

D R A F T
FOR DISCUSSION ONLY

UNREGULATED TRANSFERS OF ADOPTED CHILDREN ACT

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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UNREGULATED TRANSFERS OF ADOPTED CHILDREN ACT

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1 **UNREGULATED TRANSFERS OF ADOPTED CHILDREN ACT**

2 **Prefatory Note**

3 Several years before commencement of the drafting of this act, public awareness began to
4 focus on a situation that was occurring in the parenting and custody of some children {citations}.

5
6 Some parents found that after the birth or adoption of their child they experienced
7 considerable difficulty or even an inability to care for or effectively manage the child’s behavior.
8 In many of those cases the difficulty might have been due to the parents’ own inexperience or
9 lack of training and preparation in child-rearing, or a byproduct of the child’s physical or
10 psychological health challenges at the time of the adoption, or both. Perhaps after some initial
11 unsuccessful attempts to obtain assistance and not knowing where else to turn, some of those
12 parents decided to transfer custody of their child to another person – a person sometimes
13 unknown to them whom they found through friends or acquaintances or, in some cases, a person
14 found through the Internet or other media. In many cases, there was no evidence showing that
15 the person to whom custody of the child had been transferred had the ability to care for the child.
16

17 In some cases, the instigation for the transfers might have been more sinister. By means
18 of the Internet or other media, potential child molesters or sex traffickers seeking children
19 contacted parents who were experiencing difficulties parenting a child. Thereafter, custody of
20 the child might have been transferred to the previously unknown individual.

21
22 The Unregulated Transfers of Adopted Children Act provides two different but related
23 responses to the situation described above.
24

25 First, Article 2 prohibits an extrafamilial transfer of custody of a child if a parent intends
26 to relinquish parental rights and responsibilities with regard to the child. The prohibition applies
27 to a parent or guardian with custody of a child as well as to an individual with whom a child has
28 been placed for adoption. It also prohibits advertising in which a person seeks to transfer
29 custody of, or locate, a child in violation of the article, or to facilitate such a transfer.
30

31 Second, Article 3 deals with the adoption of children with special needs, i.e., those whose
32 physical or psychological health at the time of a proposed placement for adoption would predict
33 that the adoptive parents might have difficulty in caring for the child. This article seeks to assure
34 that prospective adoptive parents are informed about, and given instruction on dealing with,
35 various health or behavioral issues before they might arise. It requires that the child-placing
36 agency through which an adoption is facilitated provide the prospective adoptive parents with:
37 (1) general information about adopting children with these health or behavioral issues;
38 (2) specific information about the physical and psychological health of their prospective adoptive
39 child; and (3) guidance and instruction on dealing with the challenges that may present
40 themselves in rearing the child placed with them. It also requires a child-placing agency or state
41 department of child protection to provide certain post-placement and post-adoption support
42 services to the adoptive child and parent to help preserve the adoption.

Background

1
2
3 In 2013, after attention began to focus on unregulated custody transfers, a U.S. Working
4 Group was formed, consisting of representatives from several federal agencies, state child
5 welfare organizations, and the National Association of Attorneys General. The Working Group
6 produced a report specifying three issues that should be addressed in legislation: (1) a clear
7 provision stating that an unregulated custody transfer is a violation of state law; (2) authorization
8 for state protective services agencies to investigate and interdict instances of unregulated
9 transfers; and (3) a requirement that child-placing agencies provide better information and
10 training for prospective adoptive parents so that they know what to anticipate when adopting
11 children with certain special needs and how to deal with them.

12
13 Although several states adopted statutes dealing in some fashion with the issues involved
14 in unregulated child custody transfers, the Utah statute {citation} closely followed the Working
15 Group recommendations. That statute provided some of the initial background and drafting
16 input for this uniform act. Members of the Working Group and the Utah legislative drafting
17 service were observers during the drafting of this uniform act and provided further critical input.

18
19 Initially, the scope of this act was limited to unregulated transfers of children who were
20 the product of inter-country adoptions. In discussions among committee members and observers,
21 it became clear that prospective adoptive parents of children with certain other special needs
22 required the same information and training as the prospective adoptive parents of children in
23 inter-country adoptions. As a result, the scope of the act was expanded to apply not only to the
24 adoption of inter-country children but also to the adoption of all children with certain special
25 needs – similar to the Utah approach {citation}.

26
27 After further discussion, the act was bifurcated – one article (Article 2) prohibiting
28 unregulated child custody transfers, and another article (Article 3) requiring provision of
29 information and training for prospective adoptive parents. The article prohibiting unregulated
30 child custody transfers was expanded to apply not only to custody transfers of adopted children
31 with special needs but also to custody transfers of any child. A parent’s unregulated custody
32 transfer of a biological child is just as problematic and dangerous the child as an unregulated
33 custody transfer of an adopted child.

1 **UNREGULATED TRANSFERS OF ADOPTED CHILDREN ACT**

2 **[ARTICLE] 1**

3 **GENERAL PROVISIONS**

4 **SECTION 101. SHORT TITLE.** This [act] may be cited as the Unregulated Transfers
5 of Adopted Children Act.

6 **Reporter’s Notes**

7
8 Originally, the scope of this act was limited in its application to adopted children and the
9 current title was appropriate. Since that time, at the request of the drafting committee, the scope
10 of Article 2 has been expanded to apply to all children. Thus, it is necessary to choose a new
11 name for the act. Final determination of the name is a decision of the ULC Executive
12 Committee. The drafting committee is tentatively suggesting the following titles: Uniform
13 Unregulated Custody Transfer Prevention Act or Uniform Unregulated Child Custody Transfer
14 Prevention Act.

15
16 **SECTION 102. DEFINITIONS.** In this [act]:

17 (1) “Child” means an unemancipated individual under [18] years of age.

18 (2) “Child-placing agency” means a person that has authority under law of this state other
19 than this [act] or federal law to identify or place a child for adoption.

20 (3) “Custody” means to exercise physical care and supervision of a child.

21 (4) “Guardian” means a person recognized as a guardian under law of this state other than
22 this [act].

23 (5) “Parent” means an individual recognized as a parent under law of this state other than
24 this [act].

25 (6) “Person” means an individual, estate, trust, partnership, business or nonprofit entity,
26 public corporation, government or governmental subdivision, agency, or instrumentality, or other
27 legal entity.

28 (7) “Record” means information that is inscribed on a tangible medium or that is stored in
29 an electronic or other medium and is retrievable in perceivable form.

1 (8) “State” means a state of the United States, the District of Columbia, Puerto Rico, the
2 United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of
3 the United States. The term includes a federally recognized Indian tribe.

4 **Legislative Note:** *Eighteen years of age is bracketed in paragraph (1) because it is the common*
5 *age of majority in the United States. However, if the state’s age of majority is a different age,*
6 *the state’s age of majority should be inserted instead.*

7
8 **Preliminary Comments**

9 1. The definition of a “child” is limited to an unemancipated child who is under [18]
10 years of age. The provisions of this act are focused on a child who is in the custody of a parent.
11 Since an emancipated individual is no longer in the custody of that individual’s parent, that
12 individual is not a child for purposes of this act.

13
14 2. A “child-placing agency” is a person authorized under state or federal law to identify
15 or place a child for adoption.

16
17 3. The definition of “custody” is derived from, and is substantially similar to, the
18 definition of “physical custody” used in Section 102(14) of the Uniform Child-Custody
19 Jurisdiction and Enforcement Act. Article 2 of this act is focused on situations in which a parent
20 or guardian transfers the physical custody of a child. A transfer of “legal custody” of a child,
21 i.e., the right to make significant life decisions for the child (*see* Uniform Nonparent Custody and
22 Visitation Act, Section 2(6)), might sometimes be involved in a child-custody transfer. It is,
23 however, the transfer of physical custody that potentially might endanger a child. Therefore,
24 Article 2 is focused on transfers of physical custody regardless of whether there is also a transfer
25 of legal custody.

26
27 4. A “guardian” is a person recognized under other law of the enacting state as the
28 guardian of a child.

29
30 5. The definition of “parent” is determined by other law of the enacting state.

31
32 6. The definitions of “person,” “record”, and “state” are the standard Uniform Law
33 Commission definitions of those terms.

34
35 **SECTION 103. LIMITATION ON APPLICABILITY.** This [act] does not apply to
36 an Indian child, as defined in the Indian Child Welfare Act, 25 U.S.C. Section 1903(4), [as
37 amended,] to the extent application would conflict with the Indian Child Welfare Act, 25 U.S.C.
38 Sections 1901 through 1963[, as amended].

1 **Legislative Note:** *It is the intent of this act to incorporate future amendments to the cited federal*
2 *law. However, in a state in which the constitution or other law does not permit incorporation of*
3 *future amendments when a federal statute is incorporated into state law, the phrase “as*
4 *amended” should be omitted from subsection (a)(3). The phrase also should be omitted in a state*
5 *in which, in the absence of a legislative declaration, future amendments are incorporated into*
6 *state law.*

7
8 **Preliminary Comments**
9

10 This act does not apply to an Indian child to the extent the application of this act would
11 conflict with the Indian Child Welfare Act, 25 U.S.C. Sections 1901 through 1963[, as
12 amended].
13

14 **[ARTICLE] 2**

15 **PROHIBITION OF UNREGULATED CUSTODY TRANSFER**

16 **SECTION 201. DEFINITION.** In this article, “intermediary” means a person that
17 assists or facilitates a transfer of custody of a child, whether or not for compensation.

18 **Preliminary Comments**

19 An “intermediary” is a person who seeks to facilitate or assist a parent, a third party, or
20 both in bringing about a transfer of custody of a child. Compensation for any assistance in the
21 transfer is not a determining factor in this definition. As used in Sections 203(b) and 204(b), the
22 term refers to a person who facilitates or assists in a child custody transfer that is in violation of
23 Section 203(a).
24

25 **SECTION 202. APPLICABILITY.** This [article] does not apply to a transfer of
26 custody of a child to:

27 (1) a parent of the child;

28 (2) a guardian or individual with whom the child has been placed for adoption;

29 (3) a stepparent or adult family member of the child;

30 (4) an Indian custodian of the child[or member of the child’s customary family unit as
31 recognized by the child’s indigenous group by law of this state other than this [act]]; or

32 (5) an adult individual who:

33 (A) is not related to the child by either birth or marriage; and

1 (B) has a close relationship for a substantial period with the child or a parent of
2 the child.

3 **Legislative Note:** *If the state’s law permits the transfer of custody of a child to a member of the*
4 *child’s customary family unit as recognized by the child’s indigenous group, the state should*
5 *include the bracketed portion of paragraph (4).*

6
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8

Reporter’s Notes

9 In subparagraph 5(A), should “not related by adoption . . .” be added? For example, a
10 sister of an adoptive parent is not related to the child by either birth or marriage. The addition
11 would include her if she has a close relationship for a substantial period with the child or parent.

12
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14

Preliminary Comments

15 1. This section excludes intra-family and family-like custody transfers from the
16 operation of Article 2. Prohibition of intra-family or family-like custody transfers is not the
17 objective of this article. Rather, its objective is to prohibit extra-family custody transfers in
18 which, as provided in Section 203, a parent, guardian, or individual with whom the child has
19 been placed for adoption intends to relinquish that person’s rights and responsibilities regarding
20 the child without pursuing the legal processes required by state law for such transfers. Thus,
21 under this article a divorced or separated parent may transfer custody of a child to the other
22 parent for purposes of visiting or living with the other parent. Similarly, a parent may transfer
23 custody of a child to visit or live with other adult family members or individuals with whom the
24 child or parent has established a close relationship.

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2. A parent has an inherent right to custody of the parent’s child. Subdivision (1)
recognizes that right. Although that right may be limited to some extent by a child custody
agreement or divorce decree, that limitation is not within the scope of this act.

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3. Subdivision (2) excludes a guardian or an individual with whom a child has been
placed for adoption from the prohibition of the article. These individuals have a special
relationship with the child which is recognized by a court or through some other formal process
recognized by state law. (“An individual with whom a child has been placed for adoption” is
separately identified here since, during the period between placement of the child with the
adoptive parent and the finalization of the adoption, the adoptive parent may not be considered
either a parent or a guardian; see Section 203, Comment 3.)

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4. Subdivision (3) recognizes that custody transfers to adult family members, including
stepparents, are not intended to be within the scope of this article. It is a common and accepted
experience that custody of a child might be transferred to an adult family member when the
parent is unable to care for the child. For example, a parent may be deployed in the armed
services or incarcerated in a penal institution. Alternatively, a parent may be experiencing
medical difficulties, perhaps even one brought about by drug abuse. In those cases, the transfer
of custody of a child to an adult family member is not prohibited by this article. Indeed, that

1 custody transfer might be the preferential avenue to follow.
2

3 5. Subdivision (4) recognizes an Indian custodian as an individual to whom a parent may
4 transfer custody of a child. As relevant to this article, an Indian custodian is an Indian individual
5 to whom temporary physical care, custody, and control of an Indian child has be transferred by a
6 parent. An Indian custodian is recognized under the federal Indian Child Welfare Act, 25 USC
7 Section 1903. If state law recognizes an Indian tribe under its law that is not recognized under
8 federal law, an Indian custodian of that tribe would also be included.
9

10 State law might also recognize that a parent may transfer custody of a child to a member
11 of a child’s customary family unit as recognized by the child’s indigenous group. An example of
12 such a law exists in Hawaii {citation}. The bracketed clause in subdivision (4) specifically
13 recognizes that a member of the child’s customary family is a permitted transferee of custody.
14

15 6. In many circumstances, especially in certain cultures, individuals who are not actual
16 members of the child’s or parent’s family but who have a close and long-standing relationship
17 with the child or parent are, effectively, considered family members. Those individuals are
18 sometimes referred to as “fictive kin.” For purposes of this article, they have a sufficiently close
19 relationship with the child or parent that subdivision (5) treats them in a fashion similar to family
20 members. (The description of these individuals in subdivision (5) is derived from Fla. Stat. tit. V
21 sec. 39.4015(2)(d).)
22

23 Some states recognize the doctrine of *in loco parentis*, under which an individual who
24 has been treated as a parent by the child and who has formed a meaningful parental relationship
25 with the child for a substantial period is treated as a parent. This doctrine involves not just a
26 “close relationship” as with a fictive kinship, but a “meaningful parental relationship.” Being a
27 more substantial relationship with the child than exists with a fictive kinship, a person who is *in*
28 *loco parentis* with the child is treated in a similar fashion.
29

30 It is recognized that identification of an individual as fictive kin of the child or parent or
31 *in loco parentis* with a child is not as clear-cut as is identification of other members of the child’s
32 family by birth or marriage. For purposes of this article, it is presumed that a parent transferring
33 custody of a child to an individual as fictive kin or *in loco parentis* is doing so in good faith and,
34 by the transfer, has identified the transferee as such. The burden of demonstrating otherwise is
35 on a person challenging such a transfer.
36

37 7. For some purposes it may be preferential, and in some cases required, that legal
38 processes specified by law of the state other than this act be followed to accomplish custody
39 transfers to some of the individuals listed above. Although this section excludes the listed
40 transferees from the scope of this act, a custody transfer must still comply with legal processes
41 required by other state law.
42

43 **SECTION 203. PROHIBITED CUSTODY TRANSFER.**

44 (a) A parent or guardian of a child or an individual with whom a child has been placed for

1 adoption may not transfer custody of the child to another person, or allow a prior transfer of
2 custody of the child to another person to continue, with the intent permanently to relinquish the
3 parent’s, guardian’s, or individual’s rights and responsibilities regarding the child except
4 through:

- 5 (1) adoption or guardianship;
- 6 (2) judicial award of custody;
- 7 (3) placement by or through a child-placing agency;
- 8 (4) other judicial or tribal action; or
- 9 (5) other transfer of custody permitted by law of this state other than this [act].

10 (b) A person may not receive custody of a child, or act as an intermediary in a transfer of
11 custody, if the person knows or reasonably should know the transfer violates subsection (a).

12 (c) A violation of this section is a misdemeanor.

13 (d) If a parent or guardian of a child or individual with whom a child has been placed for
14 adoption transfers custody of the child and the transfer subsequently becomes permanent, the fact
15 of the permanency does not itself establish the intention of the parent, guardian, or individual, at
16 the time of transfer, permanently to relinquish the parent’s, guardian’s, or individual’s rights and
17 responsibilities regarding the child.

18 **Reporter’s Notes**

19 The committee had discussed and added the term “knowingly” in subsection (a) as
20 follows: a parent “may not *knowingly* transfer custody of a child.” Since that term does not seem
21 to add to the overall requirements of the subsection and may even cause confusion, it has not
22 been included here, but should be further discussed. The subsection already provides that a
23 custody transfer is prohibited only if a parent has an intent to permanently relinquish parental
24 responsibilities toward the child. If a parent must have an intent to permanently relinquish
25 parental responsibilities, that intent would seem already to involve a knowing decision to make
26 the transfer. Adding the term “knowingly” would be duplicative and might create confusion as
27 to why it was added.

Preliminary Comments

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2
3 1. Subsection (a) sets out the essential objective of this article – a parent or guardian of a
4 child, or individual with whom a child has been placed for adoption may not transfer custody of
5 the child to a non-family member with the intent of permanently relinquishing the parent’s,
6 guardian’s, or individual’s rights and responsibilities regarding the child. A transfer of custody
7 of the child by whatever means, including by power of attorney, is not permitted.
8

9 This section is designed to protect a child from being transferred to the custody of a
10 person who might not be fit to provide for the health, safety, and well-being of the child. It is
11 also designed to protect a child from being transferred to the custody of a person who might be a
12 child trafficker or sexual molester.
13

14 2. The intent aspect of this section is significant. If the transfer of custody of a child is
15 not with the intent of relinquishing parental rights and responsibilities, the transfer does not
16 violate this subsection. Furthermore, the intent must be that the transfer is permanent. A
17 temporary or short-term transfer does not violate the provisions of this section. For example, a
18 transfer of custody of a child to the care of a boarding school, childcare provider, or babysitter is
19 not normally with an intent to abdicate parental rights and responsibilities and, furthermore, is
20 not intended to be permanent. Those custody transfers are not be prohibited by this section.
21

22 3. Subsection (a) prohibits a transfer of custody of a child with the intent of releasing
23 parental rights and responsibilities unless the transfer is accomplished through adoption,
24 guardianship, or other listed processes. Thus, this section does not prohibit a transfer of custody
25 of a child to a prospective adoptive parent incident to an adoption, to a guardian incident to a
26 guardianship, or to a transferee designated in a judicial award of custody or other judicial or
27 tribal action.
28

29 Furthermore, subsection (a)(5) specifically exempts a child custody transfer from the
30 prohibition of this section if the transfer is in accordance with other process permitted by law of
31 the state. For example, state law might specifically authorize a transfer of custody of a child in
32 situations such as the deployment of the parent in the armed services or the incarceration of the
33 parent.
34

35 Subsection (a) applies to a custody transfer made by a parent, who is defined in Section
36 102(5). It also applies to a custody transfer made by a guardian of the child, who is defined in
37 Section 102(4). Finally, it applies to a custody transfer made by “an individual with whom a
38 child has been placed for adoption.”
39

40 “An individual with whom a child has been placed for adoption” is separately identified
41 because, during the period between a child’s placement with an individual and the finalization of
42 the child’s adoption, the individual is not yet the parent of the child. Nor, in many cases, is the
43 individual a guardian of the child in the sense that a guardian is appointed by a judicial decree.
44 To protect such a child from an unregulated custody transfer by the individual, the individual is
45 specifically included among those to whom this section applies.
46

1 4. Subsection (b) prohibits a third party from obtaining a transfer of custody of a child if
2 that transfer is prohibited in subsection (a). In doing so, it imposes a prohibition on a receiving
3 person that is reciprocal in nature to the prohibition imposed on a transferring individual, i.e., a
4 parent, guardian, or individual with whom a child has been placed for adoption.
5

6 Subsection (b) also prohibits a person from acting as an intermediary in a child custody
7 transfer if that transfer is prohibited by subsection (a). As defined in Section 201, an
8 intermediary is a person who facilitates or assists either the transferee or transferor, or both in
9 accomplishing the custody transfer. The intermediary need not receive compensation to violate
10 this provision.
11

12 To be in violation of this subsection, the receiving party or intermediary must know or
13 reasonably should know that the custody transfer would be in violation of subsection (a). Thus,
14 it is possible in an appropriate circumstance that a receiving party or intermediary would lack
15 sufficient *mens rea* to be guilty of a violation of this subsection.
16

17 5. Subsection (c) states that a violation of this section is treated as a misdemeanor. As a
18 result, the penalties for violating the section will be determined by other state law. The
19 subsection applies to a parent, guardian, or individual with whom a child has been placed for
20 adoption who transfers custody of a child. It also applies to a person who receives or solicits the
21 transfer of a child and an intermediary who facilitates the transfer of a child.
22

23 6. Subsection (d) recognizes that although a parent might transfer custody of a child
24 without intending permanently to relinquish parental rights or responsibilities, subsequent facts
25 or circumstances may result in the transfer becoming permanent. In such a situation, the fact that
26 the transfer subsequently becomes permanent does not, of itself, establish that the parent, when
27 initiating the transfer of custody, had an intent to make a permanent transfer. Other
28 corroborating evidence would be needed to prove the intent. For example, a parent who is
29 suffering from a drug addiction may transfer custody of a child to another individual intending
30 the transfer to be temporary, thereby permitting the parent to obtain treatment for the addiction.
31 If the parent should then become institutionalized or fail to recover from the addiction and not
32 regain custody of the child, the fact that the transfer has effectively become permanent does not
33 establish that the initial transfer, or failure to regain custody, of the child was done with an intent
34 to permanently relinquish parental rights and responsibilities.
35

36 **SECTION 204. PROHIBITED ADVERTISING.**

37 (a) In this section, “advertise” means to communicate by a public medium, including by
38 broadcast, print, or electronic media. The term does not include communication in person or by
39 mail, electronic mail, text messaging, or telephone.

40 (b) A person may not advertise to:

41 (1) find a person to which to make a transfer of custody of a child in violation of

- 1 Section 203(a);
- 2 (2) locate a child for a transfer of custody in violation of Section 203(b); or
- 3 (3) act as an intermediary in a transfer of custody of a child in violation of Section
- 4 203(b).
- 5 (c) A violation of subsection (b) is a misdemeanor.

6 **Reporter's Notes**

7 The wording of the advertising exclusions in second sentence of subsection (a) should be
8 considered further. The committee did not wish advertising to include private communications
9 between individuals, thus resulting in the exclusion language. However, as written, the
10 exclusions may be overly broad. On the other hand, it also fails to exclude some
11 communications that are comparable to those listed. We may wish to remove the second
12 sentence of the subsection or change it considerably.

13

14 For example, the committee intended to exclude private email conversations between two
15 persons. Although undiscussed by the committee, it seems likely that the exclusion should
16 include a three-way conversation, or one in which a third party is added to the conversation as a
17 cc:. But how extended should the number be? It is questionable whether the committee intended
18 to exclude an email message that is sent in a mass mailing to a large group. While a mass
19 emailing might be argued not to have been intended to be within the exclusion because it is in a
20 "public medium," that's not entirely clear. Indeed, adding to the confusion is the mere fact that
21 use of the Internet itself is a public medium, raising a question about how email or text
22 messaging are excluded at all.

23

24 Similarly, telephone calls are normally private conversations between two persons.
25 However, telephone conference calls seem to be very different. Do we intend to exclude them;
26 fort how many people on the call? What about Zoom calls, FaceTime calls, and similar
27 communications? In many cases they involve group conversations, but the number of
28 participants may be limited, or access may be by invitation only. How should they be treated?

29

30 Conversely, there is no exclusion in subsection (a) for Internet chat rooms. Although in
31 some cases those chat rooms may be multi-partied, they often involve only two individuals.
32 Should chat rooms be added to the list of exclusions?

33

34 There may be other instances in which the terminology of subsection (a) would result in
35 confusion.

36 **Preliminary Comments**

37

38

39 1. Since child custody transfers that would violate Section 203 are not made to family
40 members or family-like individuals, there is usually no existing personal connection or

1 relationship between a parent and a person to whom a transfer will be made. To arrange such a
2 transfer, therefore, it is usually necessary to search for and locate an interested party. That
3 search might be accomplished by some form of advertising.
4

5 This advertising might involve use of the Internet through which a parent places
6 advertisements or notices stating that the parent is seeking to transfer custody of a child.
7 However, other forms of communication might be used, such as newspaper advertisements or
8 announcements.
9

10 Even though advertising is initiated to transfer custody of a child, it might not result in a
11 completed transfer. Nonetheless, advertising, an initial step in a prohibited custody transfer, has
12 been performed. To prevent this precursor step, advertising for the transfer is separately
13 prohibited in subsection (b).
14

15 2. Advertising is defined as communicating in a public forum. The public forum may be
16 electronic such as on the Internet, print media such as a newspaper, or broadcast media such as
17 radio or television. However, it does not include private interpersonal communication such as
18 U.S. postal mail, email, text messaging, or telephone. Nor does it include private in-person
19 communication.
20

21 3. Three specific situations of prohibited advertising are identified. A parent might
22 initiate the advertising in an attempt to find a person to whom the parent might transfer custody
23 of a child in violation of Section 203(a). Alternatively, a third person might initiate the
24 advertising in an attempt to locate a child, i.e., the third person is seeking to locate a child whose
25 custody would be transferred to that person in violation of Section 203(b). Finally, an
26 intermediary who seeks to facilitate or assist a parent, a third party, or both with a custody
27 transfer that would violate Section 203(b) might initiate the advertising.
28

29 It should be noted that even though advertising prohibited by this section might be
30 separately initiated by all three parties (parent, transferee, and intermediary) in any individual
31 custody transfer, it need not be. Only one party, for example an intermediary, might conduct the
32 advertising. In that case, although all three parties might engage in a child custody transfer
33 prohibited by Section 203, only one of them will have engaged in advertising prohibited by this
34 section.
35

36 4. Subsection (c) states that a violation of this section is treated as a misdemeanor. The
37 penalties for violating the section will be determined by other state law.
38

39 **[SECTION 205. ENFORCEMENT.** If the [Attorney General] has probable cause to
40 believe that a person has violated this [article], the [Attorney General] may investigate and take
41 action as provided by law of this state other than this [act].]

42 *Legislative Note:* This section should be omitted if other law of the state already authorizes a
43 state officer to take action to enforce this act.

1 *A state should insert the appropriate law enforcement officer who will investigate and bring*
2 *proceedings under this section.*

3
4 **Preliminary Comments**
5

6 1. This section provides the Attorney General with the authority to investigate an alleged
7 violation of this article if the Attorney General has probable cause to suspect that a person has
8 violated this article and to take appropriate action. The action to be taken will depend on the
9 circumstance and the various remedies available under other state law as well as in this [article].
10

11 This article states that violations of Section 203 and 204 are misdemeanors and, thus,
12 criminal sanction would be one remedy. Other relief may be available under state law in some
13 situations. For example, the Attorney General might seek injunctive relief to enjoin continuing
14 advertising that is in violation of Section 204. If a licensed child-placing agency is acting as an
15 intermediary in violation of Sections 203 or 204, the Attorney General may, in addition to any
16 other relief sought, pursue administrative relief to revoke the agency’s license.
17

18 2. This section specifies that, to proceed with an investigation of an alleged violation of
19 this article, the Attorney General must have probable cause to believe that there has been a
20 violation of the article. What amounts to probable cause will depend on the circumstances of the
21 alleged violation and must be seen in the light of state and federal due process requirements.
22

23 **[[ARTICLE] 3**

24 **INFORMATION AND GUIDANCE**

25 **Legislative Note:** *Article 3 is bracketed because other law of the state already may require a*
26 *child-placing agency to provide information to and require preparation for a prospective*
27 *adoptive parent comparable to that required in this article. If the state has comparable*
28 *requirements, it need not enact this article. If the state does not have comparable requirements,*
29 *it should enact this article.*
30

31 **SECTION 301. DEFINITION.** In this [article], “prospective adoptive parent” means
32 an individual who has been approved or permitted under law of this state other than this [act] to
33 adopt a child.

34 **Preliminary Comments**

35 A “prospective adoptive parent” in this article is an individual who has already been
36 approved to adopt a child. The approval process and requirements are governed by other state
37 law.
38

39 **SECTION 302. SCOPE.** This [article] applies to placement for adoption of a child

1 who:

- 2 (1) has been or is in foster or institutional care;
- 3 (2) previously has been adopted in a state;
- 4 (3) has been or is being adopted under the law of a foreign country;
- 5 (4) has come or is coming to a state from a foreign country to be adopted; or
- 6 (5) is not a citizen of the United States.

7 **Preliminary Comments**

8
9 Article 3 is designed to enhance the likelihood of a positive outcome for adoptions in
10 which there is a heightened degree of risk for a disrupted or unsuccessful adoption. Its
11 provisions apply only to adoptions in which circumstances at the time of the placement of the
12 child with a prospective adoptive parent indicate that there is a heightened degree of risk for
13 disruption of the adoption.

14
15 Section 302 provides a list of those circumstances. The list was developed from a review
16 of placements identified by some states that have already enacted provisions similar to those in
17 this article (e.g., Utah {citation}), as well as from the experiences of child-placement
18 professionals.

19
20 **SECTION 303. GENERAL ADOPTION INFORMATION.**

21 (a) Before a child-placing agency places a child for adoption with a prospective adoptive
22 parent, the agency shall provide or cause to be provided to the prospective adoptive parent
23 general adoption information. The information must be provided a reasonable time before the
24 placement.

25 (b) The information required by subsection (a) must include:

- 26 (1) possible physical, mental, emotional, and behavioral issues concerning:
 - 27 (A) identity, loss, and trauma that a child might experience before, during,
 - 28 or after adoption; and
 - 29 (B) a child leaving familiar ties and surroundings;
- 30 (2) the effect that access to resources, including health insurance, might have on

- 1 the ability of an adoptive parent to meet the needs of a child;
- 2 (3) causes of disruption of an adoptive placement or dissolution of an adoption
- 3 and resources available to help avoid disruption or dissolution; and
- 4 (4) prohibitions under Sections 203 and 204.

5 Preliminary Comments

6

7 1. Section 303 is the first of four sections that require a person, usually the child-placing

8 agency involved in the placement of the child, to provide information or assistance to the

9 prospective adoptive parent. Each section requires the provision of a different kind of

10 information or assistance and, in some cases, at a different time during the progress of a

11 placement or adoption.

12

13 2. Subsection (a) requires the provision of general adoption information to the

14 prospective adoptive parent regarding adoptions that have a heightened degree of risk for

15 disruption of the adoption. The information that must be provided is generic and not child-

16 specific, i.e., it is not focused on any particular child. The information is, however, related in a

17 general way, to the types of issues that might be encountered during or after the adoption of a

18 child with a heightened degree of risk for disruption of the adoption. The objective of this

19 section is to inform the prospective adoptive parent about various matters that the parent might

20 not have appreciated and that might affect the parent's decision to proceed further along the

21 adoption pathway. By provision of the information, it seeks to enhance the chances that a

22 placement, once made, will result in a successful adoption.

23

24 Subsection (a) also specifies that the information must be provided to a prospective

25 adoptive parent a reasonable time before the child-placing agency places the child in an adoption

26 with the parent. Since this adoption information is generic, it may be provided in a standard

27 format. Further, the child-placing agency need not personally provide the information to the

28 parent as long as the agency causes the information to be provided to the parent.

29

30 3. Subsections (b)(1), (b)(2), and (b)(3) specify information about three general matters

31 that might arise in an adoption that has a heightened degree of risk for disruption of the adoption.

32

33 4. Subsection (b)(4) requires the child-placing agency to inform the prospective adoptive

34 parent about the prohibition on transferring custody of the child contained in Article 2.

35 SECTION 304. INFORMATION ABOUT CHILD.

36

37 (a) Except as prohibited by law of this state other than this [act], before a child-placing

38 agency places a child for adoption with a prospective adoptive parent, the agency shall provide

39 or cause to be provided to the prospective adoptive parent information specific to the child which

1 is known or reasonably ascertainable by the agency. The information must be provided a
2 reasonable time before the placement.

3 (b) The information under subsection (a) must include:

4 (1) the child's family, cultural, racial, religious, ethnic, linguistic, and educational
5 background;

6 (2) the child's physical, mental, emotional, and behavioral health;

7 (3) a circumstance that might affect the child's physical, mental, emotional, or
8 behavioral health adversely;

9 (4) the child's medical history, including immunizations;

10 (5) the medical history of the child's family;

11 (6) the history of an adoptive or out-of-home placement of the child and the
12 reason the adoption or placement ended;

13 (7) the child's United States immigration status;

14 (8) medical, therapeutic, and educational resources available after placement or
15 adoption to the adoptive parent and child, including language-acquisition training, to assist in
16 responding effectively to physical, mental, emotional, or behavioral issues; and

17 (9) available records relevant to the information in paragraphs (1) through (8).

18 (c) A child-placing agency placing a child for adoption shall make a reasonable effort to
19 ascertain information about the child material to the prospective adoptive parent's informed
20 decision to adopt the child.

21 (d) If, before an adoption is finalized, additional information under subsection (b) that is
22 material to an informed decision to adopt the child becomes known or reasonably ascertainable
23 by the child-placing agency, the agency shall provide the information to the prospective adoptive

1 parent.

2 (e) If, after an adoption is finalized, additional information under subsection (b) becomes
3 known to the child-placing agency, the agency shall make a reasonable effort to locate and
4 provide the information to the adoptive parent.

5 Preliminary Comments

6
7 1. Subsection (a) requires provision of child specific information to the prospective
8 adoptive parent before placement of the child with the parent. It is information about the specific
9 child that the child-placing agency is proposing to place with the parent. The purpose is to
10 inform the parent about various matters in the child’s personal history or background that might
11 affect the parent’s decision to proceed further in this particular adoption. Its objective is to avoid
12 surprises to the parent at a later date that might result in an unsuccessful adoption or perhaps in a
13 desire to transfer custody of the child in violation of Article 2. Also, by the provision of the
14 information, it seeks to enhance the chances of a successful adoption.

15
16 As with information required to be provided by Section 303(a), the child-placing agency
17 need not personally provide the information to the parent as long as the agency causes it to be
18 provided to the parent.

19
20 2. The child-specific matters about which the child-placing agency must inform the
21 prospective adoptive parent are listed in subsection (b).

22
23 Subsection (b)(1) requires information on various aspects of the child’s general
24 background.

25 Subsection (b)(2) requires information on various aspects of the child’s health.

26 Subsection (b)(3) requires information on circumstances that might adversely affect
27 aspects of the child’s health.

28 Subsection (b)(4) requires information on the child’s medical history.

29 Subsection (b)(5) requires information on the medical history of the child’s family.

30 Subsection (b)(6) requires information regarding any prior adoptive or out-of-home
31 placement (e.g., foster care, congregate care, etc.) and the reason the adoption or placement
32 ended.

33 Subsection (b)(7) requires information about the child’s immigration status if the child is
34 not a United States citizen.

35 Subsection (b)(8) requires information about various post-placement and post-adoption
36 resources that are available to the parent to assist in responding to certain health issues of the
37 child.

38 Subsection (b)(9) requires the provision of available records regarding matters listed in
39 the prior subsections.

40
41 3. The requirement in subsection (a) that a child-placing agency provide information to
42 the prospective adoptive parent applies to information that is “known or reasonably ascertainable

1 by the agency” before placing the child. Subsection (c) requires an agency to make reasonable
2 efforts to ascertain information material to the parent’s decision to adopt.
3

4 This subsection recognizes that some information about a particular child might not be
5 ascertainable even after reasonable effort. This might be particularly true in an international
6 adoption if, due to limitations imposed by the country of origin or a foreign child-care institution
7 that had prior custody of the child, the information is not provided to the agency. In some cases,
8 it might be obvious to the agency that, after using reasonable efforts, it is still unable to obtain
9 certain information about the child (e.g., the child’s medical history is totally absent), and this
10 lack of information should be pointed out to the parent. However, in other cases, even after
11 using reasonable efforts, the absence of information might not be obvious to the agency (e.g., the
12 child has a particular medical condition that is not apparent from any other information in the
13 record), and it would not have reason to make any investigation about the issue.
14

15 4. Subsection (d) states that if, after the placement and before the finalization of the
16 adoption, additional information required by subsection (b) about the child which is material to a
17 successful adoption becomes known or reasonably ascertainable to the child-placing agency, it
18 must provide that information to the prospective adoptive parent. It imposes a duty on the
19 agency that continues until the adoption is finalized to act reasonably in obtaining material
20 information and providing it to the parent.
21

22 5. Subsection (e) pertains to the child-placing agency’s duty to provide information after
23 the adoption is finalized. It states that if information required by subsection (b) about the child
24 does, in fact, become available to the child-placing agency after the adoption is finalized, the
25 agency must make reasonable efforts to locate and provide the information to the adoptive
26 parents. It does not place a duty on the agency to continue to make efforts to ascertain the
27 information but requires the agency to provide it to the parents if it should discover it. It also
28 recognizes that an agency might not continue to have up-to-date location information about the
29 parents and merely imposes a duty to make reasonable efforts to locate them in order to provide
30 the information.
31

32 **SECTION 305. GUIDANCE AND INSTRUCTION.**

33 (a) In this section, “inter-country adoption” means a placement for adoption of a foreign-
34 born child who resides outside the United States and is eligible to immigrate to the United States
35 under United States immigration law. The term includes an adoption finalized in the child’s
36 country of residence or in a state.

37 (b) A child-placing agency placing a child for adoption shall provide or cause to be
38 provided to the prospective adoptive parent guidance and instruction specific to the child to help
39 prepare the parent to respond effectively to needs of the child which are known or reasonably

1 ascertainable by the agency.

2 (c) The guidance and instruction under subsection (b) must include:

3 (1) the potential effect on the child of:

4 (A) previous adoption or out-of-home placement, or multiple placements;

5 (B) attachment disorder or similar emotional issue, fetal-alcohol-spectrum
6 disorder, or malnutrition;

7 (C) neglect, abuse, drug exposure, or similar adversity;

8 (D) separation from a sibling or significant caregiver; and

9 (E) any difference in ethnicity, race, or cultural identity between the child
10 and the prospective adoptive parent or other child of the parent;

11 (2) the steps necessary for the child to acquire United States citizenship; and

12 (3) any other matter the child-placing agency considers material to the adoption.

13 (d) The guidance and instruction under subsection (b) must be provided:

14 (1) for adoption of a child residing in the United States, a reasonable time before
15 the adoption is finalized; or

16 (2) for an inter-country adoption, in accordance with federal law.

17 (e) A child-placing agency placing a child for adoption shall make a reasonable effort to
18 ascertain the needs of the child which it must address under subsection (b).

19 **Preliminary Comments**

20
21 1. Subsection (a) defines an inter-country adoption as a placement for adoption of a
22 foreign-born child who, at the time of the placement, resides outside of the United States. Since
23 the child will be immigrating to the United States, the child must be eligible to immigrate to the
24 United States. Adoptions of foreign-born children are often finalized in the child's country of
25 residence before the child immigrates to the United States. However, an adoption may also be
26 finalized in a state of the United States.

27
28 2. Subsection (b) requires a child-placing agency to provide guidance and instruction to

1 an adoptive parent to prepare the parent to respond effectively to the needs of the child. As with
2 information required to be provided by Sections 303 and 304, the child-placing agency need not
3 personally provide the guidance and instruction to the parent as long as the agency causes it to be
4 provided to the parent.

5
6 3. Subsection (b) limits the child-placing agency’s obligation to provide the guidance
7 and instruction to needs of the child which are known to or reasonably ascertainable by the
8 agency.

9
10 4. Subsection (c) sets out the matters that the guidance and instruction must address.
11 They generally relate to matters about which the child-placing agency must provide information
12 under Sections 303(b) and 304(b).

13
14 5. Subsection (d)(1) requires the guidance and instruction for a prospective adoptive
15 parent of a child residing in the United State to be provided a “reasonable time” before the
16 adoption is finalized. A “reasonable time” will depend on the circumstances, but it must be
17 sufficient to provide the prospective adoptive parent reasonable time to implement the guidance
18 and instruction and make an informed decision as to whether to proceed with the adoption.

19
20 However, waiting until a reasonable time before an adoption is finalized to provide
21 guidance and instruction to a prospective adoptive parent in an inter-country adoption may be too
22 late. By that date, the child will have left the child’s country of origin and the care and support
23 received there and travelled to and arrived in the United States. Waiting until that time does not
24 promote a decision that is beneficial either to the child or the parent. Subsection (d)(2) requires
25 that the information be provided to the prospective adoptive parent in accordance with federal
26 law, which at the current time is before the child enters the United States {citation}.

27
28 6. Subsection (e) requires the child-placing agency to make reasonable efforts to
29 ascertain the needs of the child in order to provide the prospective adoptive parent with the
30 guidance and instruction required by this section.

31
32 **[SECTION 306. INFORMATION ABOUT FINANCIAL ASSISTANCE AND**
33 **SUPPORT SERVICES.**

34 (a) If a child who was placed for adoption or whose adoption was finalized or the
35 adoptive parent of the child requests financial assistance or support services to help preserve the
36 placement or adoption, the child-placing agency placing the child or the [department of child
37 protection] shall provide information about how to access financial assistance or support services
38 that may assist the child or parent to respond effectively to adjustment, behavioral, and other
39 challenges that may have arisen after the child was placed or adopted.

1 (b) The support services that may be requested under subsection (a) include:

2 (1) parenting-skills training and education, individual and family counseling,
3 respite care, and other similar services; and

4 (2) services provided by a qualified clinician to prevent and treat mental health or
5 substance abuse issues.]

6 **Legislative Note:** *This section should be omitted if other law of the enacting state provides for*
7 *financial assistance and support services. If the state:*

8 (1) *does not require the provision of post-adoption support services, the state should*
9 *enact this section;*

10 (2) *requires the provision of post-adoption support services, the state should insert a*
11 *restatement of those services or a reference to the other law of the state requiring provision of*
12 *those services; or*

13 (3) *has only a general statement on the provision of post-adoption support services and*
14 *does not identify those services, the state should consider adding the specific services listed in*
15 *subsection (b).*

16
17 *The state should insert the title of the appropriate state agency responsible for child protective*
18 *services.*

19 20 Preliminary Comments

21
22 1. Subsection (a) requires the child-placing agency or the [department of child
23 protection] to provide information on how to access support services and financial assistance to
24 help preserve the placement or adoption. It is designed to allow the state to take advantage of
25 funds available to it under the federal Family First Prevention Services Act {citation}.

26
27 If the information is requested by either a child or a parent, it must be provided during
28 either or both the post-placement period before the adoption is finalized and after adoption is
29 finalized.

30
31 2. Subsection (b) states that the access information that must be provided includes:

32 (1) information on access to parenting-skills training and education, individual
33 and family counseling, respite care, and other parent skill-based programs (Subsection (b)(1));
34 and

35 (2) information on access to services from a qualified clinician to prevent and
36 treat mental health or substance abuse issues (Subsection (b)(2)).

37
38 The access information on support services specified in subsection (b) overlaps to some
39 extent information or guidance and instruction required in Sections 303, 304, and 305.
40

1 various states adopting the act.

2
3 **SECTION 402. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL**

4 **AND NATIONAL COMMERCE ACT.** This [act] modifies, limits, or supersedes the federal
5 Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but
6 does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or
7 authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15
8 U.S.C. Section 7003(b).

9 **Preliminary Comments**

10
11 This section responds to the specific language of the Electronic Signatures in Global and
12 National Commerce Act and is designed to avoid preemption of state law under that federal
13 legislation.

14
15 **SECTION 403. TRANSITIONAL PROVISIONS.**

16 [(a)] [Article] 2 applies to:

17 (1) a transfer of custody:

18 (A) on or after [the effective date of this [act]]; and

19 (B) before [the effective date of this [act]], if the custody continues in the
20 transferee on or after [the effective date of this [act]]; and

21 (2) advertising on or after the [effective date of this [act]].

22 [(b)] [Article] 3 applies to placement of a child for adoption more than [60 days after the
23 effective date of this [act]].]

24 ***Legislative Note:*** *If the state enacts Article 3, Section 403(b) should also be enacted.*

25
26 **Preliminary Comments**

27
28 1. Subsection (a)(1) provides that the provisions in [Article] 2 regarding child custody
29 transfers apply to transfers that occur after the effective date of the act (subsection (a)(1)(A)) and
30 to transfers that occur before that date if custody continues in the transferee after the effective
31 date of the act (subsection (a)(1)(B)).

1 Subsection (a)(2) provides that the provisions in [Article] 2 regarding advertising apply to
2 transfers that occur after the effective date of the act.
3

4 2. Subsection (b) provides that Article 3 applies to placements that occur more than 60
5 days after the effective date of the act. This period allows time for child-placing agencies to
6 prepare for and apply the provisions of Article 3.
7

8 **[SECTION 404. SEVERABILITY.** If any provision of this [act] or its application to
9 any person or circumstance is held invalid, the invalidity does not affect other provisions or
10 applications of this [act] which can be given effect without the invalid provision or application,
11 and to this end the provisions of this [act] are severable.]

12 *Legislative Note: Include this section only if this state lacks a general severability statute or a*
13 *decision by the highest court of this state stating a general rule of severability.*
14

15 **Preliminary Comments**
16

17 This is the standard severability provision for uniform laws.

18 **SECTION 405. REPEALS; CONFORMING AMENDMENTS.**

19 (a)

20 (b)

21 (c)

22 **Preliminary Comments**
23

24 This section lists laws that this act supervenes.
25

26 **SECTION 406. EFFECTIVE DATE.** This [act] takes effect

27 **Preliminary Comments**
28

This is the standard effective date provision for uniform laws.