

Senate Engrossed  
**FILED**  
**KEN BENNETT**  
**SECRETARY OF STATE**

State of Arizona  
Senate  
Forty-ninth Legislature  
First Regular Session  
2009

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)

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; waiver; consent to the release of  
5 information; notification to potential fathers

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

- 8 1. The child's birth or adoptive mother, if living.  
9 2. The child's father if any of the following is true:

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

14 (b) The father has adopted the child.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22           1. That adoption is planned.

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

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

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

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

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

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

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

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

Notice:

1 Notice is given to \_\_\_\_\_ that you have been identified  
2 by \_\_\_\_\_, the natural mother, residing at  
3 \_\_\_\_\_, as a potential father of a child to be  
4 born or, born on \_\_\_\_\_, in \_\_\_\_\_.

5 You are informed of the following:

6 1. \_\_\_\_\_, the natural mother, plans to place the  
7 child for adoption.

8 2. Under sections 8-106 and 8-107, Arizona Revised  
9 Statutes, you have the right to consent or withhold consent to  
10 the adoption.

11 3. Your written consent to the adoption is irrevocable  
12 once you give it.

13 4. If you withhold consent to the adoption, you must  
14 initiate paternity proceedings under title 25, chapter 6,  
15 article 1, Arizona Revised Statutes, and serve the mother within  
16 thirty days after completion of service of this notice.

17 5. You have the obligation to proceed to judgment in the  
18 paternity action.

19 6. You have the right to seek custody.

20 7. If you are established as the child's father, you must  
21 begin to provide financial support for the child.

22 8. If you do not file a paternity action under title 25,  
23 chapter 6, article 1, Arizona Revised Statutes, and do not serve  
24 the mother within thirty days after completion of the service of  
25 this notice and pursue the action to judgment, you cannot bring  
26 or maintain any action to assert any interest in the child.

27 9. The Indian child welfare act may supersede the Arizona  
28 Revised Statutes regarding adoption and paternity.

29 10. You may wish to consult with an attorney to assist you  
30 in responding to this notice.

31 J. A potential father who fails to file a paternity action and who  
32 does not comply with all applicable service requirements within thirty days  
33 after completion of service as prescribed in subsection G of this section  
34 waives his right to be notified of any judicial hearing regarding the child's  
35 adoption or the termination of parental rights and his consent to the  
36 adoption or termination is not required.

37 Sec. 2. Section 8-109, Arizona Revised Statutes, is amended to read:  
38 8-109. Petition to adopt; contents

39 A. The potential adoptive parent or parents, an agency or the division  
40 may file a petition to adopt. The petition shall specify:

41 1. The full name, age and place of residence of the prospective  
42 adoptive parent and, if married, the date and place of marriage and the  
43 relationship if any to the child.  
44

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

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

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

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

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

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

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

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

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

APPROVED BY THE GOVERNOR JULY 10, 2009.

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

Passed the House June 26, 20 09,

by the following vote: 50 Ayes,

0 Nays, 10 Not Voting

Alan B. Jacobson  
Speaker of the House  
Pro Tempore

Norman L. Moore  
Chief Clerk of the House

Passed the Senate June 15, 20 09,

by the following vote: 28 Ayes,

0 Nays, 2 Not Voting

Robert L. Queen  
President of the Senate

Charmine Billington  
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF GOVERNOR

This Bill was received by the Governor this  
1st day of July, 20 09

at 8:53 o'clock A. M.

Susan K. Myers  
Secretary to the Governor

Approved this 10th day of

July, 20 09,

at 4:16 o'clock P M.

Janice K. Brewer  
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State  
this 13 day of July, 20 09,

at 9:15 o'clock A. M.

Klu Bennett  
Secretary of State

S.B. 1016