

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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July 25, 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
6 Over a period of several years prior to the commencement of the drafting of this act, public
7 awareness began to focus on a situation that was developing in the parenting and custody of
8 some children {citations}.

9
10 In some cases, the parents found that after the birth or adoption of their child they experienced
11 considerable difficulty or even inability in caring for or controlling the child. In many cases this
12 may have due to their own inexperience in child-rearing or was a byproduct of the child's poor
13 physical or psychological health at the time of the adoption, or both. Perhaps after some initial
14 unsuccessful attempts to obtain assistance and not knowing where else to turn, some of these
15 parents transferred custody of their child to another person – a person whom they found through
16 friends or acquaintances or, in some cases, a person they found through the Internet or other
17 media. In most cases, there was no evidence that the person to whom the custody of the child
18 had been 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. It also prohibits the use of advertising, including use of the Internet and social media, to
36 solicit the transfer of a child's custody. These prohibitions apply both to the parents or guardian
37 with current custody of the child and to any person to whom the custody of the child might be
38 transferred. The Article also provides the state department of child protection with the authority
39 to 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 controlling the child. This Article seeks to assure that
44 prospective adoptive parents are informed about, and given instruction on, dealing with these

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

9 **Background**

10
11 In 2013, after attention began to focus on unregulated custody transfers, a U.S. State Department
12 Working Group was formed, consisting of representatives from several federal agencies, as well
13 as state child welfare organizations and the National Association of Attorneys General. The
14 Working Group produced a report specifying three issues that should be addressed in legislation:
15 (1) a clear provision stating that an unregulated custody transfer is a violation of state law; (2)
16 authorization for state protective service agencies to investigate and interdict instances of
17 unregulated transfers; and (3) a requirement that child-placing agencies provide better
18 information and training for prospective adoptive parents so that they know what to anticipate
19 when adopting children with certain special needs and how to deal with them.
20

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

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

35 After further discussions, the committee decided to recommend that the act be bifurcated – one
36 article prohibiting unregulated child custody transfers and authorizing state protective service
37 agencies to investigate and interdict violations, and another article requiring provision of
38 information and training for prospective adoptive parents. The committee believed that the
39 article prohibiting unregulated child custody transfers should apply not only to custody transfers
40 of adopted children with special needs but to unregulated custody transfers of any child. A
41 parent’s unregulated custody transfer of a biological child is just as problematic and dangerous as
42 an unregulated custody transfer of an adopted child. The committee’s recommendation was
43 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 limited its application to adopted children. Since that
12 time, at the request of the drafting committee, the scope of Article II has been expended to apply
13 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
18 ultimately selected “Uniform Transfer of Child Custody Act” and is submitting that title as the
19 new name of the act. Final determination of the name must await a decision by the Executive
20 Committee.

21
22 **SECTION 102. DEFINITIONS.** In this [act]:

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

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

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

27 (4) “Parent” means an individual recognized as a parent under law of this state other than
28 this [act].

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

1 (6) “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 (7) “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 (1) The definition of “custody” is derived from and is substantially similar to the
12 definition of “physical custody” in Section 102(14) of the Uniform Child-Custody Jurisdiction
13 and Enforcement Act.

14
15 (2) The definition of “parent” is determined by other law of the enacting state and is
16 derived from and substantially similar to the definition of “parent” in Section 2(8) of the
17 Uniform Nonparent Custody and Visitation Act.

18
19 If the law of the enacting state recognizes, whether by statute or case law, the concept of
20 “de facto parent,” a de facto parent is included in the definition of a parent under this act.

21
22 **SECTION 103. LIMITATION ON APPLICABILITY.** This [act] does not apply to
23 an Indian child as defined in the Indian Child Welfare Act, 25 U.S.C. Section 1903(4), [as
24 amended,] to the extent application would conflict with the Indian Child Welfare Act, 25 U.S.C.
25 Sections 1901 through 1963[, as amended].

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

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

1 **Reporter's Notes**

2
3
4 **[ARTICLE] 2**

5 **PROHIBITED CUSTODY TRANSFER**

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

8 **Reporter's Notes**

9
10
11 **SECTION 202. TRANSFER OF CUSTODY.**

12 (a) A parent or guardian of a child, or an individual with whom a child has been placed
13 for adoption, may make or allow a transfer of custody:

14 (1) by:

15 (A) adoption or guardianship;

16 (B) judicial transfer of custody; or

17 (C) placement by or through a child-placing agency; or

18 (2) to:

19 (A) the child's stepparent, grandparent, adult sibling, or adult uncle or
20 aunt;

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

23 (C) a person, by [power of attorney]:

24 (1) for not more than [12 months]; or

25 (2) as permitted by law of this state other than this [act].

26 (b) Transfer of custody under subsection (a)(2) does not relieve the parent or guardian of

1 parental rights or responsibilities.

2 **Legislative Note:** *In subsection (a)(2)(C), if, under the law of the enacting state, a device other*
3 *than, or in addition to, a power of attorney is the appropriate means to document the transfer*
4 *custody of a child, that device should replace or be added to the bracketed phrase.*

5
6 *In subsection (a)(2)(C)(1), the state should select and insert the maximum period for a transfer*
7 *of custody.*

8
9 *In subsection (a)(2)(B), if the state law allows transfer of custody to a member of the child’s*
10 *customary family unit as recognized by the child’s indigenous group, that state should adopt the*
11 *bracketed provision.*

12 13 **Reporter’s Notes**

14
15 (1) I separated subsection (a) into subparagraphs (1) and (2) because subsection (b)
16 has, or at least may have, different applications to them. E.g., it would seem clear that adoption
17 (subsection (a)(1)(A)) would relieve the former parent or guardian of parental rights and
18 responsibilities. However, it would also seem clear that transfer of custody to a boarding school
19 (subsection (a)(2)(C)) does not. However, I still have several questions:

20
21 (a) Should a guardianship (subsection (a)(1)(A)) relieve a parent of parental
22 duties, particularly a temporary guardianship? What about a judicial transfer of custody
23 (subsection (a)(1)(B)), particularly if the transfer is temporary? What about a placement
24 through a child-placing agency (subsection (a)(1)(C)), particularly if the placement has not
25 resulted in an adoption?

26
27 (b) From our prior conversations, I’m not sure whether we intended that a
28 transfer of custody to a family member (subsection (A)(2)(a)), especially one for an unlimited
29 time, should not relieve a parent of parental duties?

30
31 (2) In subsection (a)(2)(A), I used a time period of 12 months as the suggested or
32 placeholder time. While many custody transfers would be for shorter periods, some might be
33 nearly a year in length, e.g., placing a child in a boarding school. Of course, as noted in the
34 Legislative Note, the enacting state legislature could use whatever period it thought was proper.
35 I will discuss that issue in the Reporter’s Comments.

36
37 Should we have any provision regarding serial powers of attorney? Allowing serial
38 powers of attorney would be a way around the prohibition on custody transfer in Section 203.
39 However, prohibiting serial transfers would be a problem with, for example, a two-year (or
40 longer) boarding school placement.

41
42 (3) In subsection (a)(2)(B), the phrase “or member of the child’s customary family
43 unit as recognized by the child’s indigenous group by the law of this state” is bracketed because
44 it is likely that the relevance of this provision will exist in very few, and perhaps only one, state
45 (Hawaii). I will discuss this in the Reporter’s Comments.

1 (4) The word “person” is used in subsections (a)(2)(C) because the transfer could be
2 to a “nonhuman,” e.g., a governmental agency or a public or private corporation that cares for
3 children.
4

5 **SECTION 203. PROHIBITED TRANSFER OF CUSTODY.**

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

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

11 (c) A violation of this Section is [endangerment of a child].

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

17 **Reporter’s Notes**
18
19
20

21 **SECTION 204. PROHIBITED ADVERTISING.**

22 (a) A person may not advertise or communicate, orally or in a record, including by
23 broadcast or in print or electronic media, that the person seeks to make, receive, or facilitate the
24 transfer of custody of a child if the person knows or reasonably should know the transfer would
25 violate Section 203(a).

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

27 **Reporter’s Notes**
28
29

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

1 (1) for a violation of Section 203(a), take action as provided by law of this state other
2 than this [act]; and

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

4 **Legislative Note:** *In the brackets, insert the state agency responsible for investigation of child*
5 *welfare issues.*

6
7 **Reporter’s Notes**

8
9
10 **[[ARTICLE] 3**

11 **INFORMATION AND PREPARATION**

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

17
18 **SECTION 301. DEFINITIONS.** In this [article]:

19 (1) “Inter-country adoption” means a placement for adoption of a foreign-born child who
20 resides outside the United States and is eligible to immigrate to the United States under a United
21 States adoption visa. The term includes an adoption finalized in the child’s country of residence
22 at the time of the placement or in a state of the United States.

23 (2) “Prospective adoptive parent” means an individual who has been approved or
24 permitted under law of this state other than this [act] to adopt a child.

25 **Reporter’s Notes**

26 A definition is provided for an “inter-country adoption” because that term is used in
27 subsections 305(c)(2) and 306(a). See the Reporter’s Notes to those Sections regarding the
28 applicability of the provisions of those Sections to inter-country adoptions.

29
30 I added “a state of” in the last clause of subsection (1) to make it clear that the adoption
31 will be occurring in an individual state. However, does this cause a problem with any other
32 aspect of an international adoption?
33

1 (4) prohibitions under [Article] 2.

2 **Reporter's Notes**

3
4
5 **SECTION 304. INFORMATION ABOUT CHILD.**

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

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

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

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

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

16 (4) the history of any adoptive or out-of-home placement of the child and the
17 reason the adoption or placement was terminated;

18 (5) the child's medical history, including immunizations;

19 (6) the medical history of the child's family;

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

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

24 (9) available records relevant to the information.

25 (c) If, before an adoption is finalized, additional information under subsection (b) that is

1 material to an informed decision to adopt the child becomes known or reasonably ascertainable
2 to the child-placing agency, the agency shall provide the information to the prospective adoptive
3 parent.

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

7 **Reporter's Notes**

8
9
10 **SECTION 305. GUIDANCE AND INSTRUCTION.**

11 (a) A child-placing agency placing a child for adoption shall provide to the prospective
12 parent guidance and instruction specific to the child to help prepare the parent to respond
13 effectively to the needs of the child.

14 (b) The guidance and instruction under subsection (a) must address:

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

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

17 (B) attachment disorder, trauma exposure, or a similar emotional problem;

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

19 similar adversity; and

20 (D) any difference in ethnicity, race, or cultural identity between the child

21 and the prospective adoptive parent or another child of the parent;

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

23 and

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

25 (c) The guidance and instruction under subsection (a) must be provided:

1 (1) for adoption of a child residing in the United States, before the adoption is
2 finalized; or

3 (2) for an inter-country adoption, before the child enters the United States.

4 **Reporter's Notes**

5
6 In subsection (c)(2), guidance and instruction for a prospective adoptive parent in an
7 inter-country adoption must be provided before the child enters the United States. This is unlike
8 the timing of the guidance and instruction in other adoptions subject to this Section, which must
9 be provided before the adoption is finalized. The reason for this difference in treatment is that,
10 in the opinion of the committee, waiting until the adoption is finalized to provide the guidance
11 and instruction in an inter-country adoption is too late.

12
13 By that time, the child will have left the child's country of origin and the care and support
14 received there and will have travelled to and arrived in the United States. Waiting until that time
15 to provide guidance and instruction to the prospective adoptive parents does not promote a
16 decision that is beneficial to either the child or the parents. If the prospective adoptive parents
17 should decide not to adopt, the child will likely either be returned to the child's country of origin
18 or placed in a child welfare system alien to the child's prior experience. Providing the guidance
19 and instruction at an earlier date will allow the prospective adoptive parents to make an earlier
20 decision which, if it is not to adopt, will be much less damaging to the child's well-being than a
21 delayed decision.

22
23 The timing for the provision of the guidance and instruction in an inter-country adoption
24 is, in most cases, the same as the timing for the provision of the information required in Section
25 304.

26 **[SECTION 306. SUPPORT SERVICES.**

27
28 (a) This subsection applies after an adoption is finalized or after a child in an inter-
29 country adoption is placed with a prospective adoptive parent. If the child or parent requests
30 support services to help preserve the adoption or placement, the child-placing agency placing the
31 child or the [Department of Child Protection] shall provide information about how to access
32 services that may assist the child or parent to respond effectively to adjustment, behavioral, and
33 other difficulties that may arise after the child is placed or adopted.

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

35 (1) parenting-skills training and education, individual and family counseling, and

1 other parent skill-based programs; and
2 (2) services provided by a qualified clinician to prevent and treat mental health or
3 substance abuse issues.]

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

6
7 (1) *has no requirement for the provision of post-adoption support services, the state*
8 *should adopt this section;*

9
10 (2) *requires the provision of post-adoption support services, the state should insert a*
11 *restatement of those services or a reference to the other law of the state requiring provision of*
12 *those services; or*

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

17

18 **Reporter's Notes**

19

20 The information on support services required by this Section will be provided in after the
21 adoption is finalized. However, similar to the comments made in the Reporter's Notes to Section
22 305, waiting until that date to provide the information in an inter-country adoption is too late. In
23 the opinion of the committee, the information should be provided at an earlier date in order to
24 preserve the placement and avoid a potential return of the child to the child's country of origin or
25 entry into the child welfare system.

26

27 **Reporter's Comments**

28

29 This section is designed to allow the state to take advantage of funds available to it under
30 the federal Family First Prevention Services Act. Participation in the services made available
31 under that act will fund, or assist in funding, the post-adoption services specified in this section.

32

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

34 General] may investigate an allegation that a child-placing agency has failed to comply with this

35 [article] and bring a proceeding against a child-placing agency to enforce this [article].

36 **Reporter's Notes**

37

38

39 **SECTION 308. RULES.** The [Department of Child Protection] shall adopt rules to

1 prescribe the content of and manner for providing the information required by Sections 303, 304,
2 [and]305 [, and 306].]

3 **Reporter's Notes**

4
5
6 **[ARTICLE] 4**

7 **MISCELLANEOUS PROVISIONS**

8 **SECTION 401. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In

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

11 **Reporter's Notes**

12
13
14 **SECTION 402. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL**

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

20 **Reporter's Notes**

21
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 after [the effective date of this [act]].

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

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

4 **Reporter’s Notes**

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

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

13
14 **Reporter’s Notes**

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16
17 **[SECTION 405. REPEALS; CONFORMING AMENDMENTS.**

18 (a)

19 (b)

20 (c)]

21 **Reporter’s Notes**

22
23
24 **SECTION 406. EFFECTIVE DATE.** This [act] takes effect

25 **Reporter’s Notes**