

D R A F T

FOR ~~DISCUSSION ONLY~~ APPROVAL

**Uniform ~~Unregulated Transfers of Adopted Children~~ Child
Custody Transfer Act**

Uniform Law Commission

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~~May 24~~ June 30, 2021

Uniform Unregulated ~~Transfers of Adopted Children~~ Child Custody Transfer Act

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Uniform Unregulated ~~Transfers of Adopted Children~~ Child Custody Transfer Act

Prefatory Note

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

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

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

~~The Unregulated Transfers of Adopted Children Act provides two different but related responses to the situation described above.~~

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

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

Background

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

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

Initially, the scope of this act was limited to unregulated transfers of children who were the product of intercountry adoptions. In discussions among committee members and observers, it became clear that prospective adoptive parents of children with certain other special needs required the same information and training as the prospective adoptive parents of children in intercountry adoptions. As a result, the scope of the act was expanded to apply not only to the adoption of intercountry children but also to the adoption of all children with certain special needs – similar to the Utah approach.

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

Unregulated Transfers of Adopted Children Act

Finally, the article prohibiting unregulated child custody transfers was expanded to apply not only to custody transfers of adopted children with special needs but also to custody transfers of any child. A parent's unregulated custody transfer of a biological child is just as problematic and dangerous for a biological child as for an adopted child.

Summary of Act

The Uniform Unregulated Child Custody Transfer Act provides two different but related responses to the situation described above.

First, if a parent intends to sever the relationship between a parent and child and to abandon parental rights and responsibilities with regard to the child, Article 2 prohibits a transfer of custody of the child to someone beyond family members and family friends. The prohibition applies to a parent or guardian with custody of a child as well as to an individual with whom a child has been placed for adoption. It also prohibits solicitation and advertising through which a person seeks to transfer custody of, or locate, a child in violation of the article, or to facilitate such a transfer.

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

1 **Uniform Unregulated Child Custody Transfer Act**

2 **[Article] 1**

3 **General Provisions**

4 **Section 101. Title**

5 This [act] may be cited as the ~~Unregulated Transfers of Adopted Children Act.~~

6 **Reporter's Note**

7
8 ~~—The drafting committee and Committee on Style have recommended~~Uniform
9 Unregulated Child Custody Transfer Act ~~as the new title for this act.~~

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

15
16 **Section 102. Definitions**

17 In this [act]:

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

19 (2) “Child-placing agency” means a person with authority under other law of this
20 state to identify or place a child for adoption.

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

22 (4) “Intercountry adoption” means an adoption or placement for adoption of a
23 child who resides in a foreign country at the time of adoption or placement. The term includes an
24 adoption finalized in the child’s country of residence or in a state.

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

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

entity.

(7) “Record” means information:

(A) inscribed on a tangible medium; or

(B) stored in an electronic or other medium and retrievable in perceivable form.

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

Legislative Note: Insert the state’s age of majority in the bracket in paragraph (1).

Comments

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

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

3. The definition of “custody” is derived from, and is substantially similar to, the definition of “physical custody” used in Section 102(14) of the Uniform Child-Custody Jurisdiction and Enforcement Act. Article 2 of this act is focused on situations in which a parent ~~or~~ guardian, or individual with whom a child has been placed for adoption transfers physical custody of a child.

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

4. An “intercountry adoption” is a placement for adoption of a foreign-born child who, at the time of adoption or placement, resides outside of the United States. An adoption of foreign-born children is often finalized in the child’s country of residence before the child immigrates to the United States. ~~However, an adoption~~Adoption of a foreign-born child that is finalized in a state of the United States is also included in the definition.

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

1
2 6. The definitions of “person”, “record”, and “state” are the standard Uniform Law
3 Commission definitions of those terms.
4

5 **Section 103. Limitation on Applicability**

6 This [act] does not apply to custody of an Indian child, as defined in the Indian Child
7 Welfare Act, 25 U.S.C. Section 1903(4)[, as amended], to the extent governed by the Indian
8 Child Welfare Act, 25 U.S.C. Sections 1901 through 1963[, as amended].

9 **Legislative Note:** *It is the intent of this act to incorporate future amendments to the cited federal*
10 *law. However, in a state in which the constitution or other law does not permit incorporation of*
11 *future amendments when a federal statute is incorporated into state law, the phrase “as*
12 *amended” should be omitted. The phrase also should be omitted in a state in which, in the*
13 *absence of a legislative declaration, future amendments are incorporated into state law.*
14

15 **Comments**

16
17 This act does not apply to an Indian child to the extent that custody of the child is
18 governed by the Indian Child Welfare Act, 25 U.S.C. Sections 1901 through 1963[, as amended].
19

20 **[Article] 2**

21 **Prohibition of Unregulated Custody Transfer**

22 **Section 201. Definitions**

23 In this [article]:

24 (1) “[Guardian]” means a person recognized as a [guardian] under other law of
25 this state.

26 (2) “Intermediary” means a person that assists or facilitates a transfer of custody
27 of a child, whether or not for compensation.

28 **Legislative Note:** *If the state uses a term other than “guardian” to designate a person other than*
29 *a parent that has the legal authority and duty to care for a child, insert that term in paragraph*
30 *(1) and when “guardian” or “guardianship” is used in Sections 202 and 203.*
31

32 **Comments**

33
34 1. A “guardian” is a person other than a parent that has the legal authority and duty to

care for a child as recognized under other law of the enacting state ~~as the guardian of a child.~~

2. An “intermediary” is a person who seeks to facilitate or assist a parent, a third party, or both in bringing about a transfer of custody of a child. Compensation for any assistance in the transfer is not a determining factor in this definition. As used in Sections 203(~~bc~~) and 205(a)(3), the term refers to a person who facilitates or assists in a child custody transfer that is in violation of Section 203(a).

Section 202. Applicability

This [article] does not apply to a transfer of custody of a child:

~~(1) if by a parent or [guardian] of the child continues to exercise the rights and responsibilities of the parent or [guardian] concerning the child; or to:~~

~~(2) to:~~

~~(A) a parent of the child;~~

~~(B) a [guardian] of the child or an individual with whom the child has been placed for adoption;~~

~~(C) (2) a stepparent of the child[;]; or;~~

~~(D) (3) an adult individual[;];~~

~~(i)(A) who is related to the child by blood, marriage[, or] adoption[, or other relationship recognized by other law of this state[;]; or]~~

~~(ii) (B) who has, at the time of the transfer, had a close relationship for a substantial period with the child or the parent[or [guardian]] of the child, and whom the parent[or [guardian]] reasonably believed, at the time of the transfer, to be a fit custodian of the child[;]; or]~~

~~(E) (4) an Indian custodian of the child as recognized by the Indian Child Welfare Act, 25 U.S.C. Section 1903[, as amended][; or]~~

~~(F) (5) a member of the child’s customary family unit recognized by the child’s~~

indigenous group by law of this state].

***Legislative Note:** If the state wishes to allow a custody transfer to adult members of the child's family, it should adopt bracketed paragraph (2)(D)(i). If the state wishes to allow custody transfers to other individuals who have a legally recognized relationship to the child, it should add the individuals in the bracketed part of the paragraph.*

If the state wishes to allow a custody transfer to an adult individual who, although not a member of the child's family, has a close relationship for a substantial period with the child or parent and whom the parent believes to be a fit custodian of the child, it should adopt bracketed paragraph (2)(D)(ii). If a state wishes to allow a guardian to make a child custody transfer, it should adopt the bracketed term "[for [guardian]]".

If the state permits custody of a child by a member of the child's customary family unit as recognized by the child's indigenous group, the state should adopt paragraph (2)(F).

Comments

1. The objective of Article 2 is to prohibit an unregulated custody transfer of a child. Section 203 prohibits custody transfers by a parent, guardian, or individual with whom the child has been placed for adoption unless the transfer has been conducted in accordance with state-approvedrecognized processes that assure the safety of the child.

Section 202 sets forth certain custody transfers that are exempt from the prohibition in Section 203. These include The exempt transfers are those made to a transfer in which the parent or guardian continues to exercise parental rights and responsibilities over the child (paragraph (1)). They also include a transfer to a parent, guardian, individual with whom the child has been placed for adoption, stepparent, family member, and family-like individual (paragraph (2)), Indian custodian, or member of the child's indigenous customary family.

2. Paragraph (1) is focused on the actions of the *transferor*. It excludes a child custody transfer from the prohibition of Article 2 if the transferor continues to exercise the rights and responsibilities of the parent or guardian regarding the child. This principle is stated further in Section 203(a).

It not infrequent that custody of a child is temporarily transferred to another person, but the parent nonetheless continues to provide support for the child and make major life decisions for the child. For example, a child may reside with a friend of the family for some period. Nevertheless, despite the transfer of custody to the friend, the parent continues to provide support for the child and make medical and educational decisions for the child. Similarly, a child may attend a boarding school which, for legal purposes, has legal custody of the child in the sense of being *in loco parentis*. Nevertheless, here too, the parent continues to provide support for the child and to make medical and educational decisions.

3. Paragraph (2) is focused on the identity of the *transferee*. It excludes a child custody transfer from the prohibition of Article 2 if the transferee is a family member or family-like

individual. ~~Prohibition of intra-family and family-like custody transfers are not the objective of this article.~~

2. A parent has an inherent right to custody of the parent's child and subparagraph (1) recognizes that right. Thus, under this article a divorced or separated parent may transfer custody of a child to the other parent for the purpose of visiting or living with the other parent. ~~Similarly, a parent may transfer custody of a child to visit or live with adult family members or other adult family-like individuals. Although that right may be limited to some extent by a child custody agreement, divorce decree, or other law of the state, that limitation is not within the scope of this act. Also, even though a parent was never married to the child's other parent, that parent may transfer custody of a child to the other parent to the extent not limited by other law of the state.~~

~~It should be noted that a custody transfer exempted from the prohibition of the article under paragraph (1) is also exempted under paragraph (2). For example, a transfer of custody of a child may be made by a parent to a family member. If the parent continues to exercise parental rights and responsibilities over the child, the transfer is exempt under paragraph (1), and, being a transfer to a family member, it is also exempt under paragraph (2).~~

~~4. A parent has an inherent right to custody of the parent's child; subparagraph (2)(A) recognizes that right. Although that right may be limited to some extent by a child custody agreement or divorce decree, that limitation is not within the scope of this act.~~

~~53. Subparagraph (2)(B) excludes a custody transfer to a guardian or an individual with whom a child has been placed for adoption from the prohibition of the article. These individuals have a special relationship with the child which is recognized by a court or through other formal processes recognized by state law.~~

~~6. Subparagraph (2)(C) excludes a custody transfers to a stepparent of the child from the prohibition of this article. A stepparent has a special relationship with the child arising from the marital relationship existing between the child's parent and the stepparent. Thus, a stepparent is treated in a fashion similar to a parent.~~

~~74. Subparagraph (2)(D)(i) recognizes3)(A) provides that custody transfers to a child's adult family members are not intended to be within the seopeprohibition of this article. #For example, it is a common and accepted experience that custody of a child might be transferred to an adult relative of the child so that the child might spend some time, perhaps even vacation, with the relative and the relative's children.~~

~~It is also not uncommon that custody of a child might be transferred to an adult family member when the parent is unable to care for the child. For example, a parent may be deployed in the armed services or incarcerated. Alternatively, a parent may be experiencing medical difficulties, perhaps brought about by a substance use disorder. In those cases, the transfer of custody of a child to an adult family member is not prohibited by this article. Indeed, that custody transfer might be the preferential avenue to follow.~~

~~85. Subparagraph 2(D)(ii) recognizes3)(B) states that custody transfers to individuals~~

1 who are not members of the child’s family should be treated the same as custody transfers to
2 family members if, at the time of the transfer, (1) the transferee ~~individual has had~~ a close
3 relationship for a substantial period with the child or with the parent or guardian of the child, and
4 (2) the parent or guardian reasonably considers the transferee to be a fit custodian of the child.
5

6 ~~One~~An example of ~~individuals who are covered by an individual included in~~
7 subparagraph ~~2(D)(ii) are~~(3)(B) is someone sometimes known as a “fictive kin.” In many
8 circumstances, especially in certain cultures, an individual who is not related to the child but who
9 has a close and long-standing relationship with the child or parent is, effectively, considered by
10 the family ~~as a family member to be a family member. The reasons and origins of the~~
11 relationship may be varied. For example, the relationship may have a racial or ethnic origin or it
12 may arise from the parent and the “fictive kin” living closely or in the same neighborhood. For
13 purposes of this article, such an individual has a sufficiently close relationship that the individual
14 is treated in a fashion similar to a family member as long as the parent or guardian reasonably
15 considers the individual to be a fit custodian of the child. ~~(See Fla. Stat. tit. V sec. 39.4015(2)(d)~~
16 ~~for a definition of “fictive kin.”)~~
17

18 Another example ~~are individuals~~is an individual included in subparagraph (3)(B) is
19 someone who ~~are is~~ is *in loco parentis* with the child. Some states recognize a version of the
20 doctrine of *in loco parentis* under which an individual who has been treated as a parent by the
21 child and who has formed a meaningful parental relationship with the child for a substantial
22 period is treated as a parent. This doctrine involves not just a “close relationship” as with a
23 fictive kinship, but a “meaningful parental relationship.” Being ~~an even~~ more substantial
24 relationship with the child than exists with a fictive kinship, a person who is *in loco parentis* with
25 the child is treated in a similar fashion if the parent or guardian reasonably believe that person ~~is~~
26 reasonably deemed to be a fit custodian of the child.
27

28 It is recognized that identification of individuals in paragraph ~~2(D)(ii)(3)(B))~~ are not as
29 clear-cut and unambiguous as identification of members of a child’s family by birth or marriage
30 in paragraph ~~2(D)(i)(3)(A)~~. For purposes of this article, however, it is presumed that a parent’s or
31 guardian’s identification of a transferee as having a close relationship for a substantial period
32 with the child or with the parent or guardian ~~of the child~~ is done in good faith. Furthermore, it is
33 presumed that a parent’s or guardian’s determination that ~~thea~~ transferee is a fit custodian of the
34 child is done in good faith. The burden of demonstrating otherwise on either of these issues is on
35 a person challenging the transfer.
36

37 96. Subparagraph ~~(2)(E4)~~ recognizes an Indian custodian as an individual to whom a
38 parent may transfer custody of a child. As relevant to this article, an Indian custodian is an Indian
39 individual to whom temporary physical care, custody, and control of an Indian child ~~has may~~
40 transferred by a parent. An Indian custodian is recognized under the federal Indian Child Welfare
41 Act, 25 USC Section 1903.
42

43 107. Subparagraph ~~(2)(F5)~~ permits a parent to transfer custody of a child to a member of
44 a child’s customary family unit as recognized by the child’s indigenous group if that relationship
45 is recognized by state law. An example of such a law exists in Hawaii. ~~This subparagraph~~
46 ~~specifically recognizes that a member of the child’s customary family is a permitted transferee of~~

1 ~~eustody.~~

2
3 This subparagraph ~~may~~might also apply to a ~~eustody~~ transfer of custody of a Indian child
4 to an individual who is a member of ~~an Indian~~the same tribe if that tribe is recognized by state
5 law but not ~~by~~ federal law.

6
7 ~~118.~~ For some purposes it may be preferential, and in some cases required, that legal
8 processes specified by other law of the state be followed to accomplish custody transfers to some
9 of the individuals listed above. Although this section excludes certain transfers from the scope of
10 this ~~act~~article, a custody transfer must ~~still~~nevertheless comply with legal processes required by
11 other state law.

12 13 **Section 203. Prohibited Custody Transfer**

14 ~~(a)~~ Except as permitted in subsection (b), a parent or [guardian] of a child or an
15 individual with whom a child has been placed for adoption may not transfer custody of the child
16 to another person with the intent, at the time of the transfer, to:

17 (1) sever the relationship between the child and the parent, [guardian], or
18 individual; and

19 (2) abandon the parent's, [guardian's], or individual's rights and responsibilities
20 concerning the child.

21 (b) A parent or [guardian] of a child or an individual with whom a child has been placed
22 for adoption may ~~not transfer custody of the child to another person, or allow a prior transfer of~~
23 ~~custody of the child to another person to continue, with the intent permanently to relinquish the~~
24 ~~rights and responsibilities of the parent, [guardian], or individual concerning the child~~
25 ~~except~~transfer custody of the child under subsection (a) only through:

26 (1) adoption or [guardianship];

27 (2) judicial award of custody;

28 (3) placement by or through a child-placing agency; [or]

29 (4) other judicial or tribal action[;][; or]

1 [(5) cite to the state’s safe haven law][; or

2 (6) . . .].

3 (~~bc~~) A person may not receive custody of a child, or act as an intermediary in a transfer
4 of custody of a child, if the person knows or reasonably should know the transfer violates
5 subsection (a).

6 (~~ed~~) Violation of this section is a [insert class of offense].

7 (~~de~~) The fact that a parent or [guardian] that transfers custody of a child subsequently
8 does not regain custody of the child does not itself establish that the parent or [guardian]
9 intended, at the time of the transfer, to ~~permanently relinquish the rights and responsibilities of~~
10 ~~the parent or [guardian] concerning the child.;~~

11 (1) sever the relationship between the child and the parent, [guardian], or
12 individual; or

13 (2) abandon the parent’s, [guardian’s], or individual’s rights and responsibilities
14 concerning the child.

15 **Legislative Note:** A state that has a safe haven law, should insert a reference to that law in
16 subsection (~~ab~~)(5).

17
18 The state should insert in subsection (~~ab~~)(6) a reference to each process the state permits for
19 transfer of custody of a child that is not included in the preceding paragraphs.

20
21 In subsection (~~ed~~), the state should insert the degree or level of the offense the state chooses.

22 23 24 25 26 27 28 29 30 31 32 Comments

1. ~~Subsection (a) sets out the essential objective of this article—a parent or guardian of a~~
~~child, or “An individual with whom a child has been placed for adoption” is separately identified~~
~~in subsection (a) because, during the period between a child’s placement with an individual and~~
~~the finalization of the child’s adoption, the individual is not yet the parent of the child. Nor, in~~
~~most cases, is the individual a guardian of the child in the sense that a guardian is appointed by a~~
~~judicial decree. To protect such a child from an unregulated custody transfer by the individual,~~
~~the individual is specifically included here.~~

1 Note: For purposes of Comments 2 through 8, below, a reference to “parent” includes a
2 parent, guardian, or individual with whom a child has been placed for adoption.

3
4 2. Subsections (a) sets out the essential objective of this article: Except as permitted in
5 subsection (b), a parent may not transfer custody of the child to a person who is a not listed in
6 Section 202(2)a child with the intent of permanently relinquishing, at the time of the transfer, of
7 (1) severing the relationship between the parent and the child, and (2) abandoning the parent’s;
8 guardian’s, or individual’s rights and responsibilities regarding the child. Similarly, a parent,
9 guardian, or individual who initially made a transfer to such a person without an intent to
10 relinquish rights and responsibilities regarding the child may not later decide to allow the transfer
11 to continue and at that time adopt an intent to relinquish those rights and responsibilities.

12
13 A transfer of custody of the child by whatever means, including by power of attorney, is
14 not permitted.

15
16 This section is designed to protect a child and prevent the child from being transferred
17 ~~to~~into the custody of a person who might not be fit to provide for the health, safety, and well-
18 being of the child. It is ~~also~~likewise designed to protect a child from being transferred to the
19 custody of a person who might be a child trafficker or sexual molester.

20
21 23. The intent aspect in subsection (a) is significant. If transfer of custody of a child is not
22 made with the intent of relinquishingsevering the rights and responsibilities ofrelationship
23 between the parent, guardian, or individual with whom and the child has been placed for
24 adoption, and abandoning the rights and responsibilities of the parent, the transfer does not
25 violate this subsection.

26
27 Furthermore, the intent must be that the transfer and relinquishment of rights and
28 responsibilities are permanent. A temporary or short term transfer does not violate the provisions
29 of this subsection. For example, a transfer of custody of a child to a childcare provider or
30 babysitter is not normally ~~with an intent to abdicate the rights and responsibilities of the parent,~~
31 ~~guardian, or individual and, furthermore, is not intended to be permanent. Those custody~~
32 ~~transfers are not be prohibited by~~ made with an intent to sever the relationship between a parent
33 and child. Nor is it made with the intent to abandon the parent’s rights and responsibilities
34 regarding the child. The transfer of custody is temporary, and the parent continues to provide for
35 the child’s support. At the end of a workday the parent will pick up the child from daycare, or
36 when the parent returns home from an absence the parent will regain custody of the child from
37 the babysitter. The parent never intended to sever the parent’s relationship with the child. Nor
38 did the parent abandon the parent’s rights and responsibilities concerning the child.

39
40 4. If a parent does have the requisite intent at the time of the transfer, a subsequent
41 change of that intent or remorse in the original intent does not absolve the parent from a violation
42 of this subsection. For example, if a parent transfers custody of a child with the requisite intent at
43 the time of the transfer, just because the parent at some later date has a change of mind and
44 recovers custody of the child, that does not free the parent from a violation. The period between
45 the transfer of custody and the recovery of custody may be long or short; the transfer is
46 nonetheless a violation of this section.

1 3. Subsection (a) prohibits a transfer of custody of a child with the intent of releasing the
2 5. The two prongs of the intent requirement in this subsection are related and supplement each
3 other. The intent to sever the relationship between the child and the parent is involves an intent
4 to have no further association with the child. The intent to abandon the parent's rights and
5 responsibilities of the parent, guardian, or individual with whom the child has been placed for
6 adoption unless the transfer concerning the child involves an intent no longer to provide support
7 or assistance for the minor child. In combination, they involve the parent's intent to cut the
8 parental and supportive bonds that bind the parent to the child. Effectively the parent is
9 attempting to wash the parent's hands of any further association with and support of the child.

10
11 6. Subsection (b) is an exception to subsection (a) and recognizes that a parent may
12 transfer custody of the child if that transfer is accomplished through adoption, guardianship, or
13 ~~other~~ one of the processes listed in subsections (a)(1) through (a)(6)-b)(6). These processes are
14 recognized by other state law as the legitimate procedures by which a parent may transfer
15 custody of a child and sever the parent's relationship with the child as well as terminate the
16 parent's rights and responsibilities regarding the child.

17
18 Thus, ~~for example~~, this section does not prohibit a transfer of custody of a child to a
19 prospective adoptive parent incident to an adoption, or to a guardian incident to a guardianship,
20 ~~or to~~ (subsection (b)(1)). It does not forbid a transfer or custody of a child to an individual
21 incident to a judicial award of custody; (subsection (b)(2)). It does not prevent a placement by of
22 a child through a child-placing agency, ~~or other~~ including a state agency, such as in a foster care
23 placement or placement for adoption (subsection (b)(3)). It does preclude a transfer of custody
24 in accordance with any judicial or tribal action- (subsection (b)(4)).

25
26 Subsection (a)(5), if enacted by a state, exempts a child custody transfer from the
27 prohibition of this section if the transfer is made in accordance with ~~at the~~ state's safe haven law.
28 Thus, for example, a parent ~~may~~ might leave a child in accordance with the state's safe haven law
29 with a designated person even though the parent intends to ~~relinquish~~ terminate parental rights
30 and responsibilities regarding the child.

31
32 ~~In addition, subsection (a)~~ Subsection (b)(6), if enacted by a state, specifically exempts a
33 child custody transfer from the prohibition of this section if the transfer is made in accordance
34 with other law of the state.

35
36 4. "An individual with whom a child has been placed for adoption" is separately
37 identified in subsection (a) because, during the period between a child's placement with an
38 individual and the finalization of the child's adoption, the individual is not yet the parent of the
39 child. Nor, in most cases, is the individual a guardian of the child in the sense that a guardian is
40 appointed by a judicial decree. To protect such a child from an unregulated custody transfer by
41 the individual, the individual is specifically included here.

42
43 57. Subsection (b)(c) prohibits a third party from obtaining custody of a child ~~if in a~~
44 situation in which the transfer of custody parent is prohibited ~~in from~~ transferring custody of the
45 child by subsection (a). In doing so, it imposes a prohibition on the receiving person that is
46 reciprocal in nature to the prohibition imposed on the transferring individual, i.e., the parent,

1 ~~guardian, or individual with whom a child has been placed for adoption~~parent.

2
3 Subsection (~~b~~c) also prohibits a person from acting as an intermediary in a child custody
4 transfer if the transfer is prohibited by subsection (a). As defined in Section 201(2), an
5 “intermediary” is a person who facilitates or assists either the transferee or transferor, or both, in
6 accomplishing the custody transfer. The intermediary need not receive compensation to violate
7 this provision.

8
9 To be in violation of this subsection, the receiving party or intermediary must know or
10 reasonably should know that the custody transfer would be in violation of subsection (a). Thus, it
11 is possible in an appropriate circumstance that a receiving party or intermediary might lack
12 sufficient *mens rea* to be guilty of a violation of this subsection.

13
14 68. Subsection (~~e~~d) provides that a violation of this section is a crime. The subsection
15 applies to a parent, ~~guardian, or individual with whom a child has been placed for adoption~~ who
16 transfers custody of a child: in violation of subsection (a). It also applies to a person who
17 receives or solicits the transfer of a child and an intermediary who facilitates the transfer of a
18 child: in violation of subsection (c).

19
20 The exact degree or level of crime is left to the state in insert. Although the Uniform Law
21 Commission strongly believes that a violation of this section should be categorized as a
22 misdemeanor, a state may insert the category of crime it determines appropriate, e.g., felony,
23 misdemeanor, or infraction. A state may also designate a violation of this section as a specific
24 crime defined by other state law, e.g., child endangerment or abandonment. The penalties
25 attendant to a violation would then be determined by the other state law.

26
27 79. Subsection (~~d~~e) recognizes that although a parent or guardian might transfer custody
28 of a child without intending ~~permanently to relinquish parental~~to sever the relationship between
29 the parent or guardian and the child and to abandon the rights or responsibilities of the parent or
30 guardian regarding the child, subsequent facts or circumstances may occur that result in the
31 transfer becoming permanent. ~~In without any intent by the parent. To deal with~~ such a
32 situation, circumstance, it provides that the mere fact that the ~~transfer subsequently becomes~~
33 permanentparent does not regain custody of the child does not, by itself, establish that the parent,
34 when initiating the transfer of custody, had ~~an intent to make a permanent transfer. Other~~
35 ~~corroborating~~the requisite intent. Corroborating evidence would be needed to prove the intent.

36
37 For example, a parent or guardian who is suffering from a substance use disorder
38 ~~may~~might transfer custody of a child to another individual intending the transfer to be temporary,
39 thereby permitting the parent or guardian to obtain treatment for the disorder. If the parent or
40 guardian should then become institutionalized or fail to recover from the disorder and not regain
41 custody of the child, the fact that the transfer has effectively become permanent does not, of
42 itself, establish that the initial transfer of the child was ~~done~~made with an intent to ~~permanently~~
43 ~~relinquish parental~~sever the relationship between the parent or guardian and the child or abandon
44 the rights and responsibilities of the parent or guardian regarding the child. Furthermore, even
45 if the parent or guardian recovers from the disorder but allows the custody with the transferee to
46 continue, that does not establish, per se, the requisite intent at the time of the transfer of custody.

1 Other factors may be present to explain the continuance of the custody of the child with the
2 transferee.

3
4 This subsection applies only to parents and guardians. It does not apply to an individual
5 with whom a child has been placed for adoption.
6

7 **Section 204. Authority and Responsibility of the [Department of Child Protection]**

8 (a) If the [Department of Child Protection] has probable cause to believe that a person has
9 transferred or will transfer custody of a child in violation of Section 203(a), the [department]
10 may conduct a home visit as provided by other law of the state to assess the welfare of the child
11 and facilitate compliance with Section 203(a).

12 (b) If the [Department of Child Protection] conducts a home visit for a child adopted or
13 placed through an intercountry adoption, the [Department] shall:

14 (1) prepare a report on the welfare and plan for permanent placement of the child;

15 and

16 (2) provide to the United States Department of State a copy of the report under
17 paragraph (b)(1).

18 (c) This [act] does not prevent the [Department of Child Protection] from taking
19 appropriate action necessary to protect a child from harm.

20 **Legislative Note:** *The state should insert the title of the appropriate state agency responsible for*
21 *child protective services, in this section and Sections 306 and 308.*

22
23 **Comments**

24
25 1. Subsection (a) allows the department of child protection to conduct a home visit to
26 assess the welfare of the child ~~in order~~ to facilitate or assure compliance with Section 203(a).
27

28 The department is an agency of the state and may not ~~act in criminal matters,~~ without
29 probable cause, act in matters that may lead to criminal prosecution. Thus, to conduct the home
30 visit the department must have probable cause to believe that custody of a child has been or will
31 be transferred in violation of Section 203(a). Mere suspicion or hearsay is insufficient.
32 Information would have to be more specific and direct as to a prior transfer or planned transfer.
33 Supporting evidence such as email or text messages concerning the transfer would tend to

1 provide probable cause.

2
3 A home visit, for purposes of the section, is usually a visit to the home where the child
4 resides. However, it may ~~include~~ be a visit to any setting at which the child is located. The
5 processes and procedures for a home visit will normally be specified by the department of child
6 protection.

7
8 The purpose of this subsection is not only to allow the department to determine whether
9 there has been a transfer in violation of Section 203(a), but also to allow it to assist the parent,
10 guardian, or individual with whom the child has been placed for adoption. In some cases that
11 assistance might involve counseling of the parent, guardian, or individual ~~and the child.~~ In
12 others it might involve advice and assistance in ~~utilizing~~ using the legitimate means of
13 transferring custody of a child as specified in Section 203(a).

14
15 2. In many instances when children are adopted or placed through an intercountry
16 adoption, the child's country of origin asks the United States Department of State to inform it if
17 custody of the child has been transferred in an unregulated custody transfer. To facilitate the
18 Department of State in this regard, subsection (b) requires the department of child protection, if it
19 conducts a home visit under Section 204(a), to provide a copy of its report on the welfare of the
20 child and an assessment on the plan for permanent placement of the child to the Department.

21
22 At the time of the drafting of this act, the appropriate office within the Department of
23 State to which the report should be submitted is the Office of Children's Issues, Bureau of
24 Consular Affairs.

25
26 3. Subsection (c) is intended to make clear that regardless of the other provisions of this
27 article which give wide latitude to the custody transfer decisions of the parent, guardian, or
28 individual with whom the child has been placed for adoption, the department of child protection
29 may nonetheless take appropriate action to protect the child from harm.

30 31 **Section 205. Prohibited Soliciting or Advertising**

32 (a) A person may not solicit or advertise ~~with the intent~~ to:

33 (1) find a person to which to make a transfer of custody in violation of Section
34 203(a);

35 (2) locate a child for a transfer of custody in violation of Section 203(b); or

36 (3) act as an intermediary in a transfer of custody in violation of Section 203(b).

37 (b) Violation of this section is a [insert class of offense].

38 ***Legislative Note:*** In subsection (b), the state should insert the degree or level of offense the state
39 chooses.

Comments

1. Since child custody transfers that would violate Section 203 are not made to family members or family-like individuals, (see Section 202), usually no preexisting personal connection or relationship exists between a parent and a person to whom a transfer will be made. To arrange such a transfer it is, therefore, ~~it is~~ usually necessary to search for and locate an interested party. That search might be accomplished by some form of solicitation or advertising.

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

Even though advertising is initiated to transfer custody of a child, it might not result in a completed transfer. Nonetheless, advertising, an initial step in a prohibited custody transfer, has been performed. To prevent this precursor step, advertising for the transfer is separately prohibited.

2. Soliciting and advertising may be seen as a form of speech. The First Amendment of the United State Constitution protects freedom of speech and does not allow the government to interfere with that speech. However, that prohibition is not absolute. The government may prohibit speech if that speech is related to an illegal activity. To withstand judicial scrutiny, that prohibition must directly advance a compelling state interest and must be narrowly drawn to focus on speech aimed at a violation of a core prohibition in the act.

This act deals with a compelling state interest – the protection of children from the dangers that may result from an unregulated custody transfer. As set forth in Section 203 and further described in its Comments, this act is designed to protect a child and prevent the child from being transferred into the custody of a person who might not be fit to provide for the health, safety, and well-being of the child. It is also designed to protect a child from being transferred into the custody of a person who might be a child trafficker or sexual molester.

This prohibition on solicitation or advertising is narrowly focused on speech that is aimed at a violation of a core prohibition of the act. The core prohibition in the act is an unregulated child custody transfer. As noted above, some form or solicitation or advertising is usually involved in located persons to whom or from whom custody of a child might be transferred. In reality, solicitation or advertising is an initial step in achieving an unregulated child custody transfer. The limitation on speech set forth in this section is narrowly focused on that core prohibition. Only speech that is aimed at implementing or facilitating an unregulated child custody transfer is prohibited. No other speech is affected. This limitation will not have a wider sweep than is necessary to accomplish the core prohibition of the act.

3. Three specific situations of prohibited advertising are identified. A parent, guardian, or individual with whom a child has been placed for adoption might initiate the advertising in an attempt to find a person to whom the parent might transfer custody of a child in violation of Section 203(a). Alternatively, a third person might initiate the advertising in an attempt to locate

1 a child, i.e., the third person is seeking to locate a child whose custody would be transferred to
2 that person in violation of Section 203(b). Finally, an intermediary ~~who seeks~~seeking to facilitate
3 or assist a parent, guardian, or individual, or a third party, or both with a custody transfer that
4 would violate Section 203(b) might initiate the advertising.

5
6 It should be noted that even though advertising prohibited by this section might be
7 separately initiated by all three parties (a parent, guardian, or individual, a transferee, and an
8 intermediary) in any individual custody transfer, it need not be. Only one party, for example an
9 intermediary, might conduct the advertising. In that case, although all three parties might engage
10 in a child custody transfer prohibited by Section 203, only one of them will have engaged in
11 advertising prohibited by this section.

12
13 34. To be in violation of this section, the person engaging in the solicitation or
14 advertising must have an intent to make or receive ~~or act as an intermediary in~~ a transfer of
15 custody of a child in violation of Section 203 or act as an intermediary in such a transfer. Thus, it
16 is possible in an appropriate circumstance that a person might lack sufficient *mens rea* to be
17 guilty of a violation of this section.

18
19 45. Subsection (b) states that a violation of this section is a crime. The exact degree or
20 level of crime is left to the state in insert. A state may insert the category of crime it determines
21 appropriate, e.g., felony, misdemeanor, or infraction. A state may also designate a violation of
22 this section as a specific crime defined by other state law, e.g., solicitation to transfer custody of
23 a child. The penalties attendant to a violation would then be determined by the other state law.

24
25 6. Section 230 of the Communications Decency Act (47 U.S.C. Section 230) protects
26 interactive computer service platforms from liability due to solicitation or advertising conducted
27 by other persons using the service platform. The prohibitions and penalties in this section apply
28 only to the persons who conduct the solicitation or advertising. They do not apply to the
29 computer service platform.

30 31 [Section 206. Enforcement

32 If the [law enforcement authority] has probable cause to believe that a person has violated
33 this [article], the [law enforcement authority] may investigate and take legal action as provided
34 by this act or other law of this state.]

35 **Legislative Note:** ~~This~~A state should omit this section-~~should be omitted~~ if other law of the state
36 already authorizes a state officer to take action to enforce this act.

37
38 *A state should insert the appropriate law enforcement authority that will investigate and bring a*
39 *proceeding under this section.*

40 41 Comments

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

This article states that violations of Section 203 and 205 are misdemeanors and, thus, criminal sanction would be one remedy. Other relief may be available under state law in some situations. For example, the law enforcement authority may seek injunctive relief to enjoin continuing advertising that is in violation of Section 205. If a licensed child-placing agency is acting as an intermediary in violation of Sections 203 or 205, the law enforcement authority may, in addition to any other relief sought, pursue administrative relief for revocation of the agency's license.

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

[[Article] 3

Information and Guidance

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

Section 301. Definition

In this [article], “prospective adoptive parent” means an individual who has been approved or permitted to adopt a child under other law of this state.

Comments

A “prospective adoptive parent” in this article is an individual who has already been approved to adopt a child. The approval process and requirements are governed by other state law. The term applies to an individual who has been approved to adopt a child even though a child has not yet been placed with the individual for adoption. It also applies to an individual with whom a child has been placed ~~but~~ for adoption, but the adoption has not yet been finalized.

Section 302. Scope

1 This [article] applies to placement for adoption of a child who:

2 (1) has been or is in foster or institutional care;

3 (2) previously has been adopted in a state;

4 (3) has been or is being adopted under the law of a foreign country;

5 (4) has come or is coming to a state from a foreign country to be adopted; or

6 (5) is not a citizen of the United States.

7 **Comments**

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

13
14 Section 302 provides a list of circumstances which are likely to result in a heightened
15 degree risk for disruption or dissolution of the adoption. The list was developed from a review of
16 placements identified by some states that have already enacted provisions similar to those in this
17 article, as well as from the experiences and opinions of child-placement professionals.

18 **Section 303. General Adoption Information**

19
20 Within a reasonable time before a child-placing agency places a child for adoption with a
21 prospective adoptive parent, the agency shall provide or cause to be provided to the prospective
22 adoptive parent general adoption information. The information must address:

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

24 (A) identity, loss, and trauma that a child ~~may~~might experience before,
25 during, or after adoption; and

26 (B) a child leaving familiar ties and surroundings;

27 (2) the effect that access to resources, including health insurance, ~~may~~might have
28 on the ability of an adoptive parent to meet the needs of a child;

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

1 and resources available to help avoid disruption or dissolution; and

2 (4) prohibitions under Sections 203 and 205.

3 **Comments**

4
5 1. Section 303 is the first of four sections that require a person, usually the child-placing
6 agency involved in the placement of the child, to provide information or assistance to the
7 prospective adoptive parent. Each section requires the provision of a different kind of
8 information or assistance and, in some cases, at a different time during the progress of a
9 placement or adoption.

10
11 2. Subsection (a) requires the provision of general adoption information to the
12 prospective adoptive parent regarding adoptions that have a heightened degree of risk for
13 disruption of the adoption. The information that must be provided is generic and not child-
14 specific, i.e., it is not focused on any particular child. The information is, however, related in a
15 general way, to the types of issues that might be encountered during or after the adoption of a
16 child with a heightened degree of risk for disruption or dissolution of the adoption.

17
18 The objective of this section is to inform the prospective adoptive parent about various
19 matters that the parent might not have appreciated and that might affect the parent's decision to
20 proceed further along the adoption pathway. By requiring the provision of the information, it
21 seeks to enhance the chances that a placement, once made, will result in a successful adoption.

22
23 Subsection (a) also specifies that the information must be provided to a prospective
24 adoptive parent a reasonable time before the child-placing agency places the child with the
25 parent. Since this adoption information is generic, it may be provided in a standard format.
26 Further, the child-placing agency need not personally provide the information to the parent as
27 long as the agency causes the information to be provided to the parent. Nevertheless, the
28 provider should do more than merely dispense the information to the prospective adoptive
29 parent. It should be reasonably satisfied that the parent has digested the information and
30 understands it.

31
32 3. Subsections (b)(1), (b)(2), and (b)(3) require the distribution of information about a
33 variety of matters that might arise in an adoption that has a heightened degree of risk for
34 disruption or dissolution.

35
36 4. Subsection (b)(4) requires the child-placing agency to inform the prospective adoptive
37 parent about the prohibitions on unregulated custody transfer of a child and advertising for an
38 unregulated custody transfer set out in Article 2.

39 **Section 304. Information About Child**

40
41 (a) Except as prohibited by other law of this state, within a reasonable time before a
42 child-placing agency places a child for adoption with a prospective adoptive parent, the agency

1 shall provide or cause to be provided to the prospective adoptive parent information specific to
2 the child that is known or reasonably obtainable by the agency and that is material to the
3 prospective adoptive parent's informed decision to adopt the child. The information must
4 include:

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

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

8 (3) circumstances that may adversely affect the child's physical, mental,
9 emotional, or behavioral health;

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

11 (5) the medical history of the child's genetic parents and siblings;

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

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

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

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

19 (b) If, before an adoption is finalized, additional information under subsection (a) that is
20 material to a prospective adoptive parent's informed decision to adopt the child becomes known
21 or reasonably obtainable by the child-placing agency, the agency shall provide the information to
22 the prospective adoptive parent.

23 (c) If, after an adoption is finalized, additional information under subsection (a) becomes

known to the child-placing agency, the agency shall make a reasonable effort to provide the information to the adoptive parent.

Reporter's Note

~~The Committee on Style recommended the deletion of former subsection (c), which imposed a duty on the child-placing agency to make a reasonable effort to obtain information about the child. The Committee on Style was of the opinion that the subsection's requirements were duplicative of the "reasonably obtainable" requirements already in subsection (a). The chair and the reporter agreed with their position. However, we did insert in subsection (a) the provision formerly in subsection (c) specifying that the information be "material to the prospective adoptive parent's informed decision to adopt the child."~~

Comments

1. Subsection (a) requires provision of child specific information to the prospective adoptive parent before placement of the child with the parent. It is information about the specific child that the child-placing agency is proposing to place with the parent. The purpose is to inform the parent about various matters in the child's personal 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 or perhaps in a desire to transfer custody of the child in violation of Article 2. Also, by the provision of the information, it seeks to enhance the chances of a successful adoption.

The introduction of the section provides that the information must be provided by the child-placing agency unless the distribution of that information is prohibited by other law of the state. This provision recognizes that state law may prohibit the provision of certain private information. For example, the genetic parent's health information ~~may~~ might be considered private and protected by the state's privacy laws. As limited by that provision, the child-placing agency must nevertheless provide information to the prospective adoptive parent that is "known or reasonably obtainable by the agency."

As with information required to be provided by Section 303(a), the child-placing agency need not personally provide the information to the parent as long as the agency causes it to be provided to the parent. Nevertheless, the provider should do more than merely dispense the information to the prospective adoptive parent. It should be reasonably satisfied that the parent has digested the information and understands it.

2. The child-specific matters about which the child-placing agency must inform the prospective adoptive parent are listed.

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

Subsection (a)(2) requires information on various aspects of the child's health.

Subsection (a)(3) requires information on previous circumstances, if any, that might

adversely affect aspects of the child's health.

Subsection (a)(4) requires information on the child's medical history.

Subsection (a)(5) requires information on the medical history of the child's genetic family.

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

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

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

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

3. Subsection (b) provides that if, after the placement and before the finalization of the adoption, additional information required by subsection (a) about the child becomes known or reasonably obtainable to the child-placing agency, it must provide that information to the prospective adoptive parent. It imposes a duty on the agency that continues until the adoption is finalized to act reasonably in obtaining material information and providing it to the parent.

4. Subsection (c) pertains to the child-placing agency's duty to provide information after the adoption is finalized. It states that if information required by subsection (a) about the child does, in fact, become ~~available~~ known to the child-placing agency after the adoption is finalized, the agency must make reasonable efforts to locate and provide the information to the adoptive parents. It does not place a duty on the agency to continue to make efforts to obtain the information but requires the agency to provide information to the parents if it should obtain it. It also recognizes that an agency might not continue to have up-to-date location information about the parents and imposes a duty to make reasonable efforts to locate them in order to provide the information.

Section 305. Guidance and Instruction

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

(b) The guidance and instruction under subsection (a) must address, if applicable:

(1) the potential effect on the child of:

(A) previous adoption or out-of-home placement;

- (B) multiple adoptions or out-of-home placements;
- (C) trauma, insecure attachment, fetal alcohol exposure, or malnutrition;
- (D) neglect, abuse, drug exposure, or similar adversity;
- (E) separation from a sibling or significant caregiver; and
- (F) any difference in ethnicity, race, or cultural identity between the child and the prospective adoptive parent or other child of the parent;
- (2) information available from the federal government on the process for the child to acquire United States citizenship; and
- (3) any other matter the child-placing agency considers material to the adoption.
- (c) The guidance and instruction under subsection (a) must be provided:
- (1) for adoption of a child residing in the United States, a reasonable time before the adoption is finalized; or
- (2) for an intercountry adoption, in accordance with federal law.

Comments

1. Subsection (a) requires a child-placing agency to provide guidance and instruction to an adoptive parent to prepare the parent to respond effectively to the needs of the child. As with information required to be provided by Sections 303 and 304, the child-placing agency need not personally provide the guidance and instruction to the parent as long as the agency causes it to be provided to the parent. Nevertheless, the provider should do more than merely dispense the ~~information~~ guidance and instruction to the prospective adoptive parent. Guidance and instruction are educational processes, and the provider should be reasonably satisfied that the parent has gained the necessary training.

2. Subsection (b) sets out the matters that the guidance and instruction must address. They generally relate to some of the matters about which the child-placing agency must previously provide information to the prospective adoptive parents under Sections 303 and 304(a).

3. Subsection (c)(1) requires the guidance and instruction for a prospective adoptive parent of a child residing in the United State to be provided a “reasonable time” before the adoption is finalized. A “reasonable time” will depend on the circumstances, but it must be sufficient to provide the prospective adoptive parent reasonable time to implement the guidance

and instruction and make an informed decision as to whether to proceed with the adoption.

4. ~~Not providing~~Providing the guidance and instruction to ~~a~~ prospective adoptive ~~parents~~ ~~until a reasonable time before an adoption is finalized~~parent after a child in an intercountry adoption ~~has been placed with that parent~~ may be too late for an informed decision on adoption. If the adoption is finalized after the child has left the child's country of origin (for example, in the state where the ~~parents reside~~parent resides), the adoptive ~~parents have~~parent has already made a significant emotional and financial decision before receiving ~~the~~ important guidance and instruction on the adoption. ~~In~~To deal with that ~~ease~~circumstance, subsection (c)(2) requires that the guidance and instruction be provided to the prospective adoptive parent in an intercountry adoption in accordance with federal law, which at the time of the drafting of this section is before the child enters the United States.

Section 306. Information About Financial Assistance and Support Services

(a) A child who was placed for adoption or whose adoption was finalized or the child's adoptive parent may request financial assistance or support services to help preserve the placement or adoption from the child-placing agency placing the child or the [Department of Child Protection]. The child-placing agency or the [Department] shall provide information about how to obtain financial assistance or support services that may assist the child or parent to respond effectively to adjustment, behavioral, and other challenges that may have arisen.

(b) Support services under subsection (a) include:

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

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

Comments

1. Subsection (a) requires the child-placing agency or the department of child protection to provide information on how to access support services and financial assistance to help preserve a placement or adoption. It is designed to allow the state to take advantage of funds available to it under the federal Family First Prevention Services Act as well as from other sources.

If ~~the~~ information is requested by either a child or a parent, it must be provided ~~during~~

1 ~~either or both the period~~ regardless of whether the request is made before or after the adoption is
2 finalized ~~and after adoption is finalized~~.

3
4 2. Subsection (b) states that the information that must be provided includes:

5
6 (1) information on access to parenting-skills training and education, individual
7 and family counseling, respite care, and other parent skill-based programs; and

8 (2) information on access to services from a qualified clinician to prevent and
9 treat mental health or substance abuse issues.

10
11 ~~The access information on support services specified in subsection (b) overlaps to some~~
12 ~~extent information or guidance and instruction required in Sections 303, 304, and 305.~~

13
14 3. If the state does not require provision of post-adoption financial assistance and support
15 or has only a general statement on assistance and services, the state should enact the assistance
16 and services listed in subsection (b).

17 **Section 307. Child-Placing Agency Compliance**

18
19 (a) The [Attorney General law enforcement authority] may investigate an allegation that a
20 child-placing agency has failed to comply with this [article] and commence an action for
21 injunctive or other relief or initiate administrative proceedings against the child-placing agency
22 to enforce this [article].

23 (b) The [state licensing authority] may initiate proceedings to determine whether a child-
24 placing agency has failed to comply with this [article]. If the [authority] finds that the child-
25 placing agency has failed to comply, the [authority] may suspend or revoke the agency's license
26 or take other action permitted by law of the state.

27 **Legislative Note:** In subsection (a), a state should insert the appropriate law enforcement
28 authority that will investigate and bring a proceeding under this subsection.

29
30 In subsection (b), a state should insert the appropriate state licensing authority that will issue or
31 suspend a license under this section.

32 **Comments**

33
34
35 1. Article 3 places a number of obligations regarding the provision of information and
36 services on the child-placing agency. ~~This section~~ Subsection (a) allows the ~~Attorney General~~
37 law enforcement authority to investigate an alleged failure of an agency to comply with this

1 article. The ~~Attorney General~~law enforcement authority may also bring proceedings to enforce
2 the article. Among the various forms of relief that the ~~Attorney General~~law enforcement
3 authority might seek ~~are a revocation or suspension of the agency's license, is~~ injunctive relief,
4 ~~and a pecuniary penalty~~. Other forms of relief might also be available under state law.

5
6 2. Subsection (b) allows the state licensing authority, which previously would have
7 issued an operating license to a child-placing agency, to suspend or revoke that license if the
8 agency fails to comply with this article. The authority may also take other actions permitted by
9 state law.

10 11 **Section 308. Rulemaking Authority**

12 The [Department of Child Protection] may adopt rules under [cite to state administrative
13 procedure act] to implement Sections 303, 304, 305, and 306.]

14 **Comments**

15
16 This section authorizes the department of child protection to adopt rules to establish the
17 content and manner of providing the information and the guidance and instruction required in
18 Article 3.

19 20 **[Article] 4**

21 **Miscellaneous Provisions**

22 **Section 401. Uniformity of Application and Construction**

23 In applying and construing this uniform act, a court shall consider the promotion of
24 uniformity of the law among jurisdictions that enact it.

25 **Comments**

26
27 This provision encourages judicial construction that will maintain uniformity among the
28 various states adopting the act.

29 30 **Section 402. Relation to Electronic Signatures in Global and National Commerce**

31 **Act**

32 This [act] modifies, limits, or supersedes the Electronic Signatures in Global and National
33 Commerce Act, 15 U.S.C. Section 7001 et seq.[, as amended], but does not modify, limit, or
34 supersede 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices

described in 15 U.S.C. Section 7003(b).

Legislative Note: *It is the intent of this act to incorporate future amendments to the cited federal law. A state in which the constitution or other law does not permit incorporation of future amendments when a federal statute is incorporated into state law should omit the phrase “, as amended”. A state in which, in the absence of a legislative declaration, future amendments are incorporated into state law also should omit the phrase.*

Comments

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

Section 403. Transitional Provisions

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

(1) a transfer of custody:

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

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

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

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

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

Comments

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

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

2. Subsection (b) provides that Article 3 applies to placements that occur more than 60

1 days after the effective date of the act. This period allows time for child-placing agencies to
2 prepare for and apply the provisions of Article 3.

3 4 **[Section 404. Severability]**

5 If a provision of this [act] or its application to a person or circumstance is held invalid,
6 the invalidity does not affect another provision or application that can be given effect without the
7 invalid provision.]

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

11 12 **Comments**

13
14 This is the standard severability provision for uniform laws.

15 **[Section 405. Repeals; Conforming Amendments]**

16 (a) . . .

17 (b) . . .].

18 ***Legislative Note:*** *A state should examine its statutes to determine whether conforming revisions*
19 *are required by provisions of this act relating to unregulated child custody transfers and*
20 *provision of information and guidance to prospective adoptive parents. See Articles 2 and 3.*

21 22 **Comments**

23 This section lists laws that this act supervenes.

24 **Section 406. Effective Date**

25 This [act] takes effect . . . ~~...~~

26 27 **Comments**

This is the standard effective date provision for uniform laws.