

EHB 2648

THE STATE SENATE
Thursday, March 25, 2010

ENGROSSED
House Bill No. 2648
As Amended

ENGROSSED HOUSE BILL NO. 2648 - By: Nelson and Kern of the House and Russell of the Senate.

[children - jurisdictional - certain child custody cases - adoption-related expenses and requirements - birth mothers - effective date]

~~BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:~~

SECTION 1. AMENDATORY 10 O.S. 2001, Section 7502-1.1, as amended by Section 2, Chapter 69, O.S.L. 2005 (10 O.S. Supp. 2009, Section 7502-1.1), is amended to read as follows:

Section 7502-1.1 ~~A. Except as otherwise provided in this section, a court of this state has jurisdiction~~ Jurisdiction over proceedings to terminate parental rights and proceedings for the adoption of a minor commenced pursuant to the Oklahoma Adoption Code ~~if:~~

~~1. a. Immediately preceding commencement of the proceeding, the minor lived in this state with a parent, a guardian, a prospective adoptive parent, or another person acting as parent, for at least six (6) consecutive months, excluding periods of temporary absence,~~

1 ~~b. In the case of a minor under six (6) months of age,~~
2 ~~the minor lived in this state from soon after birth~~
3 ~~with any of those individuals listed in subparagraph a~~
4 ~~of this paragraph and there is available in this state~~
5 ~~substantial evidence concerning the minor's present or~~
6 ~~future care, or~~

7 ~~e. A child is born in this state and the mother of the~~
8 ~~child has been a legal resident of this state for six~~
9 ~~(6) months prior to the birth or, if not a legal~~
10 ~~resident for six (6) months prior to birth, verifies~~
11 ~~compliance with or exemption from the Interstate~~
12 ~~Compact on the Placement of Children and executes her~~
13 ~~consent or permanent relinquishment before a judge of~~
14 ~~a court of this state;~~

15 ~~2. Immediately preceding commencement of the proceeding, the~~
16 ~~prospective adoptive parent lived in this state for at least six (6)~~
17 ~~consecutive months, excluding periods of temporary absence, and~~
18 ~~there is available in this state substantial evidence concerning the~~
19 ~~minor's present or future care;~~

20 ~~3. The child placing agency that placed the minor for adoption~~
21 ~~is located in this state and it is in the best interest of the minor~~
22 ~~that a court of this state, assume jurisdiction because.~~

1 a. ~~the minor and the minor's parents, or the minor and~~
2 ~~the prospective adoptive parent, have a significant~~
3 ~~connection with this state, and~~

4 b. ~~there is available in this state substantial evidence~~
5 ~~concerning the minor's present or future care;~~

6 4. ~~The minor and the prospective adoptive parent are physically~~
7 ~~present in this state, and the minor has been abandoned or it is~~
8 ~~necessary in an emergency to protect the minor because the minor has~~
9 ~~been subjected to or threatened with mistreatment or abuse or is~~
10 ~~otherwise neglected; or~~

11 5. ~~It appears that no other state would have jurisdiction under~~
12 ~~prerequisites substantially in accordance with paragraphs 1 through~~
13 ~~4 of this subsection, or another state has declined to exercise~~
14 ~~jurisdiction on the ground that this state is the more appropriate~~
15 ~~forum to hear a petition for adoption of the minor, and it is in the~~
16 ~~best interest of the minor that a court of this state assume~~
17 ~~jurisdiction.~~

18 B. 1. ~~If a child is born in this state and the mother of the~~
19 ~~child executes her consent or permanent relinquishment before a~~
20 ~~judge of a court of this state, a court of this state may exercise~~
21 ~~jurisdiction over a proceeding for the termination of parental~~
22 ~~rights of a putative father pursuant to Section 7505 2.1 of this~~
23 ~~title.~~

1 ~~2. If a parent has signed a permanent relinquishment in the~~
2 ~~presence of a court of this state pursuant to Section 7503 2.3 of~~
3 ~~this title, the court may exercise jurisdiction to issue an order~~
4 ~~terminating the parental rights of the parent to the child pursuant~~
5 ~~to Section 7503 2.3 of this title.~~

6 ~~3. A court of this state may exercise jurisdiction to issue a~~
7 ~~temporary order of custody pursuant to Section 7503 4.1 of this~~
8 ~~title for:~~

9 ~~a. a minor born in this state, or~~

10 ~~b. a minor brought into this state in compliance with the~~
11 ~~Interstate Compact on the Placement of Children, if~~
12 ~~the court is exercising jurisdiction pursuant to this~~
13 ~~section over an adoption proceeding concerning the~~
14 ~~minor that is pending before the court.~~

15 ~~4. If the court does not have jurisdiction over an adoption~~
16 ~~proceeding pursuant to subsection A of this section, any order~~
17 ~~issued pursuant to this subsection shall include a finding by the~~
18 ~~court that states that the court is declining jurisdiction over the~~
19 ~~adoption proceeding and is deferring jurisdiction to the more~~
20 ~~appropriate state.~~

21 ~~C. Except as otherwise provided by this section, a court of~~
22 ~~this state shall not exercise jurisdiction over a proceeding for~~
23 ~~adoption of a minor or for termination of parental rights brought~~

1 ~~pursuant to Section 7505-2.1 or 7505-4.1 of this title if, at the~~
2 ~~time the petition for adoption or termination is filed:~~

3 ~~1. Another court of this state is exercising jurisdiction~~
4 ~~pursuant to Section 7002 1.1 of this title, unless after notice to~~
5 ~~the parties to such deprived action, the written consent of such~~
6 ~~court is obtained and filed in the adoption proceeding, or,~~

7 ~~2. A proceeding concerning the custody or adoption of the minor~~
8 ~~is pending in a court of another state exercising jurisdiction~~
9 ~~substantially in conformity with the Uniform Child Custody~~
10 ~~Jurisdiction Act, the Uniform Child Custody Jurisdiction and~~
11 ~~Enforcement Act or the Oklahoma Adoption Code, unless the proceeding~~
12 ~~is stayed by the court of the other state because this state is a~~
13 ~~more appropriate forum or for another reason.~~

14 ~~D. In any instance when a court of this state is exercising~~
15 ~~jurisdiction over a proceeding for adoption of a minor who is a~~
16 ~~resident of this state by adoptive parents who are not legal~~
17 ~~residents of this state at the time of the filing of the petition~~
18 ~~for adoption, the court shall require, prior to the granting of a~~
19 ~~final decree of adoption, either proof of compliance with the~~
20 ~~Interstate Compact on the Placement of Children or verification that~~
21 ~~this adoptive placement is otherwise exempt from the Interstate~~
22 ~~Compact on the Placement of Children.~~

1 ~~E. If a court of another state has issued a decree or order~~
2 ~~concerning the custody of a minor who may be the subject of a~~
3 ~~proceeding for adoption or for termination of parental rights~~
4 ~~brought pursuant to Section 7505 2.1 or 7505 4.1 of this title in~~
5 ~~this state, a court of this state shall not exercise jurisdiction~~
6 ~~over a proceeding for adoption or termination of parental rights of~~
7 ~~the minor unless:~~

8 ~~1. The court of this state finds that the court of the state~~
9 ~~which issued the decree or order:~~

10 ~~a. does not have continuing jurisdiction to modify the~~
11 ~~decree or order under the law of the state which~~
12 ~~issued the decree or order or has declined to assume~~
13 ~~jurisdiction to modify the decree or order, or~~

14 ~~b. does not have jurisdiction over a proceeding for~~
15 ~~adoption substantially in conformity with paragraphs 1~~
16 ~~through 4 of subsection A of this section or has~~
17 ~~declined to assume jurisdiction over a proceeding for~~
18 ~~adoption; and~~

19 ~~2. The court of this state has jurisdiction pursuant to this~~
20 ~~section over the proceeding for adoption or termination of parental~~
21 ~~rights shall be governed by the Uniform Child Custody Jurisdiction~~
22 ~~and Enforcement Act as provided in Sections 551-101 through 551-402~~
23 ~~of Title 43 of the Oklahoma Statutes.~~

1 SECTION 2. AMENDATORY 10 O.S. 2001, Section 7505-3.2, as
2 last amended by Section 2, Chapter 288, O.S.L. 2009 (10 O.S. Supp.
3 2009, Section 7505-3.2), is amended to read as follows:

4 Section 7505-3.2 A. 1. An affidavit shall be attached to the
5 petition for adoption, or may be filed after the filing of the
6 petition for adoption, but prior to the final decree of adoption,
7 which discloses to the court all of the costs, funds, or monies
8 expended by the adoptive family or expected to be expended in
9 connection with the adoption of a minor.

10 2. No final decree of adoption shall be entered until the court
11 is satisfied that all costs and expenses have been disclosed, are
12 reasonable, and that the costs and expenses do not violate the
13 provisions of subsection B of this section. Upon its review of the
14 affidavit of monies expended, the court shall in writing disapprove
15 any expenditure that the court deems unreasonable or in violation of
16 Sections 865 through 869 of Title 21 of the Oklahoma Statutes and,
17 to the extent necessary to comply with Oklahoma law, shall order
18 reimbursement of any consideration given in violation of Sections
19 865 through 869 of Title 21 of the Oklahoma Statutes. Payments made
20 pursuant to this section shall not be a violation of Sections 865
21 through 869 of Title 21 of the Oklahoma Statutes.

22 3. The court shall select an attorney to represent the birth
23 mother, to be compensated by the adoptive parents, provided that the

1 court determines that such representation shall be necessary to
2 protect the interests of the birth mother.

3 4. The court may approve attorney fees negotiated between
4 adoptive parents and counsel prior to the filing of the petition for
5 adoption if the court determines that the fees are reasonable.

6 5. Private attorneys shall not utilize any fee designated as a
7 service or legal fee received from the adoptive parents for the
8 expenses of the birth mother for any purpose not authorized by the
9 provisions of this section.

10 B. 1. Except as otherwise specifically provided by law, the
11 following list of adoption-related costs and expenses specified in
12 this paragraph may be deemed proper items for a person to pay in
13 connection with an adoption:

- 14 a. reasonable attorney fees and court costs,
- 15 b. reasonable medical expenses for birth mother and minor
16 to be adopted,
- 17 c. reasonable adoption counseling expenses for birth
18 parents before and after the birth of the minor, not
19 to exceed six (6) months from placement of the minor,
- 20 d. reasonable fees of a licensed child-placement agency,
- 21 e. reasonable living expenses for housing, food,
22 clothing, utilities, and other necessities of the
23 birth mother that are incurred during the adoption

- 1 planning process or during the pregnancy, not to
2 exceed two (2) months after the birth of the minor or
3 after the consent or relinquishment of the birth
4 mother,
- 5 f. reasonable costs for travel or transportation of the
6 birth mother or minor as same is incurred for medical
7 or adoption placement needs,
- 8 g. reasonable expenses for a home study, ~~and~~
- 9 h. reasonable expenses legally required by any
10 governmental entity related to the adoption of a
11 minor, and
- 12 i. reasonable small gifts to the birth mother, provided
13 that all such gifts do not exceed One Hundred Dollars
14 (\$100.00).

15 2. In addition, all expenses approved by the court should be
16 commensurate with other customary fees for similar services by
17 persons of equivalent experience and training where the services are
18 performed. Any services provided outside this state shall be
19 allowed in an amount as if the services had been performed within
20 the State of Oklahoma.

21 3. The provisions of this subsection shall apply to living and
22 transportation expenses incurred after the biological mother of the

1 minor contacts the child-placing agency or attorney for adoption
2 services.

3 4. The provisions of this subsection shall not prohibit a court
4 from extending any time period, or including any additional costs
5 and expenses in connection with an adoption other than those
6 specified in this subsection based on unusual circumstances or need.

7 5. Except as otherwise ordered by the court except for good
8 cause shown, all payments made pursuant to this section shall be
9 paid directly to the third-party provider of services or goods.

10 C. Any person desiring to pay living and transportation
11 expenses to or on behalf of a birth parent is authorized to expend
12 an initial amount not to exceed ~~Five Hundred Dollars (\$500.00)~~ One
13 Thousand Dollars (\$1,000.00) for such costs and expenses without
14 first obtaining court approval as required by paragraph 1 of
15 subsection D of this section. Any such costs and expenses shall be
16 disclosed as is otherwise required by the Oklahoma Adoption Code.

17 D. 1. Except for the amount authorized by subsection C of this
18 section, the payment of any living or transportation expenses for
19 benefit of the birth mother as authorized in subparagraphs e and f
20 of paragraph 1 of subsection B of this title shall be approved in
21 advance by the court.

22 2. The person, attorney, or licensed child-placing agency
23 desiring to pay living or transportation expenses on behalf of a

1 birth mother which exceed the amount in subsection C of this section
2 shall file a petition for an order approving payment of adoption-
3 related expenses.

4 3. The petition for an order approving payment of adoption-
5 related expenses shall be filed in the district court where the
6 adoption petition is to be filed, as provided in Section 7502-1.2 of
7 this title.

8 4. The petition shall be captioned: "In the matter of Baby
9 (name)." The petition shall include a listing of all anticipated
10 living or transportation expenses to be paid on behalf of the birth
11 mother for which court approval is being sought. If additional
12 expenditures not previously authorized by the court are needed on
13 behalf of the birth mother, an amended petition may be filed with
14 the court.

15 5. The petition shall be heard by the court within ten (10)
16 days of filing. The court clerk shall charge the same cost for a
17 petition for payment of expenses as is charged for the filing of an
18 adoption petition. In the event an adoption petition is later filed
19 in the same county, the adoption petition shall be filed as an
20 amended petition within the same case in which payment for expenses
21 was approved and no additional court costs shall be required. In
22 the event a petition for preadoption termination of parental rights
23 is later filed in the same county, the court clerk shall not assess

1 an additional filing fee and may use the same case number as for the
2 petition for adoption.

3 6. Any order authorizing payment shall be attached to a
4 petition for adoption. If no adoption petition is filed, the court
5 shall retain jurisdiction to enter any orders deemed appropriate
6 regarding the reimbursement of costs and expenses paid. If the
7 child is placed for adoption outside the State of Oklahoma, any such
8 order shall be submitted to the Interstate Compact of the Placement
9 of Children and to the court in the other state where the petition
10 for adoption is to be filed.

11 E. 1. In addition to the adoptive family affidavit requirement
12 of subsection A of this section, a Disclosure Statement of Adoption-
13 related Costs and Expenditures shall be prepared in writing by the
14 person, attorney or child-placing agency in a direct-placement
15 adoption. The Disclosure Statement of Adoption-related Costs and
16 Expenditures shall include a declaration of all fees, expenses, and
17 costs charged or expected to be charged for the adoption including,
18 but not limited to, the following:

- 19 a. retainer fees, the hourly rate, and the number of
20 hours billed for the adoption,
21 b. any fee charged for preplacement or other home studies
22 of any prospective birth parents, regardless of

- 1 whether the home study was performed by an outside
2 agency,
- 3 c. any costs, fees or expenses or any other thing of
4 value paid to or on behalf of the birth parents
5 related to the adoption of a minor by any party other
6 than the adoptive parents, and
- 7 d. any other fees and expenses related to the adoption
8 not otherwise specifically listed in this section.

9 2. The Disclosure Statement of Adoption-related Costs and
10 Expenditures containing true and accurate information shall be filed
11 before the final decree of adoption is ordered in each adoption of a
12 minor in this state. The statement shall be a public record;
13 provided, that any information identifying the person, attorney or
14 child-placing agency in the direct adoption shall not be made
15 public. In addition, the identity of the child, the adoptive
16 parents, and the birth parents shall not be made public.

17 SECTION 3. This act shall become effective November 1, 2010.

18 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 3-23-10 - DO
19 PASS, As Amended and Coauthored.