

1 SB270
2 127265-2
3 By Senators Orr and Dunn
4 RFD: Children, Youth Affairs, and Human Resources
5 First Read: 24-MAR-11

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8 SYNOPSIS: Under existing law, the Department of Human
9 Resources may grant adoption subsidy payments in
10 cases of special needs only where children are in
11 the permanent legal custody of the department.

12 This bill would make adoption subsidy
13 payments available in cases not involving permanent
14 custody, such as parental relinquishment of rights
15 with the department or child placing agency, and
16 would make changes consistent with the mandates and
17 availability of adoption subsidy payments pursuant
18 to federal law.

19 This bill would clarify that no evidence to
20 locate a family to adopt a child without a subsidy
21 is required in cases where a foster parent is
22 adopting the child; would provide that subsidy
23 payments would continue under certain circumstances
24 when the parent and child move to another state;
25 would provide that subsidy payments are made to the
26 parent with physical custody of the child unless
27 court ordered or by signed agreement; would provide

1 that no payments shall be made to a parent where
2 the child is not a citizen or permanent resident of
3 the United States; would provide for subsidy
4 payments for children age 18 to 21, inclusive,
5 under certain conditions; and would provide for
6 termination of subsidy.

7 Under existing law, there are no definitions
8 for the types of special needs qualifying for
9 adoption subsidy payments.

10 This bill would define terms for the types
11 of special needs qualifying for adoption subsidy
12 payments.

13 Existing law does not provide a hearing
14 procedure.

15 This bill would provide that a hearing may
16 be requested within 30 days upon the denial,
17 reduction, or termination of adoption subsidy
18 payments or services.

19
20 A BILL

21 TO BE ENTITLED

22 AN ACT

23
24 To amend Sections 26-10-22, 26-10-24, 26-10-25,
25 26-10-26, and 26-10-29 of the Code of Alabama 1975, relating
26 to the adoption subsidy act; to provide definitions; to
27 provide for subsidy payments; to provide for termination of

1 subsidy payments; and to provide for annual reporting and
2 hearing procedures.

3 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

4 Section 1. Sections 26-10-22, 26-10-24, 26-10-25,
5 26-10-26, and 26-10-29 of the Code of Alabama 1975, are
6 amended to read as follows:

7 "§26-10-22.

8 "As used in this article, the following words shall
9 have the following meanings unless the context indicates
10 otherwise:

11 "(1) ADOPTION SUBSIDY. A money payment, services,
12 deferred payment, or any combination thereof that is provided
13 to a child with special needs or circumstances after
14 submission of an application to the department.

15 "(2) AGENCY. The department or a child welfare
16 agency which is authorized in its license issued by the
17 department to place children for adoption.

18 "(3) APPLICATION. The submission to the department
19 of a complete application as defined by the department with
20 documentation of the child's special needs.

21 ~~"As used in this article, except as otherwise~~
22 ~~required by the context, "child" means a child or a minor as~~
23 ~~defined by Alabama statute,~~ (4) CHILD. An individual under 19
24 years of age, or an individual 19 or 20 years of age and
25 eligible for Title IV-E Federal Funding, who is (a)a. in the
26 permanent care or custody, or both, of the department, a
27 public or voluntary licensed child-placing agency, (b)b.

1 legally free for adoption and ~~(c)~~c. in special need or
2 circumstances because he or she is not likely to be adopted by
3 reason of one or more, or a combination of, the following
4 conditions, such as:

5 "~~(1)~~1. Physical or mental disability~~7.~~

6 "~~(2)~~2. Emotional disturbance~~7.~~

7 "~~(3)~~3. Recognized high risk of physical or mental
8 disease~~7.~~

9 "~~(4)~~4. Age~~7~~ as determined by the department.

10 "~~(5)~~5. Sibling relationship~~7.~~

11 "~~(6)~~6. Racial or ethnic factors~~7.~~

12 "~~(7)~~ ~~Potential danger to the child in severance of~~
13 ~~his or her emotional ties with the prospective adoptive~~
14 ~~parents, or~~

15 "~~(8)~~ ~~Any combination of these conditions.~~

16 "(5) DEPARTMENT. The Department of Human Resources.

17 "(6) DEVELOPMENTAL DISABILITY. A developmental
18 disability as diagnosed by a licensed medical doctor or
19 qualified mental health professional.

20 "(7) EMOTIONAL DISTURBANCE. An emotional condition
21 which impedes the child's ordinary developmental progress as
22 diagnosed by a licensed medical doctor or qualified mental
23 health professional.

24 "(8) EMOTIONAL TIES. Includes all of the following:

25 "a. Identification of the child as a member of the
26 foster family.

1 "b. Identification by the foster family of the child
2 as belonging to that family.

3 "c. The likelihood that the child will not establish
4 significant emotional placement ties to another family if he
5 or she is denied permanent placement with the foster family.

6 "(9) HIGH RISK OF PHYSICAL OR MENTAL DISEASE. A
7 potentially debilitating condition as diagnosed by a licensed
8 medical doctor or qualified mental health professional.

9 "(10) MENTAL DISABILITY. A condition which is
10 characterized by impaired intellectual development and impedes
11 the ability to function independently as diagnosed by a
12 licensed medical doctor or qualified mental health
13 professional.

14 "(11) PHYSICAL DISABILITY. One of the following
15 conditions:

16 "a. A chronically debilitating, progressive, or
17 fatal disease which requires assistance for the child in
18 activities of daily living.

19 "b. The requirement of assistance of another person
20 or mechanical device for movement from place to place.

21 "(12) RACIAL OR ETHNIC FACTORS. Black, Hispanic,
22 Native American, Asian, or other heritage which may prevent a
23 child from being adopted.

24 "§26-10-24.

25 ~~"When foster parents are the prospective adoptive~~
26 ~~parents, certification of the child's eligibility for a~~
27 ~~subsidy shall be conditioned upon his or her adoption by the~~

1 ~~prospective adoptive parents under applicable Alabama adoption~~
2 ~~policies, procedures, and statutes.~~

3 ~~"In all other cases, after~~ (1) Except in cases
4 involving foster parents, where the department has made
5 reasonable efforts ~~have been made and no~~ to locate an
6 appropriate adoptive family to adopt the child without the use
7 of subsidy and no family has been found for ~~a~~ the child, the
8 State Department of Human Resources shall certify the child as
9 eligible for a subsidy ~~in the event of adoption,~~ provided the
10 other requirements of this chapter are met.

11 ~~"If the child is in the permanent custody of a~~
12 ~~voluntary licensed child-placing agency, that agency shall~~
13 ~~present to the State Department of Human Resources (a)~~

14 ~~"(2) In cases involving foster parents where there~~
15 is evidence to support the existence of potential danger to
16 the child in severing his or her emotional ties with his or
17 her foster parents who are the prospective adoptive parents,
18 ~~or (b) evidence of inability to place the child for adoption~~
19 ~~due to any of the other conditions specified in Section~~
20 ~~26-10-22. In the latter case, the agency shall present~~ no
21 evidence need be presented that reasonable efforts have been
22 made to place the child without subsidy, ~~such as recruitment~~
23 ~~of potential parents, use of adoption resource exchanges, and~~
24 ~~referral to appropriate specialized adoption agencies.~~

25 ~~"(3) Application for adoption subsidy shall be in~~
26 the form and contain the information required by the
27 department.

1 "The decision concerning certification of the child
2 for subsidy shall be made by the State Department of Human
3 Resources. Evidence submitted by the voluntary licensed
4 child-placing agency shall serve as a basis for the decision
5 and the State Department of Human Resources may request and
6 receive from the voluntary licensed child-placing agency
7 additional information which the State Department of Human
8 Resources considers necessary to the decision.

9 ~~"If the (4) The State Department of Human Resources~~
10 ~~approves the subsidy plan, it will draft~~ will negotiate with
11 the adoptive parent or parents and sign jointly with the
12 adoptive parents the subsidy agreement. The State Department
13 of Human Resources will be the administrator of the subsidy
14 agreement according to its regulations and the terms of this
15 article.

16 "The voluntary licensed child-placing agency shall
17 continue supervisory responsibility for the child and the
18 family until after the final adoption decree has been issued.

19 "§26-10-25.

20 "When parents are found and approved for adoption of
21 a child certified as eligible for subsidy, and before the
22 final decree of adoption is issued, there must be a written
23 agreement between the State Department of Human Resources and
24 the adopting family as to the terms and conditions of the
25 subsidy. ~~Adoption~~ Upon determination of eligibility, adoption
26 subsidies in individual cases may commence at any time after
27 the adoption placement or at the appropriate time after the

1 adoption decree, and will vary with the needs of the child and
2 as negotiated with the adoptive parent or parents, and
3 according to, as well as the availability of, other resources
4 to meet the child's needs. The subsidy may be for special
5 services only, or for money payments, payment deferred, and
6 either for a limited period, or for a long term, or for any
7 combination of the foregoing. The amount of the time-limited
8 or long-term subsidy may in no case exceed that which would be
9 allowable ~~from time to time~~ for such child if the child has
10 remained in foster care, or, in the case of special service,
11 the reasonable fee for the service rendered. If the adopted
12 parent or parents move to another state of residence with the
13 child, the adoption subsidy payment shall continue if the
14 child's needs remain the same and the child was a resident of
15 Alabama when eligibility for subsidy was certified. Payments
16 shall be made to the legal parent with physical custody of the
17 child except for school or other parent authorized placements
18 unless otherwise ordered by a court or by signed agreement by
19 the parent or parents and the department. No payment may be
20 made to a parent or parents if the child is not a citizen or
21 permanent legal resident of the United States unless the child
22 was adopted outside the United States and brought into this
23 country for the purpose of adoption and the adoption failed
24 and the child was placed into foster care.

25 "§26-10-26.

26 "~~When subsidies are for more than one year, the~~
27 ~~adoptive parents shall present an annual sworn certification~~

1 ~~that the adopted child remains under their care and that the~~
2 ~~condition(s) that caused the child to be certified continue(s)~~
3 ~~to exist. The subsidy agreement shall be continued in~~
4 ~~accordance with its terms but only as long as the adopted~~
5 ~~child is the legal dependent of the adoptive parents and the~~
6 ~~child's condition continues, except that, in the absence of~~
7 ~~other appropriate resources provided by law and in accordance~~
8 ~~with Alabama regulations, it may be continued after the~~
9 ~~adopted child reaches majority, provided he or she is in~~
10 ~~school or in training in a program, the purpose of which is to~~
11 ~~aid him toward self-support. If the child certified for~~
12 ~~subsidy was in permanent custody of a voluntary licensed~~
13 ~~child-placing agency, that agency shall, upon request, furnish~~
14 ~~the State Department of Human Resources additional information~~
15 ~~which may be needed to assure that the condition(s) that~~
16 ~~caused the child to be certified continue(s) to exist. The~~
17 ~~subsidy agreement may be modified only with approval of the~~
18 ~~State Department of Human Resources. The adoptive parents may~~
19 ~~request termination of the subsidy agreement at any time.~~

20 "(1) The department may require the adoptive parent
21 or parents to submit a verified report, annually or at a time
22 or times specified in the agreement or by rule, stating that
23 the child remains under their care and any change in the
24 conditions or circumstances of the child. The subsidy
25 agreement shall continue according to its terms, except as
26 provided by this article. The department may confirm the
27 accuracy and veracity of the report from any reliable sources

1 of information concerning the adoptive family and child,
2 including any governmental or private agency that serves the
3 area in which the child resides. If the report or information
4 received by the department indicates a substantial change in
5 the conditions that existed when the adoption subsidy
6 agreement was signed, the department may, after notice and
7 with the agreement of the adoptive parent or parents, modify
8 the adoption subsidy agreement, service, subsidy payment, or
9 any combination thereof.

10 "(2)a. The term of any adoption subsidy agreement
11 under this chapter, including any extension of the original
12 term, and any subsidy payment ends when any of the following
13 events occurs:

14 "1. The child becomes 18 years of age.

15 "2. The adoptive parent or parents are no longer
16 legally responsible for support of the child.

17 "3. The child is no longer receiving support from
18 the adoptive parent or adoptive parents.

19 "4. The child becomes emancipated.

20 "5. The child dies.

21 "6. The child's adoption is terminated.

22 "7. The adoptive parent or parents request
23 termination of the subsidy agreement.

24 "8. The child is no longer the legal dependant of
25 the adoptive parent or parents.

1 "9. The child is no longer considered to have the
2 condition or conditions that caused the child to be certified
3 for payment.

4 "10. The reduction or termination of funding.

5 "b. The department shall continue the adoption
6 subsidy payments in amounts determined by agreement among the
7 department, the child, and the adoptive parents, for children
8 adopted after age 16 during the time after the child becomes
9 18 years of age and up to the time the child reaches 21 years
10 of age if any of the following occurs:

11 "1. The child is enrolled or completing an education
12 in a program leading to an equivalent credential in any of the
13 following:

14 "(i) A secondary school.

15 "(ii) A public or private institution of higher
16 education.

17 "(iii) A course of career or technical education.

18 "(iv) The child is participating in a program or
19 activity designed to promote or remove barriers to employment.

20 "(v) The child is employed for at least 80 hours per
21 month.

22 "2. The child has a physical disability or a mental
23 disability and is in need of continued support.

24 "3. The child is incapable of attending school, a
25 training program, or employment due to a medical condition.

26 "§26-10-29.

1 "(1) Any subsidy decision by the State Department of
2 Human Resources which the placement agency or the adoptive
3 parents deem adverse to the child is reviewable by the State
4 Department of Human Resources.

5 "(2) In any case where an application under this
6 chapter is denied or an adoption subsidy is reduced or
7 terminated, the applicant or parent recipient shall have the
8 right to appeal in writing to the department for a hearing
9 within 30 days of receipt of notice in accordance with the
10 Alabama Administrative Procedure Act."

11 Section 2. This act shall become effective
12 immediately following its passage and approval by the
13 Governor, or its otherwise becoming law.