Senate Engrossed House Bill

State of Arizona
House of Representatives
Forty-sixth Legislature
Second Regular Session
2004

CHAPTER 169

HOUSE BILL 2680

AN ACT

AMENDING SECTIONS 8-105, 8-108 AND 8-112, ARIZONA REVISED STATUTES; RELATING TO ADOPTION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

STATE OF SENATE ARIZONA

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Section 8-105, Arizona Revised Statutes, is amended to
3 read:
4 8-105. Preadoption certification; investigation; central
5 adoption registry
6 A. Before any prospective adoptive parent may petition to adopt a
7 child the person shall be certified by the court as acceptable to adopt
8 children. A certificate shall be issued only after an investigation
9 conducted by an officer of the court, by an agency or by the division. A
10 written application for certification shall be made directly to the court,
11 to an agency or to the division, in the form and content required by the
12 court, agency or division.
13 B. The division is not required to accept every application for
14 certification. In determining which applications to accept the division may
15 give priority to applications filed by adult residents of this state who wish
16 to adopt a child who has any of the special needs described in section 8-141.
17 C. After receiving and accepting the written and completed application
18 of the prospective adoptive parent or parents, which shall include a
19 financial statement and a physician's statement of each applicant's physical
20 health, the division, the agency or an officer of the court shall conduct or
21 cause to be conducted an investigation of the prospective adoptive parent or
22 parents to determine if they are fit and proper persons to adopt children.
23 D. Each person for whom a criminal background check is required for
24 the purpose of adopting a child shall be fingerprinted by the division, the
25 agency, an officer of the court or a designee of the division, the agency or
26 officer of the court for the purpose of obtaining a state and federal
27 criminal records check pursuant to section 41-1750 and Public Law
28 92-544. The department of public safety may exchange this fingerprint data
29 with the federal bureau of investigation.
30 E. This investigation and report to the court shall consider all
31 relevant and material facts dealing with the prospective adoptive parents'
32 fitness to adopt children and shall include:
33 1. A complete social history.
34 2. The financial condition of the applicant.
35 3. The moral fitness of the applicant.
36 4. The religious background of the applicant.
37 5. The physical and mental health condition of the applicants.
38 6. Any court action for or adjudication of child abuse, abandonment
39 of children, dependency or termination of parent-child relationship in which
40 the applicant had control, care or custody of the child who was the subject
41 of the action.
42 7. Whether the person or persons wish to be placed on the central
43 registry established in subsection L of this section.

8. All other facts bearing on the issue of the fitness of the prospective adoptive parents that the court, agency or division may deem relevant.

F. The investigator shall not reveal to the prospective adoptive parents the identity of a child or the child's parent or parents and shall not reveal to the child or the child's parent or parents the identity of the prospective adoptive parents if these facts are not already known.

G. Within ninety days after the original application prescribed by subsection A of this section has been accepted, the division or the agency or a person or agency designated by the court to conduct an investigation shall present to the juvenile court the written report required by subsection E of this section, which shall include a definite recommendation for certifying the applicant as being acceptable or nonacceptable to adopt children with the reasons for the recommendation.

H. Within sixty days after receiving the investigation report required by subsections E and G of this section, the court shall certify the applicant as being acceptable or nonacceptable to adopt children based on the investigation report and recommendations of the report. A certification remains in effect for eighteen months from the date of its issuance and may be extended for additional one year periods if after review the court finds that there have been no material changes in circumstances which would adversely affect the acceptability of the applicant to adopt.

I. The court may require additional investigation if it finds that additional information is necessary on which to make an appropriate decision regarding certification.

J. Any applicant who has been certified as nonacceptable may petition the court to review such certification. Notice shall be given to all interested parties and the matter shall be heard by the court, which may affirm or reverse the certification.

K. If the applicant is certified as nonacceptable, the applicant may not reapply for certification to the court, to any agency or to the division for one year.

L. The division shall maintain a central adoption registry that includes the names of all prospective adoptive parents currently certified by the court as acceptable to adopt children, except those who request that their names not be included, the names of all children who are under the jurisdiction of the division and who are currently available for adoption, the names of any other children who are currently available for adoption and whose names are voluntarily entered in the registry by any agency, parent or other person that has the right to give consent to the child's adoption, and other information as the division may elect to include in aid of adoptive placements. Access to information in the registry shall be made available on request to any agency under assurances as the division may require that the information sought is in furtherance of adoptive placements and that confidentiality of the information is preserved.

M. This section does not apply if:

1. The prospective adoptive parent is the spouse of the birth or legal parent of the child to be adopted or is an uncle, aunt, adult sibling, ~~or~~ grandparent OR GREAT-GRANDPARENT of the child of the whole or half-blood or by marriage or adoption.

2. The birth or legal parent is deceased but at the time of death the parent had legal and physical custody of the child to be adopted and the child had resided primarily with the spouse of the birth or legal parent during the twenty-four months before the death of the parent.

3. The grandparent, GREAT-GRANDPARENT, aunt, adult sibling or uncle is deceased but at the time of death that person had legal and physical custody of the child to be adopted and the child had resided primarily with the spouse of the grandparent, GREAT-GRANDPARENT, aunt, adult sibling or uncle during the twenty-four months before the death of the grandparent, GREAT-GRANDPARENT, aunt, adult sibling or uncle.

N. If the applicant has adopted a child within three years preceding the current application and is applying to adopt another child or is a foster parent who is licensed by this state, the division or agency or a person designated by the court to conduct an investigation shall only provide an update report on any changes in circumstances that have occurred since the previous certification or licensing report. If the applicant has adopted a child more than three years before the current application and is applying to adopt another child, the division or agency or a person designated by the court to conduct an investigation may provide an updated report on any changes in circumstances that have occurred since the previous certification or licensing report. The court shall certify the applicant as acceptable to adopt unless there are changes in circumstances that adversely affect the applicant's parenting ability. In making this determination, the court shall consider information from the prior certification or licensing report.

Sec. 2. Section 8-108, Arizona Revised Statutes, is amended to read:

8-108. <u>Petition for child's custody by noncertified party; hearing; exceptions</u>

A. A person who is not currently certified as acceptable to adopt but who has custody of a child who the person intends to adopt shall petition the court for an order permitting that person to keep custody of the child pending certification. The person shall file the petition not later than five days after the person obtains custody of the child. The court shall hold a hearing within ten days after the person files the petition. The child shall attend the hearing, except for good cause shown. At the hearing the burden of proof is on the petitioner to show that permitting custody is in the child's best interests. The court may permit the petitioner to have custody or it may order that custody be given to some other person or agency as it deems to be in the child's best interests. If the court permits the person to continue to have custody of the child, the court shall order the investigation for preadoption certification and report as required by section

8-105 to continue. If an application for certification has not been filed before the hearing, the court shall order that an application for certification be filed within thirty days after the hearing date.

B. If a petition is not filed by the person intending to adopt a child, the division, an agency or any other interested person may petition the court for such a hearing. On the filing of a petition the court shall set the matter for hearing and issue its order to the person having custody of the child to appear before it to show cause why custody should not be denied. The hearing shall then be held and the court's order made as provided in subsection A of this section.

C. A custody petition or hearing is not required in any of the following cases:

1. If the person who intends to adopt the child is the spouse of a birth parent of the child.

2. If the person who intends to adopt the child or one of these persons is an uncle, aunt, adult sibling, ~~or~~ grandparent, OR GREAT-GRANDPARENT of the child of the whole or half-blood or by marriage.

3. If the person who intends to adopt the child is currently certified as acceptable to adopt the child.

4. If custody of the child has been given or is to be given to an agency or to the division or to a licensed or certified foster home.

5. If the person who intends to adopt the child is currently the court appointed guardian of the child.

Sec. 3. Section 8-112, Arizona Revised Statutes, is amended to read:

8-112. Social studies; requirements

A. The division, an agency or an officer of the court shall conduct and submit a social study to the court ten days before the hearing on the petition to adopt. Notwithstanding any other provisions of this section, the court may order an additional social study or waive the social study if it determines that this is in the child's best interests because of special circumstances.

B. Except as provided in subsection D or E, the social study shall include the following:

1. The social history, heritage and mental and physical condition of the child and the child's birth parents.

2. The child's current placement in the prospective adoptive parent's home and the child's adjustment to that home.

3. The prospective adoptive parent's suitability to adopt.

4. The existing and proposed arrangements regarding the child's custody.

5. Any financial arrangement concerning the proposed adoption made by the birth parents, the division, an agency, an attorney or the prospective adoptive parents.

6. A state and federal criminal records check of the prospective adoptive parent and each adult who is living permanently with the prospective

adoptive parent except a ~~natural~~ BIRTH or legal parent with custody of the child.

7. A central registry records check, including any history of child welfare referrals, with the division of the prospective adoptive parent and each adult who is living permanently with the prospective adoptive parent.

8. Any other information that is pertinent to the adoption proceedings.

C. The social study conducted pursuant to subsection A is part of the case file and shall contain a definite recommendation for or against the proposed adoption and the reasons for that recommendation.

D. The social study conducted pursuant to subsection A may consist only of the results of the state and federal criminal records check and the central registry records check conducted pursuant to subsection B if either of the following is true:

1. The prospective adoptive parent is the child's stepparent who has been legally married to the child's ~~natural~~ BIRTH or legal parent for at least one year and the child has resided with the stepparent and parent for at least one year.

2. The prospective adoptive parent is the child's adult sibling, by the whole or half blood, or the child's aunt, uncle, ~~or~~ grandparent OR GREAT-GRANDPARENT and the child has resided with the prospective adoptive parent for at least one year.

E. If the child being considered for adoption has resided with the prospective adoptive parent for at least six months and the prospective adoptive parent either has adopted a child or was appointed the permanent guardian of the child within three years preceding the current application, or is a foster parent who is licensed by this state, the social study conducted pursuant to subsection A may consist only of the following:

1. The results of the central registry records check conducted pursuant to subsection B.

2. A review of any material changes in circumstances that have occurred since the previous adoption, permanent guardianship or license renewal that affect the prospective adoptive parent's ability to adopt the child or for the child to be placed in the prospective adoptive parent's home.

APPROVED BY THE GOVERNOR APRIL 26, 2004.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 26, 2004.

SENATE

Passed the House March 11, 2004,

by the following vote: 57 Ayes,

0 Nays, 3 Not Voting

Jake Flake
Speaker of the House

Norman L. Moore
Chief Clerk of the House

Passed the Senate April 7, 2004,

by the following vote: 29 Ayes,

0 Nays, 1 Not Voting

Ken Bennett
President of the Senate

Chauncey Billington
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

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

H.B. 2680

HOUSE CONCURS IN SENATE
AMENDMENTS AND FINAL PASSAGE

April 20, 2004,

by the following vote: 55 Ayes,

0 Nays, 5 Not Voting

Speaker of the House

Pro Tempore

Norman L. Moore

Chief Clerk of the House

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

20th day of April, 2004,

at 12:23 o'clock P. M.

Jennifer Upshaw

Secretary to the Governor

Approved this 26 day of

April, 2004,

at 9:30 o'clock A. M.

Governor of Arizona

H.B. 2680

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 26 day of April, 2004,

at 12:34 o'clock P M.

Janice K. Brewer

Secretary of State