

**CHAPTER 175****(SB 16)**

AN ACT relating to adoption.

*Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

Section 1. KRS 199.470 is amended to read as follows:

- (1) Any person who is eighteen (18) years of age and who is a resident of this state or who has resided in this state for twelve (12) months next before filing may file a petition for leave to adopt a child in the Circuit Court of the county in which the petitioner resides.
- (2) If the petitioner is married, the husband or wife shall join in a petition for leave to adopt a child unless the petitioner is married to a biological parent of the child to be adopted, except that if the court finds the requirement of a joint petition would serve to deny the child a suitable home, the requirement may be waived.
- (3) If a child is placed for adoption by the cabinet, by an agency licensed by the cabinet, or with written approval by the secretary of the cabinet, the petition may be filed at the time of placement. In all other adoptions, the petition shall not be filed until the child has resided continuously in the home of the petitioner for at least ninety (90) days immediately prior to the filing of the adoption petition.
- (4) No petition for adoption shall be filed unless prior to the filing of the petition the child sought to be adopted has been placed for adoption by a child-placing institution or agency, or by the cabinet, or the child has been placed with written approval of the secretary; but no approval shall be necessary in the case of:
  - (a) A child sought to be adopted by a stepparent, grandparent, sister, brother, aunt,~~[-or]~~ uncle, **great grandparent, great aunt, or great uncle; however, the court in its discretion may order a report in accordance with KRS 199.510 and a background check as provided in subsection (8) of Section 2 of this Act;~~[-or]~~**
  - (b) A child received by the proposed adopting parent or parents from an agency without this state with the written consent of the secretary; **or**
  - (c) **A child adopted under the provisions of subsection (1) of Section 4 of this Act.**
- (5) Subsection (4) of this section shall not apply to children placed for adoption prior to June 14, 1962.

Section 2. KRS 199.473 is amended to read as follows:

- (1) All persons other than a child-placing agency or institution, the department, or persons excepted by KRS 199.470(4) or (5) who wish to place or receive a child shall make written application to the secretary for permission to place or receive a child.
- (2) Prior to the approval of an application to place or receive a child,~~[-together-with]~~ the fee required pursuant to subsection (13)~~[(6)]~~ of this section **shall be paid and a home study shall be completed. The purpose of the home study shall be to review the background of the applicant and determine the suitability of the applicant to receive a child, taking into account at all times the best interest of the child for whom application to receive has been made.**

- (3) (a) *The home study shall be made in accordance with administrative regulations promulgated by the cabinet in accordance with KRS Chapter 13A.*
- (b) *The cabinet shall conduct the home study for an applicant whose total gross income is equal to or less than two hundred fifty percent (250%) of the federal poverty level guidelines issued each year by the federal government, unless the applicant submits a written request for the home study to be conducted by a licensed child-placing agency or institution. Upon request, the cabinet shall make information available to an applicant who does not meet the requirements of this paragraph to assist the applicant in obtaining a home study from a licensed child-placing agency approved to provide adoption services.*
- (c) *A licensed child-placing agency approved to provide adoption services shall conduct the home study for an applicant whose gross total income is more than two hundred fifty percent (250%) of the federal poverty level guidelines issued each year by the federal government.*
- (d) *Calculation of family size for this subsection shall include each child requested to be adopted*~~[, the secretary shall cause the investigation to be made by a Cabinet for Families and Children social worker unless the applicant specifies in the application that the investigation shall be done by an adoption worker of the home and the background of the person or persons wishing to receive the child].~~
- (e) The portion of the *home study*~~[investigation]~~ pertaining to the home and family background shall be valid for one (1) year following the date of its completion by an adoption worker.~~[The purpose of the investigation shall be to determine the suitability of the applicants to receive a child, taking into account at all times the best interest of the child for whom application to receive has been made.]~~
- (4) The adoption worker making the *home study*~~[investigation]~~ shall make a finding in writing recommending either that the application be granted or that the application be denied.~~[In either case, reasons for the adoption worker's recommendation shall be given in writing.]~~ The recommendation of the adoption worker shall then be reviewed by the secretary.
- (5) Based on the report and recommendation of the adoption worker making the *home study*~~[investigation]~~, the secretary shall grant or refuse permission for the applicant to place or receive a child as early as practicable, but, in any case, the decision shall be made within sixty (60) days after the receipt of the application. In reaching a decision, the secretary shall be guided by the ability of the persons wishing to receive the child to give the child a suitable home, and shall at all times consider the best interest of the child from a financial, medical, psychological, and psychiatric standpoint.
- (6) If the application is refused, the secretary shall in general terms furnish in writing the reasons for his *or her* refusal.
- (7)~~(2)~~ *Any person who seeks temporary custody of a child prior to the secretary's ruling on an application for adoption shall file a petition seeking temporary custody, with a notice of intent to adopt, with the Circuit Court that will have jurisdiction of the adoption proceedings. The clerk of the court shall send a notice of the filing of the petition to the cabinet. A hearing on the petition shall occur no later than seventy-two (72) hours after the filing of the petition, excluding weekends and holidays. Proceedings under this subsection shall be incorporated into the court's adoption file. If the adoption is not*

*finalized within six (6) months of the filing of the petition and notice of intent, the court shall conduct a hearing on the status and custody of the child.*

- (8) Upon a finding by the Circuit Court that the child should be placed prior to the secretary's ruling on the application, the Circuit Court may grant the applicant temporary custody of the child pending the decision of the secretary. ***Temporary custody shall not be granted to an applicant unless a background check, including but not limited to a criminal records check by the Justice Cabinet or the Administrative Office of the Courts and a background check of child abuse and neglect records maintained by the cabinet, has been submitted to and reviewed by the court. The background check required for temporary custody shall be part of the home study required under subsection (2) of this section.*** If the application is denied ***by the secretary***, the temporary custody order shall be set aside and, upon motion of the cabinet or of the child's parent or parents, the Circuit Court may order the child returned to the biological parent or parents or the child's custody may be awarded to the cabinet, another licensed child-placing agency, or other individuals deemed appropriate by the court. This section shall not be deemed to permit the completion of any adoption proceeding without the approval of the secretary and compliance with KRS 615.030, if required.
- ~~(9)(3)~~ In any case where the cabinet refuses to approve the placement of a child for adoption when requested by the parent or parents of the child, or refuses the request of any person or persons that a child be placed with that person or those persons for adoption, the decision of the secretary in so refusing shall be final unless within ten (10) days after notice of refusal, the biological or proposed adopting parent or parents shall appeal to the Circuit Court of the county in which the adoption is proposed. No placement shall be disapproved on the basis of the religious, ethnic, racial, or interfaith background of the adoptive applicant, if the placement is made with the consent of the parent.
- (10) The cabinet may refuse to approve the placement of a child for adoption if the child's custodial parent is unwilling for the child to be placed for adoption with the proposed adoptive family. The cabinet may approve or deny the placement, in spite of the fact that the custodial parent or parents are unwilling to be interviewed by the cabinet or other approving entity, or if, after diligent efforts have been made, the adoption worker is unable to locate or interview the custodial parent or parents. The cabinet shall be made a party defendant to the appeal. In the hearing of an appeal, the court shall review the findings of the secretary and shall determine if the secretary has acted arbitrarily, unlawfully, or in a manner that constitutes an abuse of discretion.
- ~~(11)(4)~~ If a child who does not fall within the exception provided for in KRS 199.470(4) or (5) is placed or received in a home without ***the court's review of the background check required under this section or*** the permission of the secretary for families and children, or if permission to receive a child has been denied, a representative of the cabinet ***shall notify in writing or*** may petition the juvenile session of District Court of the county in which the child is found setting out the facts concerning the child. When the petition has been filed, the court shall take jurisdiction of the child and shall provide for it as it would provide for a dependent, neglected, or abused child under KRS Chapter 620, except that the child may not be placed in the home of the applicants who are to receive the child unless permission to do so is granted by the secretary or the action is ordered by a Kentucky court of competent jurisdiction.

- (12)~~(5)~~ When either the custodial parent or parents of the child to be placed or the persons wishing to receive the child reside out-of-state, the requirement of KRS 615.030, Interstate Compact on the Placement of Children, shall be met before the cabinet gives approval for the child's placement.
- (13)~~(6)~~ The secretary of the Cabinet for Families and Children shall be paid a nonrefundable fee of ~~two~~~~one~~ hundred~~—fifty~~ dollars ~~(\$200)~~~~(\$150)~~ upon the filing of the written application for permission to place or receive a child. Payment shall be made by certified or cashier's check only. All funds collected under this section shall be deposited in a restricted account, which is hereby created, for the purpose of subsidizing an adoptive parent for suitable care of a special-needs child as authorized in KRS 199.555.
- (14)~~(7)~~ Nothing in this statute shall be construed to limit the authority of the cabinet or a child-placing institution or agency to determine the proper disposition of a child committed to it by the juvenile session of District Court or the Circuit Court, prior to the filing of an application to place or receive.

Section 3. KRS 199.555 is amended to read as follows:

- (1) A "special-needs child" means:
- (a) A child which the state has determined cannot or should not be returned to the home of the child's parents; and
  - (b) A child which the state has first determined:
    1. That there exists a specific factor or condition the existence of which leads to the reasonable conclusion that the child cannot be placed with adoptive parents without providing adoption assistance under this section or medical assistance under Title XIX; and
    2. That except where it would be against the best interests of the child because of such factors as the existence of significant emotional ties with prospective adoptive parents while in the care of these parents as a foster child, a reasonable, but unsuccessful, effort has been made to place the child with appropriate adoptive parents without providing adoption assistance under this section or medical assistance under Title XIX.
- (2) "State-funded adoption assistance" means payment of monthly maintenance to assist in meeting the special needs of a child which was placed by the Cabinet for Families and Children. The state-funded adoption assistance shall also include payment of nonrecurring adoption expenses, and may include reimbursement of extraordinary medical expenses.
- (3) "Nonrecurring adoption expenses" means those expenses which are incurred in the legal adoption of a special-needs child for which parents are ultimately responsible which include reasonable and necessary adoption fees, court costs, attorney fees, and other expenses which are directly related to the special-needs adoption and which are not incurred in violation of state or federal law.
- (4) "Extraordinary medical expenses" means those expenses which are related to the child's special needs which existed prior to the adoption and are not reimbursed by private insurance, Medicaid, or other third-party payors or government programs.
- (5) If the secretary of the Cabinet for Families and Children or his designated representative finds that a child may benefit from being adopted and that the payment of a subsidy to

adoptive parents after the adoption will increase the likelihood of adoption, funds may be paid to the adoptive parents after completion of the adoption of the child if the following conditions exist:

- (a) The child was considered a special-needs child prior to the adoption;
  - (b) The child is committed to the Cabinet for Families and Children and the cabinet has authority to consent to the child's adoption; and
  - (c) The adoptive parents can give suitable care to the child if a subsidy is paid.
- (6) Agreements for the payments of funds under this section shall be made prior to the adoption of the child. However, if the secretary for families and children or his designated representative finds that the adoption is likely to disrupt, extraordinary medical expenses may be reimbursed contingent upon availability of resources, if the following conditions exist:
- (a) The child was placed for adoption by the Cabinet for Families and Children;
  - (b) The child was considered a special-needs child prior to the adoption;
  - (c) The parents have made a reasonable effort under the circumstances to meet the needs of the child without reimbursement for extraordinary medical expenses.

This subsection shall apply to any child meeting the conditions of this subsection who at the time of application for the post-adoption extraordinary medical expenses is under the age of eighteen (18). This subsection shall have retroactive as well as prospective effect.

- (7) The payments shall be out of funds appropriated to the cabinet and those funds collected pursuant to KRS 199.473(13),~~[(6)]~~ which shall be deposited in a restricted account for the purpose of subsidizing special-needs adoptions, and shall be in accordance with regulations promulgated by the secretary. The payments shall not exceed the amount which would be paid for foster care for the child. Monthly maintenance payments shall not exceed the amount which would be paid for foster care for the child and may include reimbursement for extraordinary medical expenses. Payment of nonrecurring adoption expenses shall only be reimbursed up to the limit established by the secretary for families and children in accord with 42 U.S.C. sec. 673. However, payments under agreements entered into under subsection (6) of this section shall be limited to reimbursement of authorized extraordinary medical expenses related to problems or conditions that existed prior to the adoption.
- (8) State-funded adoption assistance payments shall not be made to parents if:
- (a) The child has attained the age of eighteen (18), except that if the child is enrolled in a state or federal educational program, the payments may continue through age twenty-one (21);
  - (b) The cabinet determines the parents are no longer legally responsible for the support of the child; or
  - (c) The cabinet determines that the child is no longer receiving any support from the parents.
- (9) Parents who have been receiving adoption assistance payments under this section shall keep the cabinet informed of circumstances which would, pursuant to subsection (8) of this section, make them ineligible for assistance, or eligible for assistance in a different amount.

- (10) The cabinet shall establish criteria to be followed for the adoption of children under provisions of this section and shall promulgate the criteria by administrative regulations.

SECTION 4. A NEW SECTION OF KRS CHAPTER 199 IS CREATED TO READ AS FOLLOWS:

- (1) *The Commonwealth of Kentucky shall recognize a decree, judgment, or final order of adoption issued by a court or other governmental authority with appropriate jurisdiction in a foreign country when the child to be adopted has been approved for United States citizenship, or as otherwise provided by federal law.*
- (2) *Upon presentation of an original decree, judgment, or final order of adoption issued by a court or other governmental authority with appropriate jurisdiction in a foreign country, the secretary or his or her designee shall issue, within thirty (30) days, a certified notice that the foreign adoption is registered in the Commonwealth of Kentucky. The secretary or his or her designee may require a translated copy if the original decree, judgment, or final order is not in English. The cabinet shall maintain all records and notices of foreign adoptions in a manner similar to other adoption records.*
- (3) *A petition for adoption under KRS 199.470 shall be required for a child born outside the United States without a decree, judgment, or final order of adoption issued by a court or other governmental authority with appropriate jurisdiction in a foreign country, or for any child born outside of the United States who does not qualify for United States citizenship upon entry into the United States.*

**Approved March 31, 2005.**