

D R A F T

FOR DISCUSSION ONLY

**UNREGULATED TRANSFERS OF ADOPTED
CHILDREN ACT**

**[Name change for consideration:
UNIFORM TRANSFER OF CHILD CUSTODY ACT]**

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS



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October 28, 2020

UNREGULATED TRANSFERS OF ADOPTED CHILDREN ACT

[Name change for consideration: Uniform Transfer of Child Custody Act]

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1 **UNREGULATED TRANSFERS OF ADOPTED CHILDREN ACT**

2 **[Name change for consideration:**
3 **UNIFORM TRANSFER OF CHILD CUSTODY ACT]**

4 **Prefatory Note**

5 Over a period of several years before the commencement of the drafting of this act,
6 public awareness began to focus on a situation that was developing in the parenting and custody
7 of some children {citations}.

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

19
20 The transfer of the child’s custody was usually done without the involvement or
21 supervision of the state’s department of child protection or the use of legal process. As a result,
22 state agencies whose duties included the provision of care and assistance to these children had no
23 knowledge of the transfer of custody of the child, the identity of the transferee, or whether the
24 transferee was qualified to care for the child.

25
26 In other cases, instigation for the transfers might have been more sinister. By means of
27 the Internet or other media potential child molesters or sex traffickers seeking children contacted
28 parents who were experiencing difficulties parenting a child. Thereafter custody of the child was
29 transferred to the previously unknown individual.

30
31 The Unregulated Transfers of Adopted Children Act [Uniform Child Transfer Regulation
32 Act] provides two different but related responses to the situation described above.

33
34 First, Article 2 prohibits, with limited exceptions, a parent’s transfer of a child’s custody
35 to another person if the parent intends to sever the parent’s rights and responsibilities with regard
36 to the child. The prohibition applies to a parent or guardian with custody of a child as well as to
37 an adoptive parent with whom a child has been placed for adoption. If the parent does not intend
38 to sever the parent’s rights and responsibilities with regard to the child, the parent is allowed to
39 transfer custody to certain persons whom the parent believes are fit custodians of the child. The
40 article prohibits the use of advertising, including use of the Internet and social media, to solicit
41 the transfer of a child’s custody. The article also provides the state department of child
42 protection with the authority to investigate suspected violations of the act and the means to
43 enforce it.

1 Second, Article 3 deals with the situation of some children whose physical or
2 psychological health at the time of a proposed placement for adoption would predict that the
3 adoptive parents might have difficulty in caring for the child. This Article seeks to assure that
4 prospective adoptive parents are informed about, and given instruction on dealing with, these
5 health or behavioral issues should they arise and before they arise. It requires that the child-
6 placing agency through which an adoption is facilitated provide the prospective adoptive parents
7 with: (1) general information about adopting children with these health or behavioral issues; (2)
8 specific information about the physical and psychological health of their prospective adoptive
9 child; and (3) guidance and instruction on dealing with the challenges that may present
10 themselves in rearing the child placed with them. It also requires the [child-placing agency]
11 [state department of child protection] to provide certain post-placement and post-adoption
12 support services to the adoptive child and parent to help preserve the adoption.
13

14 **Background**

15
16 In 2013, after attention began to focus on unregulated custody transfers, a U.S. Working
17 Group was formed, consisting of representatives from several federal agencies, as well as state
18 child welfare organizations and the National Association of Attorneys General. The Working
19 Group produced a report specifying three issues that should be addressed in legislation: (1) a
20 clear provision stating that an unregulated custody transfer is a violation of state law; (2)
21 authorization for state protective services agencies to investigate and interdict instances of
22 unregulated transfers; and (3) a requirement that child-placing agencies provide better
23 information and training for prospective adoptive parents so that they know what to anticipate
24 when adopting children with certain special needs and how to deal with them.
25

26 Although several states adopted statutes dealing in some fashion with the issues involved
27 in unregulated child custody transfers, the Utah statute {citation} closely followed the Working
28 Group recommendations. That statute provided some of the initial background and drafting
29 input for this uniform act. Members of the Working Group and the Utah legislative drafting
30 service were observers for the drafting of this uniform act and provided further critical input.
31

32 Initially, the scope of this act was limited to unregulated transfers of children who were
33 the product of inter-country adoptions. In discussions among committee members and observers,
34 it became clear that prospective adoptive parents of children with certain other special needs
35 required the same information and training as the prospective adoptive parents of children in
36 inter-country adoptions. As a result, the committee recommended that the scope of the act be
37 expanded to apply not only to the adoption of inter-country children but to the adoption of all
38 children with certain special needs – similar to the Utah approach {citation}. That
39 recommendation was approved.
40

41 After further discussion, the committee decided to recommend that the act be bifurcated –
42 one article (Article 2) prohibiting unregulated child custody transfers and authorizing state
43 departments of child protection to investigate and interdict violations, and another article (Article
44 3) requiring provision of information and training for prospective adoptive parents. The article
45 prohibiting unregulated child custody transfers applies not only to custody transfers of adopted
46 children with special needs but to unregulated custody transfers of any child. A parent’s

1 unregulated custody transfer of a biological child is just as problematic and dangerous as an
2 unregulated custody transfer of an adopted child. The committee's recommendation was
3 approved.

4

5 **Relationship to the Interstate Compact on Placement of Children**

6

7 The persons to whom a parent may transfer custody of a child in Article 2 of this act is
8 derived from a list of permitted transferees as contained in the Interstate Compact on Placement
9 of Children. While the Compact applies to an interstate transfer of a child's custody, this act
10 applies to a transfer of a child's custody, regardless of whether the transfer is interstate or
11 intrastate.

1 **UNREGULATED TRANSFERS OF ADOPTED CHILDREN ACT**

2 **[Name change for consideration:**
3 **UNIFORM TRANSFER OF CHILD CUSTODY ACT]**

4 **[ARTICLE] 1**

5 **GENERAL PROVISIONS**

6 **SECTION 101. SHORT TITLE.** This [act] may be cited as the Unregulated Transfers
7 of Adopted Children Act. [Name change for consideration: Uniform Transfer of Child Custody
8 Act].

9 **Reporter’s Notes**

10
11 Originally, the scope of this act was limited in its application to adopted children. Since
12 that time, at the request of the drafting committee, the scope of Article 2 has been expanded to
13 apply to all children. Thus, it is necessary to choose a new name for the act.
14

15 Various titles were considered by the drafting committee. In making its decision, the
16 committee considered the subject matter of the act, how certain terms might be perceived by
17 persons affected by the act, and potential confusion with other uniform laws. The committee has
18 tentatively selected “Uniform Transfer of Child Custody Act” as the new name of the act. The
19 committee will further consider the naming of the act.
20

21 Final determination of the name is a decision of the ULC Executive Committee.
22

23 **SECTION 102. DEFINITIONS.** In this [act]:

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

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

27 (3) “Custody” means exercising physical care and supervision of a child.

28 (4) “Guardian” means a person recognized as a guardian under law of this state.

29 (5) “Parent” means an individual recognized as a parent under law of this state.

30 (6) “Person” means an individual, estate, business or nonprofit entity, public corporation,
31 government or governmental subdivision, agency, or instrumentality, or other legal entity.

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

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

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

9 10 **Reporter’s Notes**

11
12 In subdivision (5), should language be added to limit the definition of a parent to a parent
13 other than one who has been determined to be a danger to the child? In particular, Section 201
14 provides that the prohibitions of Article 2 do not apply to a transfer of custody to a parent as
15 defined in this subsection.

16
17 If a parent who has been determined to be a danger to the child should be excluded from
18 the definition of parent, should the exclusion require a judicial determination of endangerment or
19 termination of parental rights? What about a determination that a parent poses a danger to the
20 child made by the state’s department of child protection? Would it be better to place the
21 exclusion here in the definitions section or in Section 201 as part of the description of a parent to
22 whom the article does not apply?

23 24 **Preliminary Comments**

25 (1) The definition of a “child” is limited to an unemancipated child who is under [18]
26 years of age. The provisions of this act are focused on a child who is in the custody of a parent.
27 Since an emancipated individual is no longer in the custody of that individual’s parent that
28 individual is not a child for purposes of this act.

29
30 (2) A “child-placing agency” is a person authorized under state or federal law to identify
31 or place a child for adoption.

32
33 (3) The definition of “custody” is derived from, and is substantially similar to, the
34 definition of “physical custody” used in Section 102(14) of the Uniform Child-Custody
35 Jurisdiction and Enforcement Act. Article 2 of this act is focused on situations in which a parent
36 or guardian transfers the physical custody of a child. Although a transfer of “legal custody” of a
37 child, i.e. the right to make significant life decisions for the child (*see* Uniform Nonparent
38 Custody and Visitation Act, Section 2(6)) may sometimes be involved in a child-custody
39 transfer, it is the transfer of physical custody that potentially might endanger a child. Therefore,

1 Article 2 is focused on transfers of physical custody regardless of whether there is also a transfer
2 of legal custody.

3
4 (4) A “guardian” is a person recognized under other state law as the guardian of a child.
5

6 (5) The definition of “parent” is determined by other law of the enacting state and is
7 derived from, and substantially similar to, the definition of “parent” as used in Section 2(8) of the
8 Uniform Nonparent Custody and Visitation Act. It includes an individual who has established a
9 parent-child relationship with the child in accordance with the various modes for establishing
10 parentage under state law (*see, e.g.*, Uniform Parentage Act, Section 201).
11

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

16 *Legislative Note:* A United States Code citation (U.S.C.) follows a reference to a federal statute
17 in this section. The United States Code citation is included as an aid to the reader. If the state’s
18 convention is to omit the United States Code citation, omit the United States Code citation in this
19 section.
20

21 *It is the intent of this act to incorporate future amendments to the cited federal law. However, in*
22 *a state in which the constitution or other law does not permit the phrase “as amended” when a*
23 *federal statute is incorporated into state law, the phrase should be omitted. The phrase should*
24 *likewise be omitted in a state whose law provides that absent a legislative declaration, the*
25 *referenced provision speaks as of the time the provision is applied.*
26

27 **Preliminary Comments**

28
29 This act does not apply to an Indian child to the extent the application of this act would
30 conflict with the Indian Child Welfare Act, 25 U.S.C. Sections 1901 through 1963[, as
31 amended].
32

33 **[ARTICLE] 2**

34 **PROHIBITED CUSTODY TRANSFER**

35 **SECTION 201. APPLICABILITY.**

36 [(a) In this section, “*in loco parentis*” means a person who has been treated as a parent by
37 a child and who has formed a meaningful parental relationship with a child for a substantial

1 period of time.

2 (b)] This [article] does not apply to a transfer of custody of a child to a parent of the
3 child[or a person who, at the time of the transfer, is in the status of *in loco parentis* with the
4 child].

5 **Legislative Note:** *If the state law recognizes the doctrine of “in loco parentis”, the state should*
6 *adopt the bracketed provisions.*

7
8
9

Reporter’s Notes

10 Since guardians and an individual with whom a child has been placed for adoption have
11 the right to the custody of their child, should they be added to the persons excluded from the
12 scope of this article?

13

14 Some states recognize the doctrine of “in loco parentis.” Under that doctrine, an
15 individual who has been treated as a parent by a child and who has formed a meaningful parental
16 relationship with a child for a substantial period is treated as a parent. Bracketed subsection (1)
17 contains a definition of *in loco parentis*. The bracketed clause in subsection (2) excludes a
18 transfer of custody of a child to an individual who is *in loco parentis* from the operation of this
19 article. If an enacting state recognizes the doctrine of *in loco parentis*, it should adopt the
20 bracketed clause.

21

22

Preliminary Comments

23

24 The overall purpose of this article is to prevent a parent, guardian, or a person with whom
25 a child has been placed for adoption from transferring the custody of that child to a third person
26 who does not otherwise have a right to custody of the child and who poses a potential risk to the
27 child’s safety and well-being.

28

29 Since a parent has a right to custody of a child, this section excludes from the operation
30 of this article a transfer of custody of a child to the child’s parent {unless terminated or limited in
31 a judicial proceeding or determination of the Department of Child Protection; *see* Reporter’s
32 Note to Section 102(5) re: excluding parent who poses a danger to the child}.

33

34

SECTION 202. PROHIBITED TRANSFER OF CUSTODY.

35 (a) A parent or guardian of a child, or an individual with whom a child has been placed
36 for adoption, may not transfer custody or allow a transfer of custody of the child to another
37 person to continue with the intent of severing the rights and responsibilities of the respective
38 parent, guardian, or individual regarding the child except through:

- 1 (1) adoption or guardianship;
- 2 (2) judicial award of custody;
- 3 (3) placement by or through a child-placing agency; or
- 4 (4) other judicial or tribal action.

5 (b) A person may not knowingly solicit or facilitate a transfer of the custody of a child in
6 violation of subsection (a).

7 (c) A violation of this section is [endangerment of a child].

8 (d) This section does not prohibit a parent or guardian of a child, or an individual with
9 whom a child has been placed for adoption, from transferring custody of the child if the transfer
10 is permitted by law of the state other than this [act].

11 **Legislative Note:** *In subsection (c), if the enacting state uses a term or terms other than*
12 *“endangerment of a child” to identify the crime, offense, or ground for child welfare intervention*
13 *that results from deserting a child without regard for the child’s physical health, safety, or*
14 *welfare, or soliciting a transfer of custody of a child, that term or terms should replace the*
15 *bracketed term “endangerment of a child”.*

16 **Reporter’s Notes**

17
18
19 Subsection (a) incorporates an “intent” aspect, which prohibits a custody transfer if the
20 transferor intends to sever the parental rights and responsibilities of the parent unless the transfer
21 is accomplished in accordance with processes authorized by other law of the state. This
22 conforms the act better with three federal bills dealing with unregulated custody transfers, which
23 were introduced in the 116th Congress, 1st Session – H.R. 1389, S. 1446, and H.R. 2480. All
24 three of the bills prohibit a custody transfer with the intent of severing the parent’s relationship
25 with the child unless the transfer is done in conformance with state and federal laws. It also
26 resolves some of the issues raised during the ULC Informal Reading.

27
28 In subsection (a), is “severing” the best term to use? Would another term such as
29 “dissolving” or “ending” be more appropriate if the parent’s action is more passive?

30
31 It was suggested at the ULC Interim Reading that a clause be added to subsection (a) to
32 the effect that a parent may not allow a prior transfer to another person to continue in violation of
33 this section; i.e. prohibit a delayed transfer. Should that be added or is that already included in
34 the prohibition of a transfer; i.e. a transfer, whether immediate or delayed, is still a transfer?

35
36 Should placement of a child by the Department of Child Protection be added to the list of

1 excluded transfers in subsection (a)(3) or is it acting as a “child-placing agency” when it places a
2 child?
3

4 Subsection (b) provides that a person may not “solicit or facilitate” a transfer in violation
5 of subsection (a). In Section 204(a), a parallel provision on advertising and communication,
6 provides that a person may not seek to “receive or facilitate” a transfer in violation of Section
7 202. Parallel treatment might suggest that we either use “solicit or facilitate” or “receive or
8 facilitate” in both places.
9

10 Subsection (b) provides that a person may not “solicit or facilitate” a transfer in violation
11 of subsection (a). In Section 204(a), a parallel provision on advertising and communication,
12 provides that a person may not seek to “receive or facilitate” a transfer in violation of Section
13 202. Parallel treatment might suggest that we either use “solicit or facilitate” or “receive or
14 facilitate” in both places.
15

16 Subsection (d) replaces former Section 203 regarding permitted transfers of custody.
17 That section attempted to gather together and enumerate various circumstances under which a
18 transfer of a child’s custody would be permissible. A number of issues, described below, were
19 raised about the operation and effect of former Section 203.
20

21 First, as the drafting, discussion, and review of the section progressed it became clear that
22 there might always be unthought-of circumstance under which, or unthought-of person to whom,
23 a transfer should be permitted. For example, should a transfer to a third cousin be permitted and
24 under what circumstances, or did the section permit a babysitter or boarding school to have
25 custody of the child. In an attempt to deal with many of those issues, the section contained a
26 final “catch-all” that was not unlike proposed subsection (d).
27

28 Second, concern was expressed about former Section 203 permitting, if not encouraging,
29 unnecessary intervention and interference by the Department of Child Protection into
30 appropriate, reasonable custody transfers by parents dealing with difficult situations, particularly
31 in minority families. One of the requirements of the former section was that the transfer had to
32 be to a person who is a “fit custodian of the child.” Question was raised about whether this
33 requirement, which is judgmental in nature, would allow the Department to question
34 unnecessarily a legitimate decision by the parent.
35

36 Third, bringing the permitted custody transfer provision into this section highlights the
37 importance of former Section 203(a). It states that if a parent wishes to transfer custody of a
38 child with the intent of severing parental rights and responsibilities, the only permissible avenues
39 are adoption, guardianship, or other listed processes. Any transfer of custody of a child under
40 proposed Section 202(d), must therefore be without the intent to sever parental rights and
41 responsibilities.
42

43 There are also a number of questions about proposed subsection (d), which are described
44 below.
45

1 First, there is a question about whether proposed subsection (d) might legitimize
2 inappropriate custody transfers that are not necessarily prohibited by existing state law. For
3 example, would subsection (d) authorize a custody transfer by means of a power of attorney
4 without going through an adoption or other authorized process required in subsection (a)? When
5 the transfer is considered in light of subsection (a), if the intent were to sever parental rights and
6 responsibilities, the transfer would not be permitted. Alternatively, would subsection (d)
7 authorize a transfer of custody to a person who is a child trafficker? When considered in light of
8 subsection (d), the transfer would not be permitted since child trafficking is not otherwise
9 permitted under state law.

10
11 A second question about proposed subsection (d) is whether to carry over from former
12 Section 203(b)(4)(A) the bracketed clause at the end of that subsection requiring the transfer of
13 custody be “for purposes of the education, enrichment, health, safety, or welfare of the child.” I
14 believe that, from comments and discussions, the intent was not to include that clause because it
15 might promote unnecessary involvement and intervention of the Department in reasonable
16 custody transfers. Therefore, I did not include it in this draft, but the clause could easily be
17 reinserted.

18
19 A third question is whether this approach would be sufficiently akin to the proposals
20 currently before Congress to be acceptable as a model state law to implement the federal
21 mandate. The objective and intent of this act is certainly the same as the federal proposals.
22 Nonetheless, the wording and specificity on some issues are different.

23
24 Some observers questioned whether the prohibition on child custody transfer in
25 subsection (a) should apply only to third parties, i.e. only to those who receive a child custody
26 transfer or who facilitate one. That would, in effect, remove Section 202(a) and leave only
27 Section 202(b) (with some revisions that would be necessary). This version does not reflect that
28 suggestion.

29
30 Some observers also suggested that the article apply only to custody transfers of adopted
31 children or internationally adopted children. Those suggestions bring up many of the issues the
32 committee has discussed previously, including constitutionality and enactability. This version
33 does not reflect those suggestions.

34 35 **Preliminary Comments**

36
37 Subsection (a) sets out the essential objective of this article – a parent, guardian, or an
38 individual with whom a child has been placed for adoption may not transfer custody of the child
39 to another person with the intent of relinquishing the parent’s, guardian’s, or individual’s rights
40 and responsibilities regarding the child. A transfer of custody of the child by whatever means,
41 including by power of attorney, is not permitted.

42
43 The intent aspect of this section is significant. This article is designed to prevent the
44 transfer of custody of a child through unregulated means and a termination of the parent’s,
45 guardian’s, or individuals continued relationship with the child. A transfer of custody without
46 that intent might be permissible if it complies with Section 203.

1 This section is designed to protect a child from potentially being transferred to the
2 custody of a person who might not be fit to provide for the health, safety, and well-being of the
3 child. It is also designed to protect a child from being transferred to the custody of a person who
4 might be a child trafficker or sexual molester.
5

6 This section prohibits a transfer of custody of a child unless the transfer is accomplished
7 through proceedings or processes recognized and governed by other state law. Thus, this section
8 does not prohibit a transfer of custody of a child to a prospective adoptive parent incident to an
9 adoption, to a guardian incident to a guardianship, or to a transferee designated in a judicial
10 award of custody or other judicial or tribal action. Nor does it apply to the placement of a child
11 with a prospective adoptive parent by a child-placing agency.
12

13 Subsection (a) applies to a custody transfer made by a parent, who is defined in Section
14 102(5). It applies to a custody transfer made by a guardian of the child, who is defined in
15 Section 102(4). Finally, it applies to a custody transfer made by “an individual with whom a
16 child has been placed for adoption.”
17

18 An individual with whom a child has been placed for adoption is separately identified
19 because, during the period between a child’s placement with the individual and the finalization
20 of the child’s adoption, the individual is not yet the parent of the child. Nor, in most cases, is the
21 individual a guardian of the child in the sense that a guardian is appointed by a judicial decree.
22 To protect a child from an unregulated custody transfer by the individual, the individual is
23 specifically included among those to whom this section applies.
24

25 Subsection (b) prohibits a third party from soliciting a transfer of custody of a child that
26 is prohibited in subsection (a). In doing so, it imposes a prohibition on any person seeking to
27 obtain the transfer of a child’s custody that is reciprocal with the prohibition imposed on a
28 parent, guardian, or individual with whom a child has been placed for adoption. Subsection (b)
29 also prohibits a person from acting as an intermediary to facilitate a transfer of custody
30 prohibited in subsection (a).
31

32 Subsection (c) provides that a violation of this section is treated as child endangerment.
33 The penalties for violating the section will be determined by other state law dealing with child
34 endangerment. The subsection applies to a parent, guardian, or individual with whom a child has
35 been placed for adoption who transfers custody of a child. It also applies to a person who
36 receives or solicits the transfer of a child and a person who facilitates the transfer of a child.
37

38 **SECTION 203. PROHIBITED ADVERTISING OR COMMUNICATION.**

39 (a) A person may not advertise or communicate, orally or in a record, including by
40 broadcast or in print or electronic media, that the person seeks to make, receive, or facilitate the
41 transfer of custody of a child if the person knows or reasonably should know the transfer would
42 violate Section 202(a).

1 [(b) A violation of subsection (a) is a [misdemeanor].]

2 **Reporter’s Notes**

3
4 Should the reference in this section to Section 202(a) be more general to Section 202?
5 The provision that prohibits advertising for a person seeking to receive or facilitate a transfer of
6 custody relates to actions that are prohibited in Section 202(b) and not in Section 202(a). Would
7 it be better to simply refer generally to Section 202?
8

9 Regarding the word “receive”, see Reporter’s Notes to Section 202.

10
11 Although the drafting committee has designated a violation of this section to be a
12 misdemeanor in subsection (b), it must still decide whether it wishes to be more specific as to the
13 degree or nature of the misdemeanor.
14

15 **Preliminary Comments**

16
17 Unregulated child-custody transfers usually are promoted by some form of advertisement
18 or communication. This has usually been by use of the Internet where a parent might search for
19 advertisements or notices from persons seeking a child. However, other forms of
20 communication might be used such as newspaper or word of mouth. Subsection (a) prohibits the
21 use of any advertisement or communication, no matter what its form, or whether it is oral or
22 writing. It specifically identifies print or electronic media but is not necessarily limited to those
23 media.
24

25 The advertising prohibition applies to a person who seeks to make a transfer of custody
26 of a child in violation of Section 202, i.e. a parent or guardian. It applies to a person who solicits
27 a transfer of custody of a child, i.e. a third party seeking a child. It also applies to an
28 intermediary who seeks to facilitate the transfer of a child.
29

30 Subsection (a) applies if the person making the advertisement or communication knows
31 or reasonably should know that the transfer of child-custody would violate Section 202.
32 Absolute knowledge that the advertisement or communication would violate Section 202 is not
33 required; it is sufficient that the party reasonably should know that it would violate the section.
34 Nevertheless, a defense of lack of *mens rea* would be appropriate if the facts support it.
35

36 **[SECTION 204. ENFORCEMENT.** If the [Attorney General] [reasonably
37 suspects][has probable cause to believe] that a person has violated this [article], the [Attorney
38 General] may investigate and;

39 (1) for a violation of Section 202(a) or 202(b), {take action as provided law of the state
40 other than this [act]};

1 (2) for a violation of Section 203(a), {bring a proceeding to enjoin the violation}.

2 **Legislative Note:** *This section is bracketed because other law of the state might already provide*
3 *authorization for the state's [Attorney General] to investigate suspected violations of this*
4 *[article] and enforce it.*

5
6 *An adopting state should insert the appropriate law enforcement officer who will investigate and*
7 *bring proceedings under this section. That officer may be the Attorney General or other officer*
8 *who has statewide jurisdiction. Or it may be a local law enforcement officer such as a District*
9 *Attorney.*

10 **Reporter's Notes**

11
12
13 The prior version of this section gave authority to investigate suspected violations of
14 Article 2 and enforce its provisions to the Department of Child Protection. As noted regarding
15 the revisions in Section 202, there was concern that the Department might unnecessarily
16 intervene and interfere with appropriate, reasonable custody transfers by parents dealing with
17 difficult situations, particularly in minority families. Providing the Department with the
18 authority to investigate suspected violations and enforce the act would similarly give it authority
19 to intervene and interfere unnecessarily. Instead the authority to investigate and enforce is now
20 put with the Attorney General (or other appropriate law enforcement authority).

21
22 Nevertheless, even though the investigation and enforcement authority is now with the
23 Attorney General, it is likely that, in many cases, due to the Department's authority under
24 existing child abuse and child neglect statutes to investigate cases of potential child
25 endangerment, the Department will be the entity initially investigating and making any request
26 for enforcement to the Attorney General. Even in those cases where the matter comes before the
27 Attorney General from a source other than the Department, it is likely that the Attorney General
28 will, at least, ask for evaluation and input from the Department, thus involving the Department in
29 the investigation. Therefore, it's not clear that the involvement of the Department can be totally
30 removed.

31
32 The prior version of this section was written to make it clear that the Department had the
33 authority to enforce the article by administrative processes or civil actions permitted by other
34 state law, although in some states it might be necessary for the Department invoke the assistance
35 of the Attorney General or local law enforcement agencies to bring the civil actions. The other
36 processes or actions might have included, for example, an administrative decision to return
37 custody of the child to the parents under probationary conditions or, alternatively, a civil action
38 to remove the child from the parent's custody. The authority to invoke those processes or
39 actions continues to exist under various child endangerment laws and does not need to be stated
40 in this section to exist. Consequently, the Department would seem to still have the authority to
41 enforce this article even without an express statement authorizing it, although assistance of the
42 Attorney General or local law enforcement may be necessary in some states.

43
44 Although not expressly stated, the penal provisions of the prior versions of Sections
45 202(c) and 203(b) would have been enforced by the Attorney General or other law enforcement

1 agencies. That will continue under the current revision. However, that authority would exist
2 even without Section 204 based on the inherent authority of the Attorney General.

3
4 Thus, it seems that there are several questions to consider:

5
6 First, is Section 204 necessary at all since the authority of the Department and the
7 Attorney General to investigate and enforce the law already exists in other law?
8

9 Second, should Section 204 be written in such a way as to strip the Department of the
10 authority to investigate and enforce the article under existing child endangerment laws? Is that
11 wise? Is that even possible in this limited purpose act?
12

13 Third, should the prior version of Section 204 specifically giving authority to the
14 Department to investigate and enforce the article be reinstated?
15

16 Since any investigation initiated under this section may lead to enforcement of the penal
17 provisions in the act, it's questionable whether "reasonably suspects" is a sufficiently rigorous
18 standard to authorize the investigation. "Probable cause" might be the better standard. Both are
19 stated in bracketed provisions in the first clause of Section 204. Should we use "probable
20 cause"?

21
22 It was suggested that the section be revised to provide that the burden of proof is upon the
23 entity enforcing the act. To the extent that any case involves criminal prosecution, the burden of
24 proof would inherently be on the Attorney General and the standard would be "beyond a
25 reasonable doubt." As to any non-criminal actions brought under other state law by either the
26 Department or the Attorney General, the burden of proof and the standard would be set out in the
27 other state law. Should we or can we change them in this act?
28

29 **Preliminary Comments**

30
31 This section provides the Attorney General with the authority to investigate a situation if
32 it has reasonable grounds to suspect that a person has violated this Article and to take action or
33 bring proceedings appropriate to the situation.
34

35 If the violation is of Section 202(a), the Attorney General is authorized to take action as
36 is provided in other law of the state. If the violation is of Section 204(a), the Attorney General is
37 authorized to bring an action to enjoin the violation.
38

39 **[[ARTICLE] 3**

40 **INFORMATION AND GUIDANCE**

41 ***Legislative Note:*** Article 3 is bracketed because other law of the state might already require a
42 child-placing agency to provide information to and require preparation for prospective adoptive
43 parents comparable to that required in this article. If the state has law making comparable
44 requirements, it need not adopt this article. However, if the state does not have comparable

1 *requirements, it should adopt this article.*

2
3 **Reporter’s Notes**
4

5 During the ULC Interim Reading, one person asked whether we should be amending the
6 Uniform Adoption Act (which the ULC no longer supports) by adding the contents of Article 3
7 to that law rather than including it here. His point was that placing it there would put all/most of
8 the adoption law requirements in one act, rather than having them dispersed. It is not within our
9 scope to propose an amendment to another uniform act and one that the ULC no longer supports.
10

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

14 **Preliminary Comments**

15 A “prospective adoptive parent” in this article is an individual who has already been
16 approved to adopt a child. The approval process and requirements are governed by other state
17 law.
18

19 **SECTION 302. SCOPE.** This [article] applies to placement for adoption of a child
20 who:

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

26 **Preliminary Comments**
27

28 Article 3 is designed to enhance the likelihood of a positive outcome in adoptions where
29 there is a heightened degree of risk for a disrupted or unsuccessful adoption. Its provisions apply
30 only to adoptions in which circumstances before the placement of the child with a prospective
31 adoptive parent indicate that there is a heightened degree of risk for disruption of the adoption.
32

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

1 professionals.

2

3

SECTION 303. GENERAL ADOPTION INFORMATION.

4

(a) Before a child-placing agency identifies a child for or places a child in an adoption

5

with a prospective adoptive parent, the agency shall provide or cause to be provided to the parent

6

the adoption information in subsection (b).

7

(b) The information required by subsection (a) must address:

8

(1) possible physical, mental, emotional, and behavioral issues concerning

9

identity, loss, and trauma which a child might experience before or after adoption and probable

10

effects on a child of leaving familiar ties and surroundings;

11

(2) the effect access to resources, including health insurance, might have on

12

enabling an adoptive parent to meet the needs of a child;

13

(3) causes of disruption of an adoptive placement or dissolution of an adoption

14

and resources available to help avoid disruption or dissolution; and

15

(4) prohibitions under [Article] 2.

16

Reporter's Notes

17

18

In subsection (a), it's not clear why there are two alternative events before which the child-placing agency must provide information to the prospective adoptive parent – before an agency identifies a child for adoption or before an agency places a child for adoption.

20

21

Identification of a child for adoption with a prospective adoptive parent will always occur before or, at the latest, at the same time as the placement of the child with that parent. If provision of the information by the latter date, i.e. placement, is sufficient, it would seem unnecessary to use the earlier date too.

24

25

26

Preliminary Comments

27

28

Section 303 is the first of four sections that require a person, usually the child-placing agency involved in the placement of the child, to provide information or assistance to the prospective adoptive parent. Each section requires the provision of a different kind of information or assistance and, in some cases, at a different time during the progress of a placement or adoption.

32

33

1 Subsection (a) requires the provision of general adoption information to the prospective
2 adoptive parent. The information required is generic and not child-specific, i.e. it is not focused
3 on a particular child. The information is, however, related in a general way to the types of issues
4 that might be confronted during or after the adoption of a child with a heightened degree of risk
5 for disruption of the adoption. The objective of this section is to inform the prospective adoptive
6 parent about various matters that the parent might not have appreciated and that might affect the
7 parent's decision to proceed further along the adoption pathway.

8
9 Subsection (a) also specifies that the information must be provided to a prospective
10 adoptive parent before a child [is identified or] placed in an adoption with the parent. Since this
11 adoption information is generic, it may be provided in a standard format. Further, the child-
12 placing agency need not personally provide the information to the parent as long as the agency
13 causes the information to be provided to the parent.

14
15 Subsections (b)(1), (b)(2), and (b)(3) specify information about three general matters that
16 might arise in an adoption of a child with a heightened degree of risk for disruption of the
17 adoption.

18
19 Subsection (b)(4) requires the child-placing agency to inform the prospective adoptive
20 parent about the prohibition on transferring custody of the child contained in Article 2.

21
22 **SECTION 304. INFORMATION ABOUT CHILD.**

23 (a) Except as prohibited by law of this state other than this [act], before a child-placing
24 agency places a child in an adoption with a prospective adoptive parent, the agency shall provide
25 to the parent information specific to the child which is known or reasonably ascertainable by the
26 agency.

27 (b) The information under subsection (a) must address:

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

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

31 (3) any circumstance which might adversely affect the child's physical, mental,
32 emotional, or behavioral health;

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

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

1 (6) the history of any adoptive or out-of-home placement of the child and the
2 reason the adoption or placement was ended;

3 (7) the child’s United States immigration status;

4 (8) post-placement and post-adoption medical, therapeutic, and educational
5 resources available to the adoptive parent and child, including language-acquisition training, to
6 assist in responding effectively to physical, mental, emotional, and behavioral issues; and

7 (9) available records relevant to the information.

8 (c) If, before an adoption is finalized, additional information under subsection (b) that is
9 material to an informed decision to adopt the child becomes known or reasonably ascertainable
10 to the child-placing agency, the agency shall provide the information to the prospective adoptive
11 parent.

12 (d) A child-placing agency placing a child in an adoption shall make reasonable efforts to
13 ascertain information about the child which is material to the prospective adoptive parent’s
14 informed decision to adopt the child.

15 **Reporter’s Notes**

16
17 Sections 303(a) and 305(b) state that the child-placing agency “shall provide or cause to
18 be provided” the information or guidance. Section 304(a) provides only that the child-placing
19 agency “shall provide” the information. Might entities other than the child-placing agency be the
20 actual provider of the information on behalf of the agency? If so, should we add “or cause to be
21 provided” to subsection (a) so that its absence doesn’t suggest that the agency must be the actual
22 provider of the information?
23

24 Should abuse and neglect be added to the list of items for disclosure in subsection (b)? It
25 could be in a separate subparagraph or as an addition to an existing subparagraph.
26

27 Is the meaning of “out-of-home placement” in subsection (b)(6) clear? Does it need a
28 definition or further clarification?
29

30 Subsection (c) only imposes an ongoing duty to disclose information “before an adoption
31 is finalized.” Should there be an ongoing duty to disclose to the adoptive parents any
32 information discovered after the adoption is finalized?

Preliminary Comments

Subsection (a) requires the provision of information to the prospective adoptive parent that is child specific. It is information about the specific child that the child-placing agency is proposing to place with the parent. The objective is to inform the parent about various matters in the specific child's history or background that might affect the parent's decision to proceed further in this particular adoption. Its objective is to avoid surprises to the parent at a later date that might result in an unsuccessful adoption and perhaps in a desire to transfer custody of the child in violation of Article 2.

The child-specific matters about which the child-placing agency must inform the prospective adoptive parent are listed in subsection (b):

Subsection (b)(1) requires information on various aspects of the child's background.

Subsection (b)(2) requires information on various aspects of the child's health, and subsection (3) on circumstances which might adversely affect those aspects of the child's health.

Subsection (b)(4) requires information on the child's medical history, and subsection (b)(5) requires information on the medical history of the child's family.

Subsection (b)(6) requires information regarding any prior adoptive or out-of-home placement (e.g. foster care) and the reason the adoption or placement was ended.

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

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

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

Subsection (c) states that if, after the placement and before the finalization of the adoption, additional information about the child that is material to a successful adoption becomes known or reasonably ascertainable to the child-placing agency, it must provide that information to the prospective adoptive parent.

The requirement that a child-placing agency provide information to the prospective adoptive parent applies to information that is "known or reasonably ascertainable by the agency." Subsection (d) requires an agency to make reasonable efforts to ascertain information material to the parent's decision to adopt. These subsections recognize that some information about a particular child might not be ascertainable even after reasonable effort. This might be particularly true in an international adoption if, due to limitations imposed by the country of origin or the foreign child-care institution with custody of the child, the information is not provided to the agency. In some cases, it might be obvious to the agency that, after using

1 reasonable efforts, it is still unable to obtain certain information about the child (e.g. the child’s
2 medical history is totally absent), and this lack of information should be pointed out to the
3 parent. However, in other cases, even after using reasonable efforts, the absence of information
4 might not be obvious to the agency (e.g. the child has a particular medical condition that is not
5 apparent from any other information in the record), and it would not have reason to make any
6 further investigation about the issue.

7
8 **SECTION 305. GUIDANCE AND INSTRUCTION.**

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

13 (b) A child-placing agency placing a child for adoption shall provide or cause to be
14 provided to the prospective adoptive parent guidance and instruction specific to the child to help
15 prepare the parent to respond effectively to the needs of the child which are known or reasonably
16 ascertainable by the agency.

17 (c) The guidance and instruction under subsection (b) must address:

18 (1) the probable effect on the child of:

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

20 (B) attachment disorder, trauma exposure, or a similar emotional issue;

21 (C) fetal-alcohol-spectrum disorder, drug exposure, malnutrition, or
22 similar adversity;

23 (D) separation from siblings or significant caregivers; and

24 (E) any difference in ethnicity, race, or cultural identity between the child
25 and the prospective adoptive parent or another child of the parent;

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

27 and

1 (3) any other matter the child-placing agency considers important to the adoption.

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

3 (1) for adoption of a child residing in the United States, {a reasonable time}

4 before the adoption is finalized; or

5 (2) for an inter-country adoption, {a reasonable time} before the child enters the

6 United States.

7 **Reporter’s Notes**

8
9 The second sentence of subsection (a) provides that an inter-country adoption “includes
10 an adoption finalized in the child’s country of residence at the time of the placement . . .” Is “at
11 the time of the placement” necessary? Would it not be sufficient simply to state that the term
12 “includes an adoption finalized in the child’s country of residence? In fact, it might be even
13 more confusing if the actual finalization of the foreign adoption occurred after the child left the
14 foreign country and entered the US since it would not be “at the time of the placement” but
15 afterwards.

16
17 Subsection (b) requires the child-placing agency to provide guidance and instruction in
18 order to prepare the adoptive parent to respond to needs of the child “which are known or
19 reasonably ascertainable by the agency.” Identical language is in subsection 304(a) regarding
20 provision of child-specific information to the parent. To affirm that obligation, subsection
21 304(d) specifically requires the agency to make reasonable efforts to ascertain the information.
22 Should we also provide in this section, perhaps as a separate subsection, that the agency has a
23 duty to make reasonable efforts to ascertain the needs of the child?

24
25 Should “neglect” be added to subsection (c)(1)(B)?

26
27 At the ULC Interim Hearing, it was observed that the language of subsection (d) might
28 appear to allow a child-placing agency to provide the guidance and instruction required by the
29 section to the prospective adoptive parents five minutes before the adoption or placement. The
30 suggestion was that it be provided a reasonable time before the adoption or placement. I’ve
31 tentatively added that language within {} because it doesn’t seem to fully address the situation.
32 In fact, addressing it in the act itself might be very cumbersome and confusing. Would it be
33 better to address it in the Comments? Would it be better to retain the “reasonable time” language
34 in the act, or would the Comments be sufficient?

35 **Preliminary Comments**

36
37 Subsection (a) defines an inter-country adoption as a placement for adoption of a foreign-
38 born child who, at the time of the placement, resides outside of the United States. Since the child
39 will be immigrating to the United States, the child must be eligible to immigrate to the United
40

1 States. Adoptions of foreign-born children are often finalized in the child’s country of residence
2 before the child immigrates to the United States. However, an adoption may also be finalized in
3 a state of the United States.

4
5 Subsection (b) requires a child-placing agency to provide guidance and instruction to an
6 adoptive parent to prepare the parent to respond effectively to the needs of the child. As with
7 information required to be provided by Section 303(a), the child-placing agency need not
8 personally provide the guidance and instruction to the parent as long as the agency causes it to be
9 provided to the parent.

10
11 Subsection (b) limits the child-placing agency’s obligation to provide the guidance and
12 instruction to needs of the child which known to or reasonably ascertainable by the agency.

13
14 Subsection (c) sets out the matters which the guidance and instruction must address.
15 They are a subset of the matters about which the child-placing agency must provide information
16 under Sections 303(b) and 304(b):

17
18 Subsection (c)(1)(A) relates to subsection 304(b)(6).

19
20 Subsections (c)(1)(B) and (c)(1)(C) relate to subsections 303(b)(1), 304(b)(2), 304(b)(3),
21 304(b)(4), and 304(b)(8).

22
23 Subsection (c)(1)(D) relates to subsection 303(b)(1).

24
25 Subsection (c)(1)(E) relates to subsection 304(b)(1).

26
27 Subsection (c)(2) relates to subsection 304(b)(7).

28
29 Subsection (c)(3) is a general grouping of all other matters that the child-placing agency
30 considers important to the adoption.

31
32 Subsection (d)(1) requires the guidance and instruction be provided to the prospective
33 adoptive parent of a child residing in the United State before the adoption is finalized. Thus, the
34 guidance and instruction may be provided after the placement with the parent is completed as
35 long as it is provided before the adoption is finalized.

36
37 However, in subsection (d)(2), the guidance and instruction for a prospective adoptive
38 parent in an inter-country adoption must be provided before the child enters the United States.
39 This is unlike the timing of the guidance and instruction in the adoption of children residing in
40 the United States. This difference in timing is because it is too late to wait until the adoption is
41 finalized to provide the guidance and instruction in an inter-country adoption. By that date, the
42 child will have left the child’s country of origin and the care and support received there and
43 travelled to and arrived in the United States. Waiting until that time does not promote a decision
44 that is beneficial either to the child or the parent. If the parent should, at that later date, decide
45 not to adopt the child because of the newly provided guidance and instruction, the child will
46 likely either be returned to the child’s country of origin or placed in a child welfare system alien

1 to the child’s prior experience. Providing the guidance and instruction at an earlier date will
2 allow the parent to make an earlier decision which, if it is not to adopt, will be much less harmful
3 to the child’s well-being than a delayed decision. The timing for the provision of the guidance
4 and instruction in an inter-country adoption is, in most cases, the same as the timing for the
5 provision of the information required in Section 304.

6
7 **[SECTION 306. SUPPORT SERVICES.**

8 (a) After a child is placed with a prospective adoptive parent and after an adoption is
9 finalized, if the child or parent requests support services to help preserve the placement or
10 adoption, the child-placing agency placing the child or the [Department of Child Protection] shall
11 provide information about how to access services that may assist the child or parent to respond
12 effectively to adjustment, behavioral, and other challenges that may arise after the child is placed
13 or adopted.

14 (b) The information under subsection (a) includes:

15 (1) parenting-skills training and education, individual and family counseling,
16 respite care, and other parent skill-based programs; and

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

19 **Legislative Note:** *This section is bracketed because other law of the adopting state might*
20 *already provide for support services. An adopting state should consider its laws and, if the state:*

21
22 *(1) has no requirement for the provision of post-adoption support services, the state*
23 *should adopt this section;*

24
25 *(2) requires the provision of post-adoption support services, the state should insert a*
26 *restatement of those services or a reference to the other law of the state requiring provision of*
27 *those services; or*

28
29 *(3) has only a general statement on the provision of post-adoption support services and*
30 *does not identify those support services, the state should consider adding the specific services*
31 *listed in subsection (b).*
32

1 **Reporter’s Notes**

2
3 In the first line of subsection (a), should the times be in the disjunctive instead of the
4 conjunctive, i.e. replace the “and” with an “or”? Using the conjunctive seems to be repetitive
5 and say the request must be at both times.
6

7 **Reporter’s Comments**

8
9 This section requires the child-placing agency or the Department of Child Protection to
10 provide information on how to access support services to help preserve the placement or
11 adoption. It is designed to allow the state to take advantage of funds available to it under the
12 federal Family First Prevention Services Act. Participation in the services made available under
13 that act will fund, or assist in funding, the services specified in this section.
14

15 The information specified in subsection 306(b), if requested by the child or the parent,
16 must be provided during either or both the post-placement period before the adoption is finalized
17 and after adoption is finalized.
18

19 Subsection (b) states that the access information that must be provided includes:

- 20
21 - information on access to parenting-skills training and education, individual and family
22 counseling, respite care, and other parent skill-based programs (Subsection (b)(1)), and
23
24 - information on access to services from a qualified clinician to prevent and treat mental
25 health or substance abuse issues (Subsection (b)(2)).
26

27 The access information on support services specified in subsection (b) overlaps to some
28 extent information or guidance and instruction required in Sections 303, 304, and 305.
29

30 **SECTION 307. CHILD-PLACING AGENCY COMPLIANCE.** The [Attorney

31 General] may investigate an allegation that a child-placing agency has failed to comply with this
32 [article] and bring a proceeding against a child-placing agency to enforce this [article].

33 *Legislative Note:* An adopting state should insert the appropriate law enforcement officer who
34 will investigate and bring proceedings under this section. That officer may be the Attorney
35 General or other officer who has statewide jurisdiction. Or it may be a local law enforcement
36 officer such as a District Attorney.
37

38 **Reporter’s Notes**

39
40 During the ULC Interim Reading a question was raised about how a failure to comply
41 with the various requirements of Article 3 would relate to a wrongful adoption action against the
42 child-placing agency. Since this article imposes a statutory duty on a child-placing agency, a
43 breach of that duty would be relevant evidence in a wrongful adoption action. Is that our intent?

1 Is further consideration of the possible results needed? Should additional provisions be added to
2 the act regarding a wrongful adoption?
3

4 During the ULC Interim Reading, a question was asked about whether this act should
5 require the Department of Child Protection to follow up on an inter-country adoption to assure
6 that no unregulated custody transfers have occurred? If so, that might be seen as imposing a
7 financial burden on a state agency and a Fiscal Note might be required.
8

9 Also, during the ULC Interim Reading, a question was raised about what penalty should
10 be imposed on the state if it doesn't comply. From the context of the question, I'm not sure that
11 the questioner was actually asking about what penalty should be imposed if the state didn't
12 investigate or bring proceedings against a child-placing agency. Rather he might have been
13 asking about what penalty should be imposed on the state if the child-placing agency was
14 actually the state's department of child protection. Comments?
15

16 Preliminary Comments

17
18 Article 3 places a number of obligations regarding the provision of information and
19 services on the child-placing agency. This section allows the attorney-general to investigate an
20 alleged failure of an agency to comply with this article. The attorney general may also bring
21 proceedings to enforce the article. Among the various forms of relief that the attorney general
22 might seek are a revocation or suspension of the agency's license, injunctive relief, and a
23 pecuniary penalty. Other forms of relief might also be available under state law.
24

25 **SECTION 308. RULES.** The [Department of Child Protection] shall adopt rules to
26 prescribe the content of and manner for providing the information and guidance and instruction
27 required by Sections 303, 304, [and]305[, and 306].]

28 Reporter's Notes

29
30 Should "shall" in the first line of the section be changed to "may?" In some states a delay
31 in adopting agency rules might lead to an inordinate delay in the enforcement of the act.
32

33 Preliminary Comments

34
35 This section authorizes the Department of Child Protection to adopt rules to establish the
36 content and manner of providing the information and the guidance and instruction required in
37 Article 3.

1 [ARTICLE] 4

2 MISCELLANEOUS PROVISIONS

3 SECTION 401. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In

4 applying and construing this uniform act, consideration must be given to the need to promote
5 uniformity of the law with respect to its subject matter among states that enact it.

6 Preliminary Comments

7
8 This provision encourages judicial construction that will maintain uniformity among the
9 various states adopting the act.

10
11 SECTION 402. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL

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

17 Preliminary Comments

18
19 This section responds to the specific language of the Electronic Signatures in Global and
20 National Commerce Act and is designed to avoid preemption of state law under that federal
21 legislation.

22
23 SECTION 403. TRANSITIONAL PROVISIONS.

24 (a) [Article] 2 applies to:

25 (1) a transfer of custody on or after [the effective date of this [act]],

26 (2) advertising on or after the [effective date of this [act]]; and

27 (3) a transfer of custody before [the effective date of this [act]] in which the
28 custody continues in a transferee on or after [the effective date of this [act]].

29 [(b) [Article] 3 applies to placement of a child for adoption more than 60 days after [the

1 effective date of this [act]].]

2 *Legislative Note: If the state adopts Article 3, it should include subsection (b).*

3 **Preliminary Comments**

4
5 Subsections (a)(1) and (a)(2) provide that Article 2 applies prospectively, i.e. to transfers
6 of custody and advertising that occur after the effective date of the act. However, if a transfer of
7 custody has occurred before the date of enactment that would be a violation of Article 2 and
8 continues after the effective date of the act, subsection (a)(3) provides that the Article also
9 applies to it.

10
11 Subsection (b) provides that Article 3 applies to placements that occur more than 60 days
12 after the effective date of the act. This period allows time for child-placing agencies to prepare
13 for and apply the provisions of Article 3.

14
15 **[SECTION 404. SEVERABILITY.** If any provision of this [act] or its application to
16 any person or circumstance is held invalid, the invalidity does not affect other provisions or
17 applications of this [act] which can be given effect without the invalid provision or application,
18 and to this end the provisions of this [act] are severable.]

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

21
22 **Preliminary Comments**

23
24 This is the standard severability provision for uniform laws.

25 **[SECTION 405. REPEALS; CONFORMING AMENDMENTS.**

26 (a)

27 (b)

28 (c)]

29
30 **Preliminary Comments**

31 This section lists laws that this act supervenes.

32
33 **SECTION 406. EFFECTIVE DATE.** This [act] takes effect

1

Preliminary Comments

2

This is the standard effective date provision for uniform laws.