C. Notwithstanding sections 8-120 and 8-121, a confidential  
29 intermediary may inspect documents compiled pursuant to this article.  
30 Documents include the court records, division records, agency records and  
31 maternity home records. The confidential intermediary shall keep  
32 confidential all information obtained during the course of the investigation.  
33 The intermediary shall use confidential information only to arrange a contact  
34 or share information between the individual PERSON who initiates the search  
35 and the person who is the subject of the search. A confidential intermediary  
36 shall review the court record before making any contact with an adoptee to  
37 determine if an affidavit has been filed pursuant to subsection E of this  
38 section. A confidential intermediary shall not contact persons under ~~twenty-~~  
39 ~~one~~ EIGHTEEN years of age, ~~except as provided in subsection A, paragraph 1~~  
40 ~~of this section.~~

41 D. The confidential intermediary shall obtain written consent from the  
42 person who initiated the search and the person who is the subject of the  
43 search before arranging for the sharing of identifying information or a  
44 contact between them. If the confidential intermediary discovers the subject  
45 of the search is deceased or that the identity of the birth father was

1 unknown to or not revealed by the birth mother, the confidential intermediary  
2 shall share this information with the person initiating the search. If the  
3 confidential intermediary, after a diligent effort, is unable to locate the  
4 subject of the search to obtain written consent to share information, the  
5 confidential intermediary shall share this information with the person  
6 initiating the search and prepare and place with the compiled documents a  
7 written report describing search efforts. If the person who initiated the  
8 search petitions the court to release identifying information, the court  
9 shall review the report prepared by the confidential intermediary and shall  
10 decide if the information may be released and in what manner the information  
11 may be released if the court determines there is good cause.

12 E. An adoptive parent who has not informed an adoptee that the adoptee  
13 was adopted may file an affidavit so stating with the court where the  
14 adoption took place. The affidavit may be withdrawn at any time by the  
15 adoptive parent. If an affidavit is a part of the court record, the  
16 confidential intermediary shall not make contact with the adoptee unless the  
17 adoptive parent withdraws the affidavit and grants permission in writing or  
18 the adoptee has filed an affidavit stating that the adoptee knows ~~he was~~  
19 ~~adopted~~ ABOUT THE ADOPTION and wishes to make contact with ~~his~~ THE birth  
20 parent.

21 F. A birth parent who has not informed ~~his or her~~ THE PARENT'S  
22 biological offspring of the existence of the adoptee may file an affidavit  
23 so stating with the court where the adoption took place. The affidavit may  
24 be withdrawn at any time by the birth parent. If an affidavit is a part of  
25 the court record, the confidential intermediary shall not make contact with  
26 the biological sibling unless the birth parent withdraws the affidavit and  
27 grants permission in writing or the biological sibling has filed an affidavit  
28 stating that the biological sibling knows about the adoptee and wishes to  
29 make contact with the adoptee.

30 G. On receipt of a written statement from a physician that explains  
31 in detail how a health condition may seriously affect the health of the  
32 adoptee or a direct descendant of the adoptee, the court shall order the  
33 confidential intermediary program to appoint a confidential  
34 intermediary. The confidential intermediary shall make a diligent effort to  
35 notify an adoptee who has attained eighteen years of age, an adoptive parent  
36 or guardian of an adoptee who has not attained eighteen years of age or a  
37 direct descendant of a deceased adoptee that the nonidentifying information  
38 is available and shall be provided on written request.

39 H. On receipt of a written statement from a physician that explains  
40 in detail why a serious health condition of the adoptee or a direct  
41 descendant of the adoptee should be communicated to the birth parent or  
42 biological sibling to enable the birth parent or biological sibling to make  
43 an informed medical decision, the court shall order the confidential  
44 intermediary program to appoint a confidential intermediary. The  
45 confidential intermediary shall make diligent effort to notify those

1 individuals that the nonidentifying information is available and shall be  
2 provided on written request.

3 I. The Arizona supreme court shall administer the confidential  
4 intermediary program. The court shall adopt rules and procedures necessary  
5 to implement the program, including qualifications, required fees, minimum  
6 standards for certification, training and standards of conduct of  
7 confidential intermediaries, and shall establish the fees that may be charged  
8 by a confidential intermediary.

9 J. A person shall not act as a confidential intermediary unless he  
10 possesses a confidential intermediary certificate issued by the supreme  
11 court. In order to be certified as a confidential intermediary a person  
12 shall meet and maintain the minimum standards prescribed by this section and  
13 the rules adopted by the supreme court.

14 K. In carrying out the provisions of this section the supreme court  
15 shall require applicants for a confidential intermediary certificate to  
16 furnish fingerprints and the supreme court shall obtain criminal history  
17 RECORD information pursuant to section 41-1750. The applicant for  
18 certification shall pay a fee to the department of public safety to reimburse  
19 the department of public safety for the cost of obtaining the applicant's  
20 criminal history RECORD information required by this section. The fee shall  
21 not exceed the actual cost of obtaining the applicant's criminal history  
22 RECORD information.

23 L. The actual and reasonable cost to the agency, division or court of  
24 providing information pursuant to the confidential intermediary program shall  
25 be paid by the person requesting the services of a confidential intermediary.  
26 If the juvenile court of a county is supplying the information, the actual  
27 and reasonable costs shall be paid to the clerk of the court of that county  
28 who shall transmit the monies to the county treasurer of that county for  
29 deposit in the juvenile probation services fund to be utilized by the  
30 juvenile court of that county for reimbursing the court for costs associated  
31 with providing information pursuant to the confidential intermediary program.  
32 If the division is supplying the information, the actual and reasonable costs  
33 shall be paid to the division. If an agency is supplying the information,  
34 the actual and reasonable costs shall be paid to the agency.

35 Sec. 4. Section 8-533, Arizona Revised Statutes, is amended to read:  
36 8-533. Petition; who may file; grounds

37 A. Any person or agency that has a legitimate interest in the welfare  
38 of a child, including, but not limited to, a relative, a foster parent, a  
39 physician, the department of economic security or a private licensed child  
40 welfare agency, may file a petition for the termination of the parent-child  
41 relationship alleging grounds contained in subsection B of this section.

42 B. Evidence sufficient to justify the termination of the parent-child  
43 relationship shall include any one of the following, and in considering any  
44 of the following grounds, the court shall also consider the best interests  
45 of the child:

1           1. That the parent has abandoned the child.

2           2. That the parent has neglected or wilfully abused a child. This  
3 abuse includes serious physical or emotional injury or situations in which  
4 the parent knew or reasonably should have known that a person was abusing or  
5 neglecting a child.

6           3. That the parent is unable to discharge the parental  
7 responsibilities because of mental illness, mental deficiency or a history  
8 of chronic abuse of dangerous drugs, controlled substances or alcohol and  
9 there are reasonable grounds to believe that the condition will continue for  
10 a prolonged indeterminate period.

11           4. That the parent is deprived of civil liberties due to the  
12 conviction of a felony if the felony of which that parent was convicted is  
13 of such nature as to prove the unfitness of that parent to have future  
14 custody and control of the child, including murder of another child of the  
15 parent, manslaughter of another child of the parent or aiding or abetting or  
16 attempting, conspiring or soliciting to commit murder or manslaughter of  
17 another child of the parent, or if the sentence of that parent is of such  
18 length that the child will be deprived of a normal home for a period of  
19 years.

20           5. That the potential father failed to file a paternity action within  
21 thirty days of completion of service of notice prescribed in section 8-106,  
22 subsection 6.

23           6. THAT THE PUTATIVE FATHER FAILED TO FILE A NOTICE OF CLAIM OF  
24 PATERNITY AS PRESCRIBED IN SECTION 8-106.01.

25           ~~6-~~ 7. That the parents have relinquished their rights to a child to  
26 an agency or have consented to the adoption.

27           ~~7-~~ 8. That the child is being cared for in an out-of-home placement  
28 under the supervision of the juvenile court, the division or a licensed child  
29 welfare agency, that the agency responsible for the care of the child has  
30 made a diligent effort to provide appropriate reunification services and that  
31 either of the following circumstances exists:

32           (a) The child has been in an out-of-home placement for a cumulative  
33 total period of nine months or longer pursuant to court order or voluntary  
34 placement pursuant to section 8-806 and the parent has substantially  
35 neglected or wilfully refused to remedy the circumstances which cause the  
36 child to be in an out-of-home placement.

37           (b) The child has been in an out-of-home placement for a cumulative  
38 total period of fifteen months or longer pursuant to court order or voluntary  
39 placement pursuant to section 8-806, the parent has been unable to remedy the  
40 circumstances which cause the child to be in an out-of-home placement and  
41 there is a substantial likelihood that the parent will not be capable of  
42 exercising proper and effective parental care and control in the near future.

43           ~~8-~~ 9. That the identity of the parent is unknown and continues to  
44 be unknown following three months of diligent efforts to identify and locate  
45 the parent.

1           9- 10. That the parent has had parental rights to another child  
2 terminated within the preceding two years for the same cause and is currently  
3 unable to discharge parental responsibilities due to the same cause.

4           10- 11. That all of the following are true:

5           (a) The child was cared for in an out-of-home placement pursuant to  
6 court order.

7           (b) The agency responsible for the care of the child made diligent  
8 efforts to provide appropriate reunification services.

9           (c) The child, pursuant to court order, was returned to the legal  
10 custody of the parent from whom the child had been removed.

11           (d) Within eighteen months after the child was returned, pursuant to  
12 court order, the child was removed from that parent's legal custody, the  
13 child is being cared for in an out-of-home placement under the supervision  
14 of the juvenile court, the division or a licensed child welfare agency and  
15 the parent is currently unable to discharge parental responsibilities.

16           C. In considering the grounds for termination prescribed in subsection  
17 B, paragraph 7- 8 or 10- 11 of this section, the court shall consider the  
18 availability of reunification services to the parent and the participation  
19 of the parent in these services.

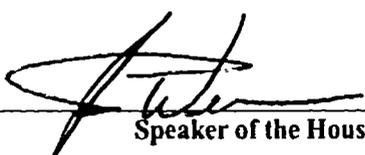
20           D. In considering the grounds for termination prescribed in subsection  
21 B, paragraph 7- 8 of this section, the court shall not consider the first  
22 sixty days of the initial out-of-home placement pursuant to section 8-806 in  
23 the cumulative total period.

APPROVED BY THE GOVERNOR MAY 6, 2002.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 7, 2002.

Passed the House April 23, 2002

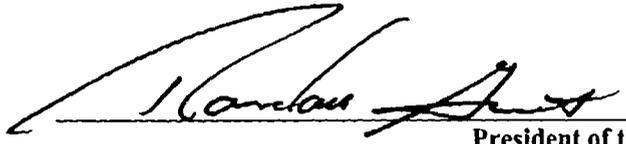
by the following vote: 31 Ayes,  
22 Nays, 7 Not Voting

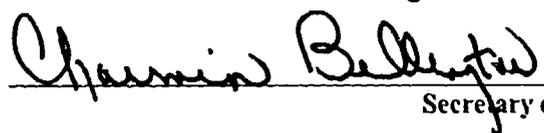
  
Speaker of the House

  
Chief Clerk of the House

Passed the Senate March 25, 2002

by the following vote: 26 Ayes,  
2 Nays, 21 Not Voting

  
President of the Senate

  
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF GOVERNOR

This Bill was received by the Governor this  
~~\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,~~  
~~at \_\_\_\_\_ o'clock \_\_\_\_\_ M.~~  
~~\_\_\_\_\_ Secretary to the Governor~~

Approved this \_\_\_\_\_ day of  
~~\_\_\_\_\_ , 20\_\_\_\_,~~  
~~at \_\_\_\_\_ o'clock \_\_\_\_\_ M.~~  
~~\_\_\_\_\_ Governor of Arizona~~

S.B. 1287

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State  
~~this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,~~  
~~at \_\_\_\_\_ o'clock \_\_\_\_\_ M.~~  
~~\_\_\_\_\_ Secretary of State~~

SENATE CONCURS IN HOUSE AMENDMENTS  
AND FINAL PASSAGE

Passed the Senate April 30, 2002

by the following vote: 26 Ayes,

2 Nays, 2 Not Voting

*Randall Snare*  
President of the Senate  
*Chermin Bellinger*  
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF GOVERNOR

This Bill was received by the Governor this

30 day of April, 2002,

at 12:48 o'clock P M.

*Andrew Gray*  
Secretary to the Governor

Approved this 6<sup>th</sup> day of

May, 2002,

at 3:55 o'clock P M.

*Ron McCreary*  
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 7 day of May, 2002,

at 3:13 o'clock P M.

*Robert Boyless*  
Secretary of State

S.B. 1287