

House Bill 2904

Sponsored by Representative DOHERTY; Representative DEMBROW (at the request of Janette Barcnas, Ashley Peterson-Munoz, Leticia Munoz, Kiley Steward, Tamara Slack, Oregon Birth Mothers) (Pre-session filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Establishes Adoption Legal Services Fund. Continuously appropriates moneys in fund to Judicial Department to pay costs of legal consultation for birth parents in adoption proceedings. Requires additional fee to be collected from party filing petition for adoption and to be credited to fund.

Prohibits consent to adoption, or surrender and release of child for adoption, until child is eight days old. Prohibits waiver. Permits certificate of irrevocability to be revoked for any reason within 30 days. Provides that certificate of irrevocability is not effective until birth parent participates in mandatory adoption-related counseling and legal consultation. Failure of birth parent to participate in mandatory counseling and legal consultation and nonpayment of expenses of counseling and consultation are grounds for setting aside adoption judgment or for revocation of consent to adoption.

Provides that validity of adoption judgment may be challenged on specified grounds within one year after entry.

A BILL FOR AN ACT

1
2 Relating to adoptions; creating new provisions; amending ORS 21.114, 109.309, 109.312, 109.346,
3 109.381, 418.270 and 419B.529; and appropriating money.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1.** ORS 21.114 is amended to read:

6 21.114. (1) In a court having jurisdiction, the clerk of the court shall charge and collect:

7 (a) In an adoption proceeding[.];

8 (A) A first appearance fee of \$39 from the party filing the petition for adoption[*and*];

9 (B) A first appearance fee of \$39 from an objecting party appearing separately or objecting
10 parties appearing jointly; **and**

11 (C) **A fee of \$_____ from the party filing the petition for adoption. The sum collected**
12 **under this subparagraph shall be paid over to the State Treasurer and credited to the**
13 **Adoption Legal Services Fund created under section 3 of this 2011 Act.**

14 (b) In a change of name proceeding, a first appearance fee of \$39 from the party filing the ap-
15 plication for change of name, and a first appearance fee of \$39 from an objecting party appearing
16 separately or objecting parties appearing jointly.

17 (2) A pleading or other document shall be filed by the clerk only if the fee required under this
18 section is paid or if a request for a fee waiver or deferral is granted by the court.

19 (3) In any adoption or change of name proceeding in a court having jurisdiction, the clerk of the
20 court shall charge and collect in advance from the party having the affirmative of the issue, at the
21 time the proceeding comes on for trial or hearing upon the issues of fact or law involved therein,
22 a trial or hearing fee of \$39.

23 **SECTION 2. Sections 3 and 6 of this 2011 Act are added to and made a part of ORS 109.305**
24 **to 109.410.**

25 **SECTION 3. The Adoption Legal Services Fund is established in the State Treasury,**

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 separate and distinct from the General Fund. Moneys in the Adoption Legal Services Fund
 2 are continuously appropriated to the Judicial Department for the purpose of paying the cost
 3 of legal consultation for birth parents in adoption proceedings as described in section 6 of
 4 this 2011 Act. Interest earned by the Adoption Legal Services Fund shall be credited to the
 5 fund.

6 **SECTION 4.** ORS 109.312 is amended to read:

7 109.312. (1) Except as provided in ORS 109.314 to 109.329, consent in writing to the adoption
 8 under ORS 109.309 of a child shall be given by:

9 (a) The parents of the child, or the survivor of them.

10 (b) The guardian of the child, if the child has no living parent.

11 (c) The next of kin in this state, if the child has no living parent and no guardian.

12 (d) Some suitable person appointed by the court to act in the proceeding as next friend of the
 13 child to give or withhold consent, if the child has no living parent and no guardian or next of kin
 14 qualified to consent.

15 **(2) Consent to adoption under subsection (1) of this section may not be given until the**
 16 **child is at least eight days old. The requirement of this subsection may not be waived for any**
 17 **reason by any person.**

18 [(2)(a)] **(3)(a)** A person who gives consent to adoption under subsection (1) of this section may
 19 agree concurrently or subsequently to the giving of such consent that the consent shall be or be-
 20 come irrevocable, and may waive such person's right to a personal appearance in court, by a duly
 21 signed and attested certificate. **The certificate of irrevocability and the waiver may be revoked**
 22 **for any reason within 30 days after signing and attesting to the certificate.** The certificate of
 23 irrevocability and waiver shall be in effect **on the 31st day after the certificate of irrevocability**
 24 **has been signed and attested to without being revoked and** when the following are completed:

25 (A) The child is placed for the purpose of adoption in the physical custody of the person or
 26 persons to whom the consent is given;

27 (B) The person or persons to whom consent for adoption is given have filed a petition to adopt
 28 the child in a court of competent jurisdiction;

29 (C) The court has entered an order appointing the petitioner or some other suitable person as
 30 guardian of the child pursuant to ORS 109.335;

31 (D) The Department of Human Services, an Oregon licensed adoption agency or an attorney who
 32 is representing the adoptive parents has filed either a department or an Oregon licensed adoption
 33 agency home study with the court approving the petitioner or petitioners as potential adoptive
 34 parents or the department has notified the court that the filing of such study has been waived;

35 (E) Information about the child's social, medical and genetic history required in ORS 109.342 has
 36 been provided to an attorney or the department or an Oregon licensed adoption agency by the per-
 37 son giving consent to the adoption; [and]

38 [(F) *The person signing the certificate of irrevocability and waiver has been given an explanation*
 39 *by an attorney who represents the person and who does not also represent the adoptive family, by the*
 40 *department or by an Oregon licensed adoption agency of the consequences of signing the certificate.*]

41 **(F) When a birth parent gives consent to adoption, the birth parent has participated in**
 42 **the adoption-related counseling required by ORS 109.346, all uninsured costs of the coun-**
 43 **seling have been paid and the verification and notice required by ORS 109.346 have been filed**
 44 **with the court; and**

45 **(G) When a birth parent gives consent to adoption, the birth parent has consulted with**

1 **an attorney as required by section 6 of this 2011 Act, all costs of the legal consultation have**
 2 **been paid and the verification and notice required by section 6 of this 2011 Act have been filed**
 3 **with the court.**

4 (b) Upon the fulfillment of the conditions in paragraph (a) of this subsection, the consent for
 5 adoption may not be revoked unless fraud or duress is proved with respect to any material fact.

6 [(3)] (4) Consent to the adoption of a child subject to the Indian Child Welfare Act shall not be
 7 valid unless the requirements of the Indian Child Welfare Act (25 U.S.C. 1901 et seq.) are met. In
 8 accordance with the Indian Child Welfare Act a certificate of irrevocability is not valid for a child
 9 who is subject to the Indian Child Welfare Act.

10 **SECTION 5.** ORS 109.346 is amended to read:

11 109.346. (1) Except as provided in subsection [(5)] (6) of this section, a birth parent **who is**
 12 **contemplating giving consent to an adoption or who has given consent** [*consenting*] to an
 13 adoption shall **participate in** [*receive notice of the birth parent's right to payment for*] three
 14 adoption-related counseling sessions prior to surrender or relinquishment of the child for adoption
 15 and three sessions of adoption-related counseling after surrender or relinquishment of the child for
 16 adoption.

17 (2) Notice of the [*right to*] **requirement that a birth parent participate in** adoption-related
 18 counseling [*shall*] **must** be in writing and [*shall*] **must** be provided to the [*consenting*] birth parent
 19 by either the attorney for the birth parent, the agency representative taking the birth parent's
 20 consent or the attorney for the prospective adoptive parent. Before entry of a judgment of adoption,
 21 the agency or attorney providing the written notice shall submit verification to the court that the
 22 notice was given to the [*consenting*] birth parent.

23 **(3) A person who has provided adoption-related counseling to a birth parent under this**
 24 **section shall file a written verification with the court that the birth parent participated in**
 25 **the counseling required by this section and that the counseling included, at a minimum, in-**
 26 **formation about:**

27 **(a) The grief and loss that may be experienced by the birth parent and the child as a**
 28 **result of the adoption;**

29 **(b) The desirability of keeping the child with the birth parent, or with members of the**
 30 **birth parent's family if the birth parent is unable to care for the child;**

31 **(c) The availability of public and private resources that would enable the birth parent to**
 32 **keep and nurture the child; and**

33 **(d) The benefits of continuing contact between the birth parent and the child.**

34 [(3)] (4) The prospective adoptive parent shall pay all uninsured costs of the adoption-related
 35 counseling required by this section[, *provided the counseling is received within one year of the date*
 36 *of surrender or relinquishment of the child for adoption*].

37 [(4)] (5) Adoption-related counseling under this section[, *unless otherwise agreed to by the pro-*
 38 *spective adoptive parent and the consenting birth parent,*] shall be provided by:

39 (a) A regulated social worker as defined in ORS 675.510 who is employed by an Oregon licensed
 40 adoption agency other than the regulated social worker assigned to the prospective adoptive parent;

41 (b) A regulated social worker, counselor or therapist who is working under the supervision of
 42 a clinical social worker licensed under ORS 675.530 or a licensed professional counselor and who
 43 is knowledgeable about birth parent, adoption and grief and loss issues; or

44 (c) A clinical social worker licensed under ORS 675.530, counselor or therapist who:

45 (A) Has a graduate degree in social work, counseling or psychology; and

1 (B) Is knowledgeable about birth parent, adoption and grief and loss issues.

2 [(5)] (6) The requirements of this section do not apply to:

3 [(a) *An adoption in which a birth parent relinquishes parental rights to the Department of Human*
4 *Services;*]

5 [(b)] (a) An adoption in which one parent retains parental rights;

6 [(c)] (b) An adoption in which the child is born in a foreign country and adopted under the laws
7 of that country or readopted in Oregon;

8 [(d)] (c) An adoption in which the child is born in a foreign country and subsequently adopted
9 in Oregon and in which the identity or whereabouts of the child's birth parents are unknown; or

10 [(e)] (d) An adoption of an adult.

11 [(6)] (7) Failure [*to provide the notice*] **of the birth parent to participate in the counseling**
12 **required by this section, failure of the person providing the counseling to file the verification**
13 **required by this section** or failure to pay the uninsured costs of adoption-related counseling re-
14 quired by this section is [*not*] grounds for setting aside an adoption judgment or for revocation of
15 a written consent to an adoption [*or a certificate of irrevocability*].

16 **SECTION 6. (1) Except as provided in subsection (7) of this section, a birth parent who**
17 **is contemplating giving consent to an adoption or who has given consent to an adoption shall**
18 **meet with an attorney for legal consultation prior to surrender or relinquishment of the**
19 **child for adoption.**

20 (2) The attorney shall advise the birth parent, at a minimum, of the following:

21 (a) The birth parent's right to keep and nurture the child;

22 (b) The birth parent's right to consider or reconsider the surrender or relinquishment
23 of the child for adoption, regardless of any services the birth parent may have received from
24 any source and regardless of any payments a prospective adoptive parent may have made for
25 the services or to the birth parent;

26 (c) The time the birth parent has to consent to adoption or to surrender or relinquish
27 the child after the birth of the child;

28 (d) The time the birth parent has to revoke a consent to adoption or a certificate of
29 irrevocability and waiver under ORS 109.312;

30 (e) Agreements for continuing contact with the child under ORS 109.305 that may be
31 entered into between the birth parent and a prospective adoptive parent;

32 (f) Circumstances under which a judgment of adoption may be appealed or the validity
33 of a judgment of adoption may be challenged in court;

34 (g) The procedure for obtaining a copy of the child's birth certificate;

35 (h) The birth parent's obligation, if any, to pay expenses related to the child's birth,
36 medical care or adoption; and

37 (i) The birth parent's right to obtain copies of documents filed or signed by the birth
38 parent in connection with the adoption proceeding.

39 (3) Notice of the requirement that a birth parent meet with an attorney for legal con-
40 sultation must be in writing and must be provided to the birth parent by either the attorney
41 for the birth parent, the agency representative taking the birth parent's consent or the at-
42 torney for the prospective adoptive parent. Before entry of a judgment of adoption, the
43 agency or attorney providing the written notice shall submit verification to the court that
44 the notice was given to the birth parent.

45 (4) The attorney who has met with a birth parent under this section shall file a written

1 verification with the court that the attorney provided the birth parent with legal consulta-
 2 tion that included, at a minimum, the information required by subsection (2) of this section.

3 (5) The prospective adoptive parent shall pay all costs of the legal consultation required
 4 by this section, except that the court may order all or part of the costs to be paid from
 5 moneys in the Adoption Legal Services Fund established under section 3 of this 2011 Act.

6 (6) An attorney meeting with a birth parent as required by this section must be licensed
 7 to practice in Oregon and have expertise in the practice of adoption law in this state.

8 (7) The requirements of this section do not apply to:

9 (a) An adoption in which one parent retains parental rights;

10 (b) An adoption in which the child is born in a foreign country and adopted under the
 11 laws of that country or readopted in Oregon;

12 (c) An adoption in which the child is born in a foreign country and subsequently adopted
 13 in Oregon and in which the identity or whereabouts of the child's birth parents are unknown;
 14 or

15 (d) An adoption of an adult.

16 (8) Failure of the birth parent to participate in the legal consultation required by this
 17 section, failure of the attorney meeting with a birth parent to file the verification required
 18 by this section or failure to pay the costs of the legal consultation required by this section
 19 is grounds for setting aside an adoption judgment or for revocation of a written consent to
 20 an adoption.

21 **SECTION 7.** ORS 109.381 is amended to read:

22 109.381. (1) A judgment of a court of this state granting an adoption, and the proceedings in such
 23 adoption matter, shall in all respects be entitled to the same presumptions and be as conclusive as
 24 if rendered by a court of record acting in all respects as a court of general jurisdiction and not by
 25 a court of special or inferior jurisdiction, and jurisdiction over the persons and the cause shall be
 26 presumed to exist.

27 *[(2) Except for such right of appeal as may be provided by law, judgments of adoption shall be*
 28 *binding and conclusive upon all parties to the proceeding. No party nor anyone claiming by, through*
 29 *or under a party to an adoption proceeding, may for any reason, either by collateral or direct pro-*
 30 *ceedings, question the validity of a judgment of adoption entered by a court of competent jurisdiction*
 31 *of this or any other state.]*

32 *[(3) After the expiration of one year from the entry of a judgment of adoption in this state the va-*
 33 *lidity of the adoption shall be binding on all persons, and it shall be conclusively presumed that the*
 34 *child's natural parents and all other persons who might claim to have any right to, or over the child,*
 35 *have abandoned the child and consented to the entry of such judgment of adoption, and that the child*
 36 *became the lawful child of the adoptive parents or parent at the time when the judgment of adoption*
 37 *was rendered, all irrespective of jurisdictional or other defects in the adoption proceeding. After the*
 38 *expiration of the one-year period no one may question the validity of the adoption for any reason, either*
 39 *through collateral or direct proceedings, and all persons shall be bound thereby. However, the pro-*
 40 *visions of this subsection shall not affect the right of appeal from a judgment of adoption as may be*
 41 *provided by law.]*

42 (2) Any party to an adoption, including but not limited to a person whose consent in
 43 writing to an adoption is required under ORS 109.312 or who has signed a release or surren-
 44 der for the purpose of adoption under ORS 418.270, may file an action up to one year after
 45 the entry of a judgment of adoption in this state contesting the validity of the judgment or

1 **the validity of the consent to the adoption. A court shall set aside an adoption judgment**
 2 **under this section if the court finds that:**

- 3 **(a) The consent to adoption was obtained by fraud or duress;**
- 4 **(b) The requirements of ORS 109.346 were not met; or**
- 5 **(c) The requirements of section 6 of this 2011 Act were not met.**

6 **SECTION 8.** ORS 418.270 is amended to read:

7 418.270. (1) If licensed for such purposes by the Department of Human Services, a private
 8 child-caring agency may receive children from their parents or legal guardians for special, tempo-
 9 rary or continued care. The parents or guardians may sign releases or surrenders giving to such
 10 agencies guardianship and control of the persons of such children during the period of such care,
 11 which may be extended until the children arrive at legal age. Such releases do not surrender the
 12 rights of such parents or guardians in respect to the adoption of such children and do not entitle
 13 such organization to give consent to the adoption of the children unless the release or surrender
 14 expressly recites that it is given for the purpose of adoption. Private child-caring agencies are au-
 15 thorized to place children for adoption or foster care only if authorized by the department in the
 16 license issued by the department.

17 (2) Any entire severance of family ties of such children by adoption or otherwise shall be ac-
 18 complished only by the order of a court of competent jurisdiction.

19 *[(3) In the absence of the certificate provided for in subsection (4) of this section, it is unlawful to*
 20 *present a child surrendered to an agency by a parent, parents or guardian for a court to pass upon the*
 21 *adoption of the child until at least six months have elapsed after signing the surrender.]*

22 *[(4) Parents or legal guardians of children whom they have by release or surrender agreement*
 23 *given into the guardianship of incorporated child-caring agencies for the purpose of adoption may,*
 24 *concurrently or subsequently and without any adoption proceeding having been initiated, agree that the*
 25 *release or surrender shall become irrevocable as soon as the child is placed by the agency in the*
 26 *physical custody of a person or persons for the purpose of adoption by them, and waive their right to*
 27 *personal appearance in court in matters of adoption of such children, by a duly signed and attested*
 28 *certificate. From and after such physical placement for adoption such certificate of irrevocability and*
 29 *waiver and the release or surrender may not be revoked by the parent or guardian unless fraud or*
 30 *duress is affirmatively proved.]*

31 **(3) A parent or guardian may not sign a release or surrender under subsection (1) of this**
 32 **section until the child is at least eight days old. The requirement of this subsection may not**
 33 **be waived for any reason by any person.**

34 **(4) A parent or guardian may revoke a release or surrender given under subsection (1)**
 35 **of this section for any reason within 30 days after signing the release or surrender.**

36 *[(5) No agreement to release or surrender a child for adoption, or other agreement or waiver of*
 37 *rights having the same effect, executed before March 24, 1971, in connection with the surrender of a*
 38 *child into the guardianship of a child-caring agency for purposes of adoption, may be revoked or held*
 39 *invalid for any reason except upon affirmative proof of fraud or duress.]*

40 **SECTION 9.** ORS 109.309 is amended to read:

41 109.309. (1) Any person may petition the circuit court for leave to adopt another person and, if
 42 desired, for a change of the other person's name. One petitioner, the child, one parent or the person,
 43 who is not an adoption agency, consenting to the adoption as required under ORS 109.312 (1) must
 44 be a resident of this state. As used in this subsection, "resident" means a person who has resided
 45 in this state continuously for a period of six months prior to the date of the petition.

1 (2) Except as provided in subsection (3) of this section, when the petition is for the adoption of
 2 a minor child, the adoption is governed by the Uniform Child Custody Jurisdiction and Enforcement
 3 Act, ORS 109.701 to 109.834.

4 (3)(a) Notwithstanding ORS 109.741 and 109.744, a court of this state has jurisdiction over the
 5 adoption of a minor child if, immediately prior to the filing of a petition for adoption:

6 (A) The minor child resided in this state for at least six consecutive months including periods
 7 of temporary absence;

8 (B) One parent or another person, who is not an adoption agency, consenting to the adoption
 9 as required under ORS 109.312 (1) resided in this state for at least six consecutive months including
 10 periods of temporary absence;

11 (C) The prospective adoptive parent resided in this state for at least six consecutive months
 12 including periods of temporary absence and substantial evidence is available in this state concerning
 13 the present or future care of the minor child;

14 (D) It appears that no court of another state would have jurisdiction under circumstances sub-
 15 stantially in accordance with subparagraphs (A) to (C) of this paragraph; or

16 (E) A court of another state has declined to exercise jurisdiction on the grounds that this state
 17 is a more appropriate forum to hear a petition for adoption of the minor child and it is in the best
 18 interests of the minor child that a court of this state assume jurisdiction.

19 (b) As used in paragraph (a) of this subsection, “periods of temporary absence” means periods
 20 of absence of not more than a total of 30 days in the prior six consecutive months.

21 (4) The petition to adopt a person 18 years of age or older may be filed in the county where the
 22 petitioner, the person to be adopted or the person who consents to the adoption resides.

23 (5) In a petition to adopt a minor child, venue lies in the Oregon county with which the child
 24 has the most significant connection or in the Oregon county in which the licensed adoption agency
 25 is located.

26 (6)(a) When the petition is for the adoption of a minor child, the petitioner shall also file at the
 27 time of filing the petition:

28 (A) A written statement containing the full names and permanent addresses of:

29 (i) The child;

30 (ii) The petitioner;

31 (iii) All persons whose consent to the adoption is required under ORS 109.312 when such names
 32 are either known or may be readily ascertained by the petitioner;

33 (iv) The persons with whom the child has lived during the last five years and the places where
 34 the child has lived during that period, if the names and addresses may be readily ascertained by the
 35 petitioner;

36 (v) If known to the petitioner, any person not a party to the proceeding who has physical cus-
 37 tody of the child or claims rights of legal custody or physical custody of, or parenting time or
 38 visitation with, the child; and

39 (vi) The Oregon licensed adoption agency, if any, or the relative or person that privately placed
 40 the child for adoption.

41 (B) The documents demonstrating consent under ORS 109.312 to the adoption of the minor child.

42 (C) Written evidence documenting a current home study that has been approved by either the
 43 Department of Human Services or an Oregon licensed adoption agency submitted for the purpose
 44 of demonstrating that the petitioner meets the minimum standards for adoptive homes as set forth
 45 in the department’s administrative rules.

1 (b) A relative who qualifies under the department administrative rules for a waiver of the
 2 department's home study requirements described in paragraph (a)(C) of this subsection may file the
 3 request for waiver along with the petition for adoption.

4 (c) The department, upon request by the petitioner, may waive the home study requirements
 5 described in paragraph (a)(C) of this subsection in an adoption in which one of the child's biological
 6 or adoptive parents retains parental rights. The department shall waive post-placement reports in
 7 an adoption in which one of the child's biological or adoptive parents retains parental rights.

8 (7)(a) The petitioner shall cause copies of the documents required to be filed with the court
 9 under subsection (6) of this section to be served upon the Director of Human Services **and any**
 10 **person whose consent is required under ORS 109.312**, by either registered or certified mail with
 11 return receipt or personal service, within 30 days after the documents have been filed with the
 12 court.

13 (b) In the case of an adoption described in subsection (6)(c) of this section, the petitioner shall
 14 also serve the petition, by either registered or certified mail with return receipt or personal service:

15 (A) On all persons whose consent to the adoption is required under ORS 109.312 unless the
 16 person's written consent is filed with the court; and

17 (B) On the parents of the party whose parental rights would be terminated, if the names and
 18 addresses are known or may be readily ascertained by the petitioner. Service required by this sub-
 19 paragraph may be waived by the court for good cause.

20 (c) When a parent of the child is deceased or incapacitated, the petitioner shall also serve the
 21 petition on the parents of the deceased or incapacitated parent, if the names and addresses are
 22 known or may be readily ascertained by the petitioner. Service required by this paragraph may be
 23 waived by the court for good cause. As used in this paragraph:

24 (A) "Incapacitated" means a condition in which a person's ability to receive and evaluate in-
 25 formation effectively or to communicate decisions is impaired to such an extent that the person
 26 lacks the capacity to meet the essential requirements for the person's physical health or safety.

27 (B) "Meet the essential requirements for the person's physical health or safety" means those
 28 actions necessary to provide the health care, food, shelter, clothing, personal hygiene and other care
 29 without which serious physical injury or illness is likely to occur.

30 (d) The court may not rule upon the petition until at least 90 days after the date that the doc-
 31 uments were served upon the director. However, the department may waive the 90-day period.

32 (8)(a) Within 90 days after the service on the director, the department shall investigate and file
 33 for the consideration of the judge before whom the petition for adoption is pending a placement re-
 34 port containing information regarding the status of the child and evidence concerning the suitability
 35 of the proposed adoption. The department may designate an Oregon licensed adoption agency to
 36 investigate and report to the court. If the department designates an Oregon licensed adoption
 37 agency to investigate and report to the court, the department shall make the designation and pro-
 38 vide all necessary information and materials to the Oregon licensed adoption agency no later than
 39 30 days after the service on the director. However, the department may waive the placement report
 40 requirement.

41 (b) Upon receipt of a written request by the petitioner's attorney, the department shall furnish
 42 to that attorney copies of any information that the department has filed with the court.

43 (c) The department may charge the petitioner a fee for investigating a proposed nonagency
 44 adoption and preparing the home study report described in subsection (6)(a)(C) of this section and
 45 the placement report described in paragraph (a) of this subsection. The petitioner shall report the

1 fee amount to the court. The court granting the adoption shall make a finding as to whether the fee
 2 is necessary and reasonable. Any fee charged may not exceed reasonable costs for investigation,
 3 home study and placement report preparation. The department shall prescribe by rule the procedure
 4 for computing the investigation, home study and placement report preparation fee. The rules shall
 5 provide a waiver of either part or all of the fee based upon the petitioner's ability to pay.

6 (9) The amounts of any fees collected under subsection (8) of this section are continuously ap-
 7 propriated to the department for use in preparing the home study and placement reports required
 8 under subsections (6)(a)(C) and (8)(a) of this section.

9 (10)(a) Except as provided in paragraph (b) of this subsection, a court may not grant a judgment
 10 for the adoption of a minor child unless the petitioner has filed with the court the documents de-
 11 scribed in subsections (6) and (8)(a) of this section.

12 (b) A person is not required to file a home study or a placement report with the court when the
 13 department has granted the person a waiver under department rules.

14 (11) The adoption shall comply with the Indian Child Welfare Act (25 U.S.C. 1901 et seq.), if
 15 applicable. Every adoption petition involving the Indian Child Welfare Act shall include the follow-
 16 ing:

17 (a) A statement of the efforts to notify the appropriate Indian tribe or tribes of the adoption;
 18 and

19 (b) A statement of the efforts to comply with the placement preferences of the Indian Child
 20 Welfare Act (25 U.S.C. 1901 et seq.) or the placement preferences of the appropriate Indian tribe.

21 **SECTION 10.** ORS 419B.529 is amended to read:

22 419B.529. (1) Notwithstanding ORS 109.309, a prospective adoptive parent is not required to file
 23 a petition for adoption when:

24 (a) A juvenile court that is a circuit court has entered an order of permanent commitment of a
 25 ward to the Department of Human Services under ORS 419B.527 or the parent has signed and the
 26 department has accepted a release and surrender to the department [*and a certificate of irrevocability*
 27 *and waiver*] as provided in ORS 418.270 regarding a child;

28 (b) The department has completed a home study as defined in ORS 109.304 that finds the pro-
 29 spective parent is suitable to adopt the child or ward and the department consents to the adoption
 30 of the child or ward by the prospective parent;

31 (c) A home study and a placement report requesting the juvenile court to enter a judgment of
 32 adoption have been filed in the juvenile court proceeding; and

33 (d) At the time the placement report is filed under paragraph (c) of this subsection, the pro-
 34 spective adoptive parent files the adoption report form required under ORS 109.400.

35 (2) Notwithstanding ORS 21.114, the clerk of the juvenile court may not charge or collect [*first*
 36 *appearance or hearing*] **any** fees for a proceeding under this section.

37 (3) After the filing of the home study and the placement report requesting the court to enter a
 38 judgment of adoption, the juvenile court that entered the order of permanent commitment may pro-
 39 ceed as provided in ORS 109.307 and 109.350 and may enter a judgment of adoption.

40 (4) Records of adoptions filed and established under this section shall be kept in accordance
 41 with, and are subject to, ORS 7.211.

42 **SECTION 11. Sections 3 and 6 of this 2011 Act and the amendments to ORS 21.114,**
 43 **109.309, 109.312, 109.346, 109.381, 418.270 and 419B.529 by sections 1, 4, 5 and 7 to 10 of this 2011**
 44 **Act apply to adoption proceedings in which the consent to adoption was given on or after the**
 45 **effective date of this 2011 Act.**

