

Senate Engrossed  
third party rights; adopted child

State of Arizona  
Senate  
Fifty-fifth Legislature  
Second Regular Session  
2022

# SENATE BILL 1323

AN ACT

AMENDING SECTION 25-409, ARIZONA REVISED STATUTES; RELATING TO LEGAL  
DECISION-MAKING AND PARENTING TIME.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 25-409, Arizona Revised Statutes, is amended to  
3 read:

4 25-409. Third party rights

5 A. Pursuant to section 25-402, subsection B, paragraph 2, a person  
6 other than a legal parent may petition the superior court for legal  
7 decision-making authority or placement of the child. The court shall  
8 summarily deny a petition unless it finds that the petitioner's initial  
9 pleading establishes that all of the following are true:

10 1. The person filing the petition stands in loco parentis to the  
11 child.

12 2. It would be significantly detrimental to the child to remain or  
13 be placed in the care of either legal parent who wishes to keep or acquire  
14 legal decision-making.

15 3. A court of competent jurisdiction has not entered or approved an  
16 order concerning legal decision-making or parenting time within one year  
17 before the person filed a petition pursuant to this section, unless there  
18 is reason to believe the child's present environment may seriously  
19 endanger the child's physical, mental, moral or emotional health.

20 4. One of the following applies:

21 (a) One of the legal parents is deceased.

22 (b) The child's legal parents are not married to each other at the  
23 time the petition is filed.

24 (c) A proceeding for dissolution of marriage or for legal  
25 separation of the legal parents is pending at the time the petition is  
26 filed.

27 B. Notwithstanding subsection A of this section, it is a rebuttable  
28 presumption that awarding legal decision-making to a legal parent serves  
29 the child's best interests because of the physical, psychological and  
30 emotional needs of the child to be reared by a legal parent. A third  
31 party may rebut this presumption only with proof showing by clear and  
32 convincing evidence that awarding legal decision-making to a legal parent  
33 is not consistent with the child's best interests.

34 C. Pursuant to section 25-402, subsection B, paragraph 2, a person  
35 other than a legal parent may petition the superior court for visitation  
36 with a child. The superior court may grant visitation rights during the  
37 child's minority on a finding that the visitation is in the child's best  
38 interests and that any of the following is true:

39 1. One of the legal parents is deceased or has been missing at  
40 least three months. For the purposes of this paragraph, a parent is  
41 considered to be missing if the parent's location has not been determined  
42 and the parent has been reported as missing to a law enforcement agency.

43 2. The child was born out of wedlock and the child's legal parents  
44 are not married to each other at the time the petition is filed.

1           3. For grandparent or great-grandparent visitation, the marriage of  
2 the parents of the child has been dissolved for at least three months.

3           4. For in loco parentis visitation, a proceeding for dissolution of  
4 marriage or for legal separation of the legal parents is pending at the  
5 time the petition is filed.

6           D. A petition filed under subsection A or C of this section must be  
7 verified or supported by affidavit and must include detailed facts  
8 supporting the petitioner's claim. The petitioner must also provide  
9 notice of this proceeding, including a copy of the petition and any  
10 affidavits or other attachments, and serve the notice pursuant to the  
11 Arizona rules of family law procedure to all of the following:

12           1. The child's legal parents.

13           2. A third party who possesses legal decision-making authority over  
14 the child or visitation rights.

15           3. The child's guardian or guardian ad litem.

16           4. A person or agency that possesses physical custody of the child  
17 or claims legal decision-making authority or visitation rights concerning  
18 the child.

19           5. Any other person or agency that has previously appeared in the  
20 action.

21           E. In deciding whether to grant visitation to a third party, the  
22 court shall give special weight to the legal parents' opinion of what  
23 serves their child's best interests and consider all relevant factors  
24 including:

25           1. The historical relationship, if any, between the child and the  
26 person seeking visitation.

27           2. The motivation of the requesting party seeking visitation.

28           3. The motivation of the person objecting to visitation.

29           4. The quantity of visitation time requested and the potential  
30 adverse impact that visitation will have on the child's customary  
31 activities.

32           5. If one or both of the child's parents are deceased, the benefit  
33 in maintaining an extended family relationship.

34           F. If logistically possible and appropriate, the court shall order  
35 visitation by a grandparent or great-grandparent if the child is residing  
36 or spending time with the parent through whom the grandparent or  
37 great-grandparent claims a right of access to the child.

38           G. A grandparent or great-grandparent seeking visitation rights  
39 under this section shall petition in the same action in which the family  
40 court previously decided legal decision-making and parenting time or, if  
41 no such case existed, by separate petition in the county of the child's  
42 home state, as defined in section 25-1002.

1           H. All visitation rights granted under this section automatically  
2 terminate if the child is adopted or placed for adoption. If the child is  
3 removed from an adoptive placement, the court may reinstate the visitation  
4 rights. This subsection does not apply if the child is adopted by the  
5 spouse of a natural parent after the natural parent remarries.

6           I. FOR THE PURPOSES OF THIS SECTION, A CHILD WHO IS ADOPTED MAY BE  
7 TREATED AS IF BORN IN LAWFUL WEDLOCK ONLY IF THE CHILD IS ADOPTED JOINTLY  
8 BY PARENTS WHO ARE MARRIED TO ONE ANOTHER AS PROVIDED IN SECTION 8-103,  
9 SUBSECTION A.