

DRAFT  
FOR DISCUSSION ONLY

# UNREGULATED TRANSFERS OF ADOPTED CHILDREN ACT

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

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NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS

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*AUGUST 25, 2020 INFORMAL SESSION*



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August 11, 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, public  
6 awareness began to focus on a situation that was developing in the parenting and custody of  
7 some children {citations}.

8  
9 In some cases, the parents found that after the birth or adoption of their child they experienced  
10 considerable difficulty or even inability in caring for or effectively managing the child’s  
11 behavior. In many cases this may have been due to their own inexperience or lack of training or  
12 preparation in child-rearing, or a byproduct of the child’s physical or psychological health  
13 challenges at the time of the adoption, or both. Perhaps, after some initial unsuccessful attempts  
14 to obtain assistance and not knowing where else to turn, some of these parents transferred  
15 custody of their child to another person – a person whom they found through friends or  
16 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 supervision of  
21 the state’s department of child protection or the use of legal process. As a result, state agencies  
22 whose duties include the provision of care and assistance to these children had no knowledge of  
23 the transfer of custody of the child, the identity of the transferee, or whether the transferee was  
24 qualified to care for the child.

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

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

33  
34 First, Article II prohibits, with limited exceptions, the transfer of a child’s custody to another  
35 person. The prohibition applies a parent or guardian with custody of a child as well as  
36 prospective adoptive parent with whom a child has been placed for adoption. It prohibits the use  
37 of advertising, including use of the Internet and social media, to solicit the transfer of a child’s  
38 custody. The Article also provides the state department of child protection with the authority to  
39 investigate suspected violations of the act and the means to enforce it.

40  
41 Second, Article III deals with the situation of some children whose physical or psychological  
42 health at the time of a proposed placement for adoption would predict that the adoptive parents  
43 might have difficulty in caring for or effectively managing the child’s behavior. This Article

1 seeks to assure that prospective adoptive parents are informed about, and given instruction on  
2 dealing with, these health or behavioral issues should they arise. It requires that the child-  
3 placing agency through which an adoption is facilitated provide the prospective adoptive parents  
4 with: (1) general information about adopting children with these health or behavioral issues; (2)  
5 specific information about the physical and psychological health of their prospective adoptive  
6 child; and (3) guidance and instruction on dealing with the challenges that may present  
7 themselves in rearing these children. It also requires the [child-placing agency] [state department  
8 of child protection] to provide certain post-placement and post-adoption support services to the  
9 adoptive child and parent to help preserve the adoption.

## 10 11 **Background**

12  
13 In 2013, after attention began to focus on unregulated custody transfers, a U.S. Working Group  
14 was formed, consisting of representatives from several federal agencies, as well as state child  
15 welfare organizations and the National Association of Attorneys General. The Working Group  
16 produced a report specifying three issues that should be addressed in legislation: (1) a clear  
17 provision stating that an unregulated custody transfer is a violation of state law; (2) authorization  
18 for state protective services agencies to investigate and interdict instances of unregulated  
19 transfers; and (3) a requirement that child-placing agencies provide better information and  
20 training for prospective adoptive parents so that they know what to anticipate when adopting  
21 children with certain special needs and how to deal with them.

22  
23 Although several states adopted statutes dealing in some fashion with the issues involved in  
24 unregulated child custody transfers, the Utah statute {citation} closely follows the Working  
25 Group recommendations. That statute provided some of the initial background and drafting  
26 input for this uniform act. Members of the Working Group and the Utah legislative drafting  
27 service were observers for the drafting of this uniform act and provided further critical input.

28  
29 Initially, the scope of this act was limited to unregulated transfers of children who were the  
30 product of inter-country adoptions. In discussions among committee members and observers, it  
31 became clear that prospective adoptive parents of children with certain other special needs  
32 required the same information and training as the prospective adoptive parents of children in  
33 inter-country adoptions. As a result, the committee recommended that the scope of the act be  
34 expanded to apply not only to children in inter-country adoptions but to the adoption of all  
35 children with certain special needs. That recommendation was approved.

36  
37 After further discussion, the committee decided to recommend that the act be bifurcated – one  
38 article (Article 2) prohibiting unregulated child custody transfers and authorizing state  
39 departments of child protection to investigate and interdict violations, and another article (Article  
40 3) requiring provision of information and training for prospective adoptive parents. The article  
41 prohibiting unregulated child custody transfers applies not only to custody transfers of adopted  
42 children with special needs but also to unregulated custody transfers of any child. A parent's  
43 unregulated custody transfer of a biological child is just as problematic and dangerous as an  
44 unregulated custody transfer of an adopted child. The committee's recommendation was  
45 approved.

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 must await a decision by the 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) “Parent” means an individual recognized as a parent under law of this state other than  
29 this [act].

30                   (5) “Guardian” means a person recognized as a guardian under law of this state other than  
31 this act.

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

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

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

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

#### 12 **Reporter’s Notes**

13  
14  
15 In subdivision (3), should the definition of a parent be limited to a parent other than a  
16 parent who has been determined to be a danger to the child? In particular, Section 201 provides  
17 that the prohibitions of Article 2 do not apply to a transfer of custody to a parent as defined in  
18 this subsection.

19  
20 If a parent who has been determined to be a danger to the child should be excluded from  
21 the definition of parent, should the exclusion require a judicial determination of endangerment or  
22 termination of parental rights? What about a determination that a parent poses a danger to the  
23 child made by the Department of Child Protection? Would it be better to place the exclusion  
24 here in the definitions section or in Section 201 as part of the description of a parent to whom the  
25 Article does not apply?

#### 26 **Preliminary Comments**

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

32  
33 (2) A “child-placing agency” is a person which is authorized under state or federal law to  
34 identify or place a child for adoption.

35  
36 (3) The definition of “custody” is derived from, and is substantially similar to, the  
37 definition of “physical custody” as used in Section 102(14) of the Uniform Child-Custody  
38 Jurisdiction and Enforcement Act. Article 2 of this act is focused on situations in which a parent

1 or guardian transfers the physical custody of a child. Although a transfer of “legal custody” of a  
2 child, i.e. the right to make significant life decisions for the child (*see* Uniform Nonparent  
3 Custody and Visitation Act, Section 2(6)), may sometimes be involved in a child-custody  
4 transfer it is the transfer of physical custody that potentially may endanger a child. Therefore,  
5 Article 2 is focused on transfers of physical custody regardless of whether there is also a transfer  
6 of legal custody.

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

13  
14 (5) A “guardian” is a person who is recognized under other state law as the guardian of a  
15 child.

16  
17 **SECTION 103. LIMITATION ON APPLICABILITY.** This [act] does not apply to  
18 an Indian child as defined in the Indian Child Welfare Act, 25 U.S.C. Section 1903(4), [ as  
19 amended,] to the extent application would conflict with the Indian Child Welfare Act, 25 U.S.C.  
20 Sections 1901 through 1963[, as amended].

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

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

31  
32 **Preliminary Comments**

33  
34 This act does not apply to an Indian child to the extent the application of this act would  
35 conflict with the Indian Child Welfare Act, 25 U.S.C. Sections 1901 through 1963[, as  
36 amended].

37  
38 **[ARTICLE] 2**

39 **PROHIBITED CUSTODY TRANSFER**

40 **SECTION 201. SCOPE.** This [article] does not apply to a transfer of custody of a child

1 to:

2 (1) a parent of the child[ or an individual who, at the time of the transfer, is in the status  
3 of *in loco parentis* with the child]; or

4 (2) a person for the purposes of:

5 (1) adoption or guardianship;

6 (2) judicial transfer of custody; or

7 (3) placement by or through a child-placing agency.

8 **Legislative Note:** *If the state law recognizes the doctrine of “in loco parentis”, the state should*  
9 *adopt the bracketed provision.*

10

11

### Reporter’s Notes

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Should we define “*in loco parentis*” in order to distinguish it from situations that might arise under Section 202(a)(4)? E.g. Section 202(a)(4) would allow a transfer of a child’s custody to a boarding school which, in some definitions, is then *in loco parentis* with the child. A definition of *in loco parentis* would prevent the two provisions from overlapping or perhaps conflicting in some cases. A definition such as that under Arizona law might resolve the issue: “‘In loco parentis’ means a person who has been treated as a parent by a child and who has formed a meaningful parental relationship with a child for a substantial period of time.” ARS 25-401(1).

A Department of Child Protection may transfer its custody of a child to a foster care provider. Should placement of a child by the Department of Child Protection be added to the list of excluded transfers in subsection (b), perhaps in subsection (b)(3)?

### Preliminary Comments

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

Since a parent has a right to custody of a child, subdivision (1) excludes from the operation of this Article a transfer of custody of a child to the child’s parent {unless terminated or limited in a judicial proceeding or determination of the Department of Child Protection; *see* Reporter’s Note to Section 102(4) re: excluding parent who poses a danger to the child}.

Some states recognize the doctrine of “in loco parentis.” Under that doctrine, an individual who has been treated as a parent by a child and who has formed a meaningful parental

1 relationship with a child for a substantial period is treated as a parent. The bracketed clause in  
2 subdivision (1) excludes a transfer of custody of a child to an individual who is *in loco parentis*  
3 from the operation of this Article. If an enacting state recognizes this doctrine, it should adopt  
4 the bracketed clause.

5  
6 Subdivision (2) excludes from the operation of this Article a transfer of custody of a child  
7 as part of certain proceedings or processes recognized and governed by other state law. Thus,  
8 this Article does not apply to a transfer of custody of a child to a prospective adoptive parent  
9 incident to an adoption, a guardian incident to a guardianship, or a transferee designated by a  
10 judge in a judicial transfer of custody. Nor does it apply to the placement of a child with a  
11 prospective adoptive parent by a child-placing agency.

12  
13 **SECTION 202. TRANSFER OF CUSTODY.**

14 (a) A parent or guardian of a child, or an individual with whom a child has been placed  
15 for adoption, may make or allow a transfer of custody to a person whom the parent reasonably  
16 believes to be a fit custodian and is:

17 (1) the child's stepparent, grandparent, adult sibling, or adult uncle or aunt;

18 (2) an adult individual with whom the parent has a pre-existing personal  
19 relationship before the transfer of custody;

20 (3) an Indian custodian[ or member of the child's customary family unit as  
21 recognized by the child's indigenous group by the law of this state]; or

22 (4) a person in accordance with the law of this state other than this [act]:

23 (A) for the purpose of exercising authority on behalf of the parent or  
24 guardian about the health, safety, or welfare of the child; and

25 (B) during a stated period not to exceed [12 months].

26 (b) Transfer of custody under subsection (a) does not relieve the parent or guardian of  
27 parental rights or responsibilities.

28 **Legislative Note:** *In subsection (a)(3), if law of the state allows transfer of custody to a member*  
29 *of the child's customary family unit as recognized by the child's indigenous group, the state*  
30 *should adopt the bracketed provision.*

1 *In subsection (a)(4)(B), the state should select and insert the maximum period for a transfer of*  
2 *custody.*

3  
4 **Reporter’s Notes**  
5

6 Subsection (a)(4) might include custody transfers in situations such as, for example, the  
7 deployment of a parent in the armed forces. The right to transfer custody in such situations  
8 might already be covered by other state law and allow a transfer for a duration other than 12  
9 months. If a state has several laws of this sort, they may provide different durations. Should we  
10 provide a specific exclusion of situations for which other state law authorizes transfer of a child’s  
11 custody for a specific period?  
12

13 **Preliminary Comments**  
14

15 Section 202 sets out a list of third persons to whom custody of a child may be transferred  
16 under this Article. It applies to a custody transfer made by a parent, who is defined in Section  
17 102(4). It also applies to a custody transfer made by a guardian of the child, who is defined in  
18 Section 102(5). Finally, it applies to a custody transfer made by a prospective adoptive parent  
19 with whom a child has been placed in anticipation of a subsequent adoption.  
20

21 As a requirement for a permissible transfer under this section, the parent, guardian, or  
22 prospective adoptive parent must have a reasonable belief that the third person to whom the  
23 custody of the child is being transferred will be a fit custodian of the child. The parent, guardian,  
24 or prospective adoptive parent must reasonably believe that the third person will properly  
25 supervise and provide a safe and healthy environment for the child.  
26

27 Subsection (a)(1) provides a list of relatives to whom a parent, guardian, or prospective  
28 adoptive parent may transfer custody of a child. It is similar to the list of relatives provided in  
29 Article VIII, subsection (a) of the Interstate Compact on the Placement of Children. The  
30 relatives listed in the subsection are the relatives of the child and, in the case of an adopted child,  
31 the relatives in the child’s adoptive family.  
32

33 Subsection (a)(2) recognizes the fact that there are many individuals beyond the limited  
34 list of relatives in subsection (a)(1) who might be equally qualified to provide a safe and healthy  
35 environment for the child. Such an individual might be a more remote relative who, due to the  
36 nature of the family’s interactions, has a personal relationship with the parent equal to or even  
37 closer than that of a listed relative in subsection (a)(1), and with whom the parent has comfort  
38 and assurance in the care of the child.  
39

40 The subsection also recognizes as qualified transferees of the child’s custody individuals  
41 who are not relatives but who have an existing personal relationship with the parent before the  
42 time of the transfer. The nature of these relationships is broad and varied. They might be close  
43 neighbors, long-standing friends, constant members of the parent’s religious congregation, or  
44 members of the parent’s ethnic customary family.  
45

1 Subsection (a)(3) specifically recognizes an Indian custodian as an individual to whom a  
2 parent may transfer custody of a child. As relevant to this act, an Indian custodian is an Indian  
3 individual to whom temporary physical care, custody, and control of an Indian child has been  
4 transferred by the parent. An Indian custodian is recognized under the Indian Child Welfare Act,  
5 25 USC Section 1903.  
6

7 State law might also recognize that a parent may transfer custody of a child to a member  
8 of the child’s customary family unit as recognized by the child’s indigenous group. An example  
9 of this exists in Hawaii {citation}. The bracketed clause in this subsection specifically  
10 recognizes that member of the child’s customary family as a permitted transferee.  
11

12 Subsection (a)(4) recognizes that a temporary transfer of a child’s custody might be  
13 highly convenient or even necessary in some circumstances. For example, a child might be  
14 enrolled by a parent in a boarding school for a semester or a year. During that period the child  
15 will be in the physical custody of the boarding school. The boarding school will oversee the day-  
16 to-day care and supervision of the child. This subsection permits the transfer of custody of the  
17 child to the boarding school for a period up to [12 months].  
18

19 Subsection (b) states that, although a parent is permitted to transfer custody of a child in  
20 accordance with subsection (a), that transfer does not relieve the parent or guardian of parental  
21 rights or obligations. Although the parent will not be providing day-to-day care and supervision  
22 for the child, the parent will still have the duty to provide for necessary financial support of the  
23 child.  
24

### 25 **SECTION 203. PROHIBITED TRANSFER OF CUSTODY.**

26 (a) Except as permitted in Section 202, a parent or guardian of a child, or an individual  
27 with whom a child has been placed for adoption, may not make or allow a transfer of custody to  
28 another person.

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

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

32 **Legislative Note:** *In subsection (c), if the enacting state uses a term or terms other than*  
33 *“endangerment of a child” to identify the crime, offense, or ground for child welfare intervention*  
34 *that results from deserting a child without regard for the child’s physical health, safety, or*  
35 *welfare, or soliciting a transfer of custody of a child, that term or terms should replace the*  
36 *bracketed term “endangerment of a child”.*  
37

1 **Reporter’s Notes**

2  
3 Subsection (b) provides that a person may not “solicit or facilitate” a transfer in violation  
4 of subsection (a). In Section 204(a), a parallel provision on advertising and communication,  
5 provides that a person may not seek to “receive or facilitate” a transfer in violation of Section  
6 203. Parallel treatment suggests that we either use “solicit or facilitate” or “receive or facilitate”  
7 in both places.  
8

9 **Preliminary Comments**

10  
11 Subsection (a) sets out the essential objective of this Article – except as permitted in  
12 Section 202, a parent, guardian, or an individual with whom a child has been placed for adoption  
13 may not transfer custody of the child to another person. A transfer of custody of the child by  
14 whatever means, such as by power of attorney, is not permitted. This prohibition is designed to  
15 protect a child from being transferred into the custody of a person who might not be fit to  
16 provide for the health, safety, and well-being of the child. It will also protect the child from  
17 being transferred into the custody of a person who might be a child trafficker or sexual molester.  
18

19 An individual with whom a child has been placed for adoption is separately identified in  
20 subsection (a). During the period between a child’s placement with the individual and the  
21 finalization of the child’s adoption, the individual is not yet the parent of the child. In addition,  
22 in most cases, the individual is also not a guardian in the sense that a guardian is appointed by a  
23 judicial decree. Therefore, to protect a child from an unregulated custody transfer by the  
24 individual, the individual is included among those who are prohibited from making a transfer  
25 other than as permitted by Section 202  
26

27 Subsection (b) prohibits solicitation of a child-custody transfer prohibited in subsection  
28 (a). In doing so, it imposes a prohibition on any person seeking to obtain the transfer of a child’s  
29 custody that is reciprocal with the prohibition imposed in subsection (a). Subsection (b) also  
30 prohibits any person from acting as an intermediary to facilitate a transfer of custody prohibited  
31 in subsection (a).  
32

33 Subsection (c) provides that a violation of this section is treated as child endangerment.  
34 The penalties for violating the section will be determined by other state law dealing with child  
35 endangerment. The subsection applies to a parent, guardian, or individual with whom a child has  
36 been placed for adoption who transfers custody of a child. It also applies to a person who  
37 receives or solicits the transfer of a child and a person who facilitates the transfer of a child.  
38

39 **SECTION 204. PROHIBITED ADVERTISING.**

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

1 violate Section 203(a).

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

3 **Reporter’s Notes**

4  
5 Should the reference in this section to Section 203(a) be more general to Section 203?  
6 The prohibition on advertising that a person seeking to receive or facilitate a transfer relates to  
7 actions that are prohibited in Section 203(b) and not in Section 203(a). Would it be better be  
8 better to simply refer generally to Section 203?  
9

10 Regarding the word “receive”, see Reporter’s Notes to Section 203.

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

15  
16 **Preliminary Comments**

17  
18 Unregulated child-custody transfers usually are promoted by some form of advertisement  
19 or communication. This has usually been by use of the Internet where a parent might search for  
20 advertisements or notices from persons seeking a child. However, other forms of  
21 communication might be used such as newspaper or word of mouth. Subsection (a) prohibits the  
22 use of any advertisement or communication, no matter what its form, or whether it is oral or  
23 writing. It specifically identifies print or electronic media but is not necessarily limited to those  
24 media.  
25

26 The advertising prohibition applies to a person who seeks to make a transfer of custody  
27 of a child in violation of Section 203, i.e. a parent or guardian. It applies to a person who solicits  
28 a transfer of custody of a child, i.e. a third party seeking a child. It also applies to an  
29 intermediary who seeks to facilitate the transfer of a child.  
30

31 Subsection (a) applies if the person making the advertisement or communication knows  
32 or reasonably should know that the transfer of child-custody would violate Section 203.  
33 Absolute knowledge that the advertisement or communication would violate Section 203 is not  
34 required; it is sufficient that the party reasonably should know that it would violate the section.  
35 Nevertheless, a defense of lack of *mens rea* would be appropriate if the facts support it.  
36

37 **[SECTION 205. ENFORCEMENT.** If the [Department of Child Protection]  
38 reasonably suspects that a person has violated this [article], the [Department] shall investigate  
39 and may:

40 (1) for a violation of Section 203(a), take action as provided by law of this state other

1 than this [act]; and

2 (2) for a violation of Section 204(a), bring a proceeding to enjoin the violation.]

3 **Legislative Note:** *This section is bracketed because other law of the state might already provide*  
4 *authorization for the state's [Department of Child Protection] to investigate suspected violations*  
5 *of this [article] and enforce it. If the [Department] already has the authority to take action to*  
6 *enforce Section 203(a), the state need not adopt subsection (1). If the [Department] already has*  
7 *the authority to bring a injunction to enforce Section 204(a), the state need not adopt subsection*  
8 *(2).*

9  
10 *In the bracketed references to [Department of Child Protection], insert the state agency*  
11 *responsible for investigation and enforcement of child welfare issues.*

### 12 13 **Reporter's Notes**

14  
15 Regarding subdivision (1), should the reference to Section 203(a) be more general to  
16 Section 203? Without doing so, it's not clear whether we intend the that the Department of Child  
17 Protection has the authority to take action against a person who receives the transfer of custody  
18 of a child. If that is our intent, that prohibition is in Section 203(b). Therefore, it would seem  
19 better not to refer to subsection (a) and simply to refer generally to Section 203?

### 20 21 **Preliminary Comments**

22  
23 This section provides the Department of Child Protection with the authority to investigate  
24 a situation if it has reasonable grounds to suspect that a person has violated this Article and to  
25 take action or bring proceedings appropriate to the situation.

26  
27 If the violation is of Section 203(a), the Department is authorized to take action as is  
28 provided in other law of the state. If the violation is of Section 204(a), the Department is  
29 authorized to bring an action to enjoin the violation.

## 30 31 **[[ARTICLE] 3**

### 32 **INFORMATION AND PREPARATION**

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



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

2 (1) possible physical, mental, emotional, and behavioral issues concerning  
3 identity, loss, and trauma which a child might experience before or after adoption and probable  
4 effects on a child of leaving familiar ties and surroundings;

5 (2) the effect access to resources, including health insurance, might have on  
6 enabling an adoptive parent to meet the needs of a child;

7 (3) causes of disruption of an adoptive placement or dissolution of an adoption  
8 and resources available to help avoid disruption or dissolution; and

9 (4) prohibitions under [Article] 2.

### 10 **Reporter's Notes**

11  
12 In subsection (a), it's not clear why there are two events before which the child-placing  
13 agency must provide information to the prospective adoptive parent – before an agency identifies  
14 a child for adoption and before an agency places a child for adoption. Identification of a child  
15 for adoption with a prospective adoptive parent will always occur before or, at the latest, at the  
16 same time as the placement of the child with that parent. If provision of the information by the  
17 latter date, i.e. placement, is sufficient, it would seem unnecessary to identify the earlier date  
18 also.

### 19 **Preliminary Comments**

20  
21  
22 Section 303 is the first of four sections that require a person, usually the child-placing  
23 agency involved in the placement of the child, to provide information or assistance to the  
24 prospective adoptive parent. Each section requires the provision of a different kind of  
25 information or assistance and, in some cases, at a different time in the progress of placement and  
26 adoption.

27  
28 Subsection (a) requires the provision of general adoption information to the prospective  
29 adoptive parent. The information required is generic and not child-specific, i.e. it is not focused  
30 on a particular child. The information is, however, related in a general way to the types of issues  
31 that might be confronted in the adoption of a child with a heightened degree of risk for disruption  
32 of the adoption. Its objective is to inform the parent about various matters that the parent might  
33 not have appreciated and that might affect the parent's decision to proceed further along the  
34 adoption pathway.

35  
36 Subsection (a) also specifies that the information must be provided to a prospective  
37 adoptive parent before a child [is identified or] placed in an adoption with the parent. Since this

1 adoption information is generic, it may be provided in a pre-prepared format. Further, the child-  
2 placing agency need not personally provide the information to the parent as long as the agency  
3 causes the information to be provided to the parent.  
4

5 Subsections (b)(1), (b)(2), and (b)(3) specify information about three general matters that  
6 may arise in an adoption of a child with a heightened degree of risk for disruption of the  
7 adoption.  
8

9 Subsection (b)(4) requires the child-placing agency to inform the prospective adoptive  
10 parent about the prohibition on transferring custody of the child contained in Article 2.  
11

## 12 **SECTION 304. INFORMATION ABOUT CHILD.**

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

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

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

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

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

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

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

25 (6) the history of any adoptive or out-of-home placement of the child and the  
26 reason the adoption or placement was terminated;

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

28 (8) post-placement and post-adoption medical, therapeutic, and educational  
29 resources available to the adoptive parent and child, including language-acquisition training, to

1 assist in responding effectively to physical, mental, emotional, and behavioral issues; and

2 (9) available records relevant to the information.

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

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

10 **Preliminary Comments**

11  
12 Subsection (a) requires the provision of information to the prospective adoptive parent  
13 that is child specific. It is information about the specific child that the child-placing agency is  
14 proposing to place with the parent. Once again, the objective is to inform the parent about  
15 various matters in the specific child's history or background that might affect the parent's  
16 decision to proceed further in this particular adoption. Its objective is to avoid surprises to the  
17 parent at a later date that might result in an unsuccessful adoption and perhaps in a desire to  
18 transfer custody of the child in violation of Article 2.

19  
20 Subsection (a) also requires that a child-placing agency provide information to the  
21 prospective adoptive parent that is "known or reasonably ascertainable by the agency."  
22 Subsection (d) requires an agency to make reasonable efforts to ascertain information material to  
23 the parent's decision to adopt. These subsections recognize that some information about a  
24 particular child might not be ascertainable even after reasonable effort. This might be  
25 particularly true in an international adoption if, due to limitations imposed by the country of  
26 origin or the foreign child-care institution with custody of the child, the information is not  
27 provided to the agency. In some cases, it might be obvious to the agency that, after using  
28 reasonable efforts, it is still unable to obtain certain information about the child (e.g. the child's  
29 medical history is totally absent), and this lack of information should be pointed out to the  
30 parent. However, in other cases, even after using reasonable efforts, the absence of information  
31 might not be obvious to the agency (e.g. the child has a particular medical condition that is not  
32 apparent from any other information in the record), and it would not have reason to make any  
33 further investigation about the issue.

34  
35 Subsection (c) states that if, after the placement and before the finalization of the  
36 adoption, additional information about the child that is material to a successful adoption becomes  
37 known or reasonably ascertainable to the child-placing agency, it must provide that information

1 to the prospective adoptive parent.

2  
3 The child-specific matters about which the child-placing agency must inform the  
4 prospective adoptive parent are listed in subsection (b):

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

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

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

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

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

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

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

19  
20 **SECTION 305. GUIDANCE AND INSTRUCTION.**

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

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

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

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

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

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

33 (C) fetal-alcohol-spectrum disorder, drug exposure, malnutrition, or

1 similar adversity  
2 (D) separation from siblings or significant caregivers; and  
3 (E) any difference in ethnicity, race, or cultural identity between the child  
4 and the prospective adoptive parent or another child of the parent;  
5 (2) the steps necessary for the child to acquire United States citizenship;  
6 and  
7 (3) any other matter the child-placing agency considers important to the adoption.  
8 (d) The guidance and instruction under subsection (b) must be provided:  
9 (1) for adoption of a child residing in the United States, before the adoption is  
10 finalized; or  
11 (2) for an inter-country adoption, before the child enters the United States.

### 12 **Reporter’s Notes**

13  
14 Subsection (b) requires the child-placing agency to provide guidance and instruction in  
15 order to prepare the prospective adoptive parent to respond to needs of the child “which are  
16 known or reasonably ascertainable by the agency.” There is identical language in subsection  
17 304(a) regarding provision of child-specific information to the parent. To affirm that obligation,  
18 subsection 304(d) specifically requires the agency to make reasonable efforts to ascertain the  
19 information. Should we also provide in this section, perhaps as a separate subsection, that the  
20 agency has a duty to make reasonable efforts to ascertain the needs of the child?  
21

### 22 **Preliminary Comments**

23  
24 Subsection (b) requires a child-placing agency to provide guidance and instruction to a  
25 prospective adoptive parent to prepare the parent to respond effectively to the needs of the child.  
26 As with information required to be provided by Section 303(a), the child-placing agency need  
27 not personally provide the guidance and instruction to the parent as long as the agency causes it  
28 to be provided to the parent.  
29

30 Subsection (b) limits the child-placing agency’s obligation to provide the guidance and  
31 instruction to needs of the child which known to or reasonably ascertainable by the agency.  
32

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

1 long as it is provided before the adoption is finalized.

2  
3 However, in subsection (d)(2), the guidance and instruction for a prospective adoptive  
4 parent in an inter-country adoption must be provided before the child enters the United States.  
5 This is unlike the timing of the guidance and instruction in the adoption of children residing in  
6 the United States. This difference in treatment is because it is too late to wait until the adoption  
7 is finalized to provide the guidance and instruction in an inter-country adoption. By that date,  
8 the child will have left the child's country of origin and the care and support received there and  
9 travelled to and arrived in the United States. Waiting until that time does not promote a decision  
10 that is beneficial to either the child or the parent. If the parent should then decide not to adopt  
11 because of the newly provided guidance and instruction, the child will likely either be returned to  
12 the child's country of origin or placed in a child welfare system alien to the child's prior  
13 experience. Providing the guidance and instruction at an earlier date will allow the parent to  
14 make an earlier decision which, if it is not to adopt, will be much less harmful to the child's well-  
15 being than a delayed decision. The timing for the provision of the guidance and instruction in an  
16 inter-country adoption is, in most cases, the same as the timing for the provision of the  
17 information required in Section 304.

18  
19 Subsection(a) defines an inter-country adoption as a placement for adoption of a foreign-  
20 born child who, at the time of the placement, resides outside of the United States. Since the child  
21 will be immigrating to the United States, the child must be eligible to immigrate to the United  
22 States. Adoptions of foreign-born children are usually finalized in the child's country of  
23 residence before the child immigrates to the United States. However, an adoption may also be  
24 finalized in a state of the United States.

25  
26 Subsection (c) sets out the matters which the guidance and instruction must address.  
27 They are a subset of the matters about which the child-placing agency must provide information  
28 under Sections 303(b) and 304(b):

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

30 Subsections (c)(1)(B) and (c)(1)(C) relate to subsections 303(b)(1), 304(b)(2), 304(b)(3),  
31 304(b)(4), and 304(b)(8).

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

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

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

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

### 37 38 **[SECTION 306. SUPPORT SERVICES.**

39 (a) After a child is placed with a prospective adoptive parent and after an adoption is  
40 finalized, if the child or parent requests support services to help preserve the placement or  
41 adoption, the child-placing agency placing the child or the [Department of Child Protection] shall  
42 provide information about how to access services that may assist the child or parent to respond

1 effectively to adjustment, behavioral, and other challenges that may arise after the child is placed  
2 or adopted.

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

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

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

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

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

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

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

## 21 **Reporter's Comments**

22 This section requires the child-placing agency or the Department of Child Protection to  
23 provide information on how to access support services to help preserve the placement or  
24 adoption. It is designed to allow the state to take advantage of funds available to it under the  
25 federal Family First Prevention Services Act. Participation in the services made available under  
26 that act will fund, or assist in funding, the services specified in this section.  
27

28 The information specified in subsection 306(b), if requested by the child or the parent,  
29 must be provided during either or both the post-placement period before the adoption is finalized  
30 and after adoption is finalized.  
31

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

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

35 Subsection (b)(2) specifies information on access to services from a qualified clinician to  
36 prevent and treat mental health or substance abuse issues.  
37

38  
39

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

3  
4 **SECTION 307. CHILD-PLACING AGENCY COMPLIANCE.** The [Attorney  
5 General] may investigate an allegation that a child-placing agency has failed to comply with this  
6 [article] and bring a proceeding against a child-placing agency to enforce this [article].

7 **Preliminary Comments**

8  
9 Article 3 places a number of obligations regarding the provision of information and  
10 services on the child-placing agency. This section allows the attorney-general to investigate an  
11 alleged failure of an agency to comply with this article. The attorney general may also bring  
12 proceedings to enforce the article. Among the various forms of relief that the attorney general  
13 might seek are a revocation or suspension of the agency’s license, injunctive relief, and a  
14 pecuniary penalty. Other forms of relief might also be available under state law.

15  
16 **SECTION 308. RULES.** The [Department of Child Protection] shall adopt rules to  
17 prescribe the content of and manner for providing the information and guidance and instruction  
18 required by Sections 303, 304, [and]305[, and 306].]

19 **Preliminary Comments**

20  
21 This section authorizes the Department of Child Protection to adopt rules to establish the  
22 content and manner of providing the information and the guidance and instruction required in  
23 Article 3.

24  
25 **[ARTICLE] 4**

26 **MISCELLANEOUS PROVISIONS**

27 **SECTION 401. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In  
28 applying and construing this uniform act, consideration must be given to the need to promote  
29 uniformity of the law with respect to its subject matter among states that enact it.

30 **Preliminary Comments**

31  
32 This provision encourages judicial construction that will maintain uniformity among the  
33 various states adopting the act.



1 for and apply the provisions of Article 3.

2

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

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

9

10 **Preliminary Comments**

11

12 This is the standard severability provision for uniform laws.

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

14 (a) . . . .

15 (b) . . . .

16 (c) . . . .]

17 **Preliminary Comments**

18

19 This section lists laws that this act supervenes.

20

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

22 **Preliminary Comments**

23 This is the standard effective date provision for uniform laws.