

D R A F T
FOR APPROVAL

Uniform Unregulated Child Custody Transfer Act

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Uniform Unregulated Child Custody Transfer Act

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1 **Uniform Unregulated Child Custody Transfer Act**

2 **Prefatory Note**

3 Several years before commencement of the drafting of this act, public awareness began to
4 focus on a situation that was occurring in the parenting and custody of some children.
5

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

17 In some cases, the instigation for the transfers might have been more sinister. By means
18 of the Internet or other media, potential child molesters or sex traffickers seeking children
19 contacted parents who were experiencing difficulties parenting a child. Thereafter, custody of the
20 child might have been transferred to the previously unknown individual.
21

22 **Background**

23
24 In 2013, after attention began to focus on unregulated custody transfers, a U.S. Working
25 Group was formed, consisting of representatives from several federal agencies, state child
26 welfare organizations, and the National Association of Attorneys General. The Working Group
27 produced a report specifying three issues that should be addressed in legislation: (1) a clear
28 provision stating that an unregulated custody transfer is a violation of state law; (2) authorization
29 for state protective services agencies to investigate and interdict instances of unregulated
30 transfers; and (3) a requirement that child-placing agencies provide better information and
31 training for prospective adoptive parents so that they know what to anticipate when adopting
32 children with certain special needs and how to deal with them.
33

34 Although several states adopted statutes dealing in some fashion with the issues involved
35 in unregulated child custody transfers, the Utah statute closely followed the Working Group
36 recommendations. That statute provided some of the initial background and drafting input for
37 this uniform act. Members of the Working Group and the Utah legislative drafting service were
38 observers during the drafting of this uniform act and provided further critical input.
39

40 Initially, the scope of this act was limited to unregulated transfers of children who were
41 the product of intercountry adoptions. In discussions among committee members and observers,
42 it became clear that prospective adoptive parents of children with certain other special needs
43 required the same information and training as the prospective adoptive parents of children in
44 intercountry adoptions. As a result, the scope of the act was expanded to apply not only to the

1 adoption of intercountry children but also to the adoption of all children with certain special
2 needs – similar to the Utah approach.

3
4 After further discussion, the act was bifurcated – one article (Article 2) prohibiting
5 unregulated child custody transfers, and another article (Article 3) requiring provision of
6 information and training for prospective adoptive parents.

7
8 Finally, the article prohibiting unregulated child custody transfers was expanded to apply
9 not only to custody transfers of adopted children with special needs but also to custody transfers
10 of any child. A parent’s unregulated custody transfer of a biological child is just as problematic
11 and dangerous for a biological child as for an adopted child.

12 **Summary of Act**

13
14
15 The Uniform Unregulated Child Custody Transfer Act provides two different but related
16 responses to the situation described above.

17
18 First, if a parent intends to sever the relationship between a parent and child and to
19 abandon parental rights and responsibilities with regard to the child, Article 2 prohibits a transfer
20 of custody of the child to someone beyond family members and family friends. The prohibition
21 applies to a parent or guardian with custody of a child as well as to an individual with whom a
22 child has been placed for adoption. It also prohibits solicitation and advertising through which a
23 person seeks to transfer custody of, or locate, a child in violation of the article, or to facilitate
24 such a transfer.

25
26 Second, Article 3 deals with the adoption of children with special needs, i.e., those whose
27 physical or psychological health at the time of a proposed placement for adoption would predict
28 that the adoptive parents might have difficulty in caring for the child. This article seeks to assure
29 that prospective adoptive parents are informed about, and given instruction on dealing with,
30 various health or behavioral issues before they might arise. It requires the child-placing agency
31 through which an adoption is facilitated to provide the prospective adoptive parents with:
32 (1) general information about adopting children with these health or behavioral issues;
33 (2) specific information about the physical and psychological health of their prospective adoptive
34 child; and (3) guidance and instruction on dealing with the challenges that may present
35 themselves in rearing the child placed with them. It also requires a child-placing agency or state
36 department of child protection to provide information on accessing certain post-placement and
37 post-adoption financial assistance and support services to the adoptive child and parent to help
38 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 Uniform Unregulated Child Custody Transfer Act.

6 **Section 102. Definitions**

7 In this [act]:

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

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

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

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

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

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

20 (7) “Record” means information:

21 (A) inscribed on a tangible medium; or

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

24 (8) “State” means a state of the United States, the District of Columbia, Puerto

1 Rico, the United States Virgin Islands, or any other territory or possession subject to the
2 jurisdiction of the United States. The term includes a federally recognized Indian tribe.

3 *Legislative Note: Insert the state’s age of majority in the bracket in paragraph (1).*
4

5 **Comments**

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

10
11 2. A “child-placing agency” is a person authorized under state or federal law to identify
12 or place a child for adoption.

13
14 3. The definition of “custody” is derived from, and is substantially similar to, the
15 definition of “physical custody” used in Section 102(14) of the Uniform Child-Custody
16 Jurisdiction and Enforcement Act. Article 2 of this act is focused on situations in which a parent,
17 guardian, or individual with whom a child has been placed for adoption transfers physical
18 custody of a child.

19
20 A transfer of “legal custody” of a child, i.e., the right to make significant life decisions
21 for the child (*see* Uniform Nonparent Custody and Visitation Act, Section 2(6)), might
22 sometimes be involved in a child-custody transfer. It is, however, the transfer of physical custody
23 that potentially might endanger a child. Therefore, Article 2 is focused on transfers of physical
24 custody regardless of whether there is also a transfer of legal custody.

25
26 4. An “intercountry adoption” is a placement for adoption of a foreign-born child who, at
27 the time of adoption or placement, resides outside of the United States. An adoption of foreign-
28 born children is often finalized in the child’s country of residence before the child immigrates to
29 the United States. Adoption of a foreign-born child that is finalized in a state of the United States
30 is also included in the definition.

31
32 5. The definition of “parent” is determined by other law of the enacting state.

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

36
37 **Section 103. Limitation on Applicability**

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

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

6
7 **Comments**
8

9 This act does not apply to an Indian child to the extent that custody of the child is
10 governed by the Indian Child Welfare Act, 25 U.S.C. Sections 1901 through 1963[, as amended].
11

12 **[Article] 2**

13 **Prohibition of Unregulated Custody Transfer**

14 **Section 201. Definitions**

15 In this [article]:

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

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

20 **Legislative Note:** *If the state uses a term other than “guardian” to designate a person other than*
21 *a parent that has the legal authority and duty to care for a child, insert that term in paragraph*
22 *(1) and when “guardian” or “guardianship” is used in Sections 202 and 203.*
23

24 **Comments**
25

26 1. A “guardian” is a person other than a parent that has the legal authority and duty to
27 care for a child as recognized under other law of the enacting state.
28

29 2. An “intermediary” is a person who seeks to facilitate or assist a parent, a third party, or
30 both in bringing about a transfer of custody of a child. Compensation for any assistance in the
31 transfer is not a determining factor in this definition. As used in Sections 203(c) and 205(a)(3),
32 the term refers to a person who facilitates or assists in a child custody transfer that is in violation
33 of Section 203(a).
34

35 **Section 202. Applicability**

36 This [article] does not apply to a transfer of custody of a child by a parent or [guardian]

1 of the child to:

2 (1) a parent of the child;

3 (2) a stepparent of the child;

4 (3) an adult individual:

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

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

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

12 (5) a member of the child's customary family unit recognized by the child's
13 indigenous group by law of this state].

14 **Comments**

15
16 1. The objective of Article 2 is to prohibit an unregulated custody transfer of a child.
17 Section 203 prohibits custody transfers by a parent, guardian, or individual with whom the child
18 has been placed for adoption unless the transfer has been conducted in accordance with state-
19 recognized processes that assure the safety of the child.

20
21 Section 202 sets forth certain custody transfers that are exempt from the prohibition in
22 Section 203. The exempt transfers are those made to a parent, stepparent, family member,
23 family-like individual, Indian custodian, or member of the child's indigenous customary family.

24 2. A parent has an inherent right to custody of the parent's child and subparagraph (1)
25 recognizes that right. Thus, under this article a divorced or separated parent may transfer custody
26 of a child to the other parent for the purpose of visiting or living with the other parent. Although
27 that right may be limited to some extent by a child custody agreement, divorce decree, or other
28 law of the state, that limitation is not within the scope of this act. Also, even though a parent was
29 never married to the child's other parent, that parent may transfer custody of a child to the other
30 parent to the extent not limited by other law of the state.

31
32 3. Subparagraph (2) excludes custody transfers to a stepparent of the child from the
33 prohibition of this article. A stepparent has a special relationship with the child arising from the

1 marital relationship existing between the child’s parent and the stepparent. Thus, a stepparent is
2 treated in a fashion similar to a parent.

3
4 4. Subparagraph (3)(A) provides that custody transfers to a child’s adult family members
5 are not intended to be within the prohibition of this article. For example, it is a common and
6 accepted experience that custody of a child might be transferred to an adult relative of the child
7 so that the child might spend some time, perhaps even vacation, with the relative and the
8 relative’s children.

9
10 It is also not uncommon that custody of a child might be transferred to an adult family
11 member when the parent is unable to care for the child. For example, a parent may be deployed
12 in the armed services or incarcerated. Alternatively, a parent may be experiencing medical
13 difficulties, perhaps brought about by a substance use disorder. In those cases, the transfer of
14 custody of a child to an adult family member is not prohibited by this article. Indeed, that
15 custody transfer might be the preferential avenue to follow.

16
17 5. Subparagraph (3)(B) states that custody transfers to individuals who are not members
18 of the child’s family should be treated the same as custody transfers to family members if, at the
19 time of the transfer, (1) the transferee had a close relationship for a substantial period with the
20 child or with the parent or guardian of the child, and (2) the parent or guardian reasonably
21 considers the transferee to be a fit custodian of the child.

22
23 An example of an individual included in subparagraph (3)(B) is someone sometimes
24 known as a “fictive kin.” In many circumstances, especially in certain cultures, an individual
25 who is not related to the child but who has a close and long-standing relationship with the child
26 or parent is, effectively, considered by the family to be a family member. The reasons and
27 origins of the relationship may be varied. For example, the relationship may have a racial or
28 ethnic origin or it may arise from the parent and the “fictive kin” living closely or in the same
29 neighborhood. For purposes of this article, such an individual has a sufficiently close
30 relationship that the individual is treated in a fashion similar to a family member as long as the
31 parent or guardian reasonably considers the individual to be a fit custodian of the child.

32
33 Another example is an individual included in subparagraph (3)(B) is someone who is *in*
34 *loco parentis* with the child. Some states recognize a version of the doctrine of *in loco parentis*
35 under which an individual who has been treated as a parent by the child and who has formed a
36 meaningful parental relationship with the child for a substantial period is treated as a parent. This
37 doctrine involves not just a “close relationship” as with a fictive kinship, but a “meaningful
38 parental relationship.” Being an even more substantial relationship with the child than exists
39 with a fictive kinship, a person who is *in loco parentis* with the child is treated in a similar
40 fashion if the parent or guardian reasonably believe that person to be a fit custodian of the child.

41
42 It is recognized that identification of individuals in paragraph (3)(B)) are not as clear-cut
43 and unambiguous as identification of members of a child’s family by birth or marriage in
44 paragraph (3)(A). For purposes of this article, however, it is presumed that a parent’s or
45 guardian’s identification of a transferee as having a close relationship for a substantial period
46 with the child or with the parent or guardian is done in good faith. Furthermore, it is presumed

1 that a parent’s or guardian’s determination that a transferee is a fit custodian of the child is done
2 in good faith. The burden of demonstrating otherwise on either of these issues is on a person
3 challenging the transfer.
4

5 6. Subparagraph (4) recognizes an Indian custodian as an individual to whom a parent
6 may transfer custody of a child. As relevant to this article, an Indian custodian is an Indian
7 individual to whom temporary physical care, custody, and control of an Indian child may be
8 transferred by a parent. An Indian custodian is recognized under the federal Indian Child Welfare
9 Act, 25 USC Section 1903.
10

11 7. Subparagraph (5) permits a parent to transfer custody of a child to a member of a
12 child’s customary family unit as recognized by the child’s indigenous group if that relationship is
13 recognized by state law. An example of such a law exists in Hawaii.
14

15 This subparagraph might also apply to a transfer of custody of a Indian child to an
16 individual who is a member of the same tribe if that tribe is recognized by state law but not
17 federal law.
18

19 8. For some purposes it may be preferential, and in some cases required, that legal
20 processes specified by other law of the state be followed to accomplish custody transfers to some
21 of the individuals listed above. Although this section excludes certain transfers from the scope of
22 this article, a custody transfer must nevertheless comply with legal processes required by other
23 state law.
24

25 **Section 203. Prohibited Custody Transfer**

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

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

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

33 (b) A parent or [guardian] of a child or an individual with whom a child has been placed
34 for adoption may transfer custody of the child under subsection (a) only through:

35 (1) adoption or [guardianship];

- 1 (2) judicial award of custody;
- 2 (3) placement by or through a child-placing agency; [or]
- 3 (4) other judicial or tribal action[;][; or]
- 4 [(5) cite to the state’s safe haven law][; or
- 5 (6) . . .].

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

9 (d) Violation of this section is a [insert class of offense].

10 (e) The fact that a parent or [guardian] that transfers custody of a child subsequently does
11 not regain custody of the child does not itself establish that the parent or [guardian] intended, at
12 the time of the transfer, to:

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

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

17 **Legislative Note:** *A state that has a safe haven law should insert a reference to that law in*
18 *subsection (b)(5).*

19
20 *The state should insert in subsection (b)(6) a reference to each process the state permits for*
21 *transfer of custody of a child that is not included in the preceding paragraphs.*

22
23 *In subsection (d), the state should insert the degree or level of the offense the state chooses.*

24

25

26

Comments

27 1. “An individual with whom a child has been placed for adoption” is separately
28 identified in subsection (a) because, during the period between a child’s placement with an
29 individual and the finalization of the child’s adoption, the individual is not yet the parent of the
30 child. Nor, in most cases, is the individual a guardian of the child in the sense that a guardian is

1 appointed by a judicial decree. To protect such a child from an unregulated custody transfer by
2 the individual, the individual is specifically included here.

3
4 Note: For purposes of Comments 2 through 8, below, a reference to “parent” includes a
5 parent, guardian, or individual with whom a child has been placed for adoption.
6

7 2. Subsections (a) sets out the essential objective of this article: Except as permitted in
8 subsection (b), a parent may not transfer custody of a child with the intent, at the time of the
9 transfer, of (1) severing the relationship between the parent and the child, and (2) abandoning the
10 parent’s rights and responsibilities regarding the child.

11
12 A transfer of custody of the child by whatever means, including by power of attorney, is
13 not permitted.
14

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

20 3. The intent aspect in subsection (a) is significant. If transfer of custody of a child is not
21 made with the intent of severing the relationship between the parent and the child and
22 abandoning the rights and responsibilities of the parent, the transfer does not violate this
23 subsection.
24

25 For example, a transfer of custody of a child to a childcare provider or babysitter is not
26 normally made with an intent to sever the relationship between a parent and child. Nor is it
27 made with the intent to abandon the parent’s rights and responsibilities regarding the child. The
28 transfer of custody is temporary, and the parent continues to provide for the child’s support. At
29 the end of a workday the parent will pick up the child from daycare, or when the parent returns
30 home from an absence the parent will regain custody of the child from the babysitter. The parent
31 never intended to sever the parent’s relationship with the child. Nor did the parent abandon the
32 parent’s rights and responsibilities concerning the child.
33

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

42 5. The two prongs of the intent requirement in this subsection are related and supplement
43 each other. The intent to sever the relationship between the child and the parent is involves an
44 intent to have no further association with the child. The intent to abandon the parent’s rights and
45 responsibilities concerning the child involves an intent no longer to provide support or assistance
46 for the minor child. In combination, they involve the parent’s intent to cut the parental and

1 supportive bonds that bind the parent to the child. Effectively the parent is attempting to wash
2 the parent's hands of any further association with and support of the child.

3
4 6. Subsection (b) is an exception to subsection (a) and recognizes that a parent may
5 transfer custody of the child if that transfer is accomplished through one of the processes listed in
6 subsections (b)(1) through (b)(6). These processes are recognized by other state law as the
7 legitimate procedures by which a parent may transfer custody of a child and sever the parent's
8 relationship with the child as well as terminate the parent's rights and responsibilities regarding
9 the child.

10
11 Thus, this section does not prohibit a transfer of custody of a child to a prospective
12 adoptive parent incident to an adoption or to a guardian incident to a guardianship (subsection
13 (b)(1)). It does not forbid a transfer or custody of a child to an individual incident to a judicial
14 award of custody (subsection (b)(2)). It does not prevent a placement of a child through a child-
15 placing agency, including a state agency, such as in a foster care placement or placement for
16 adoption (subsection (b)(3)). It does preclude a transfer of custody in accordance with any
17 judicial or tribal action (subsection (b)(4)).

18
19 Subsection (b)(5), if enacted by a state, exempts a child custody transfer from the
20 prohibition of this section if the transfer is made in accordance with the state's safe haven law.
21 Thus, for example, a parent might leave a child in accordance with the state's safe haven law
22 with a designated person even though the parent intends to terminate parental rights and
23 responsibilities regarding the child.

24
25 Subsection (b)(6), if enacted by a state, specifically exempts a child custody transfer from
26 the prohibition of this section if the transfer is made in accordance with other law of the state.

27
28 7. Subsection (c) prohibits a third party from obtaining custody of a child in a situation in
29 which the parent is prohibited from transferring custody of the child by subsection (a). In doing
30 so, it imposes a prohibition on the receiving person that is reciprocal in nature to the prohibition
31 imposed on the parent.

32
33 Subsection (c) also prohibits a person from acting as an intermediary in a child custody
34 transfer if the transfer is prohibited by subsection (a). As defined in Section 201(2), an
35 "intermediary" is a person who facilitates or assists either the transferee or transferor, or both, in
36 accomplishing the custody transfer. The intermediary need not receive compensation to violate
37 this provision.

38
39 To be in violation of this subsection, the receiving party or intermediary must know or
40 reasonably should know that the custody transfer would be in violation of subsection (a). Thus, it
41 is possible in an appropriate circumstance that a receiving party or intermediary might lack
42 sufficient *mens rea* to be guilty of a violation of this subsection.

43
44 8. Subsection (d) provides that a violation of this section is a crime. The subsection
45 applies to a parent who transfers custody of a child in violation of subsection (a). It also applies
46 to a person who receives or solicits the transfer of a child and an intermediary who facilitates the

1 transfer of a child in violation of subsection (c).
2

3 The exact degree or level of crime is left to the state in insert. Although the Uniform Law
4 Commission strongly believes that a violation of this section should be categorized as a
5 misdemeanor, a state may insert the category of crime it determines appropriate, e.g., felony,
6 misdemeanor, or infraction. A state may also designate a violation of this section as a specific
7 crime defined by other state law, e.g., child endangerment or abandonment. The penalties
8 attendant to a violation would then be determined by the other state law.
9

10 9. Subsection (e) recognizes that although a parent or guardian might transfer custody of
11 a child without intending to sever the relationship between the parent or guardian and the child
12 and to abandon the rights or responsibilities of the parent or guardian regarding the child,
13 subsequent facts or circumstances may occur that result in the transfer becoming permanent
14 without any intent by the parent. To deal with such a circumstance, it provides that the mere fact
15 that the parent does not regain custody of the child does not, by itself, establish that the parent,
16 when initiating the transfer of custody, had the requisite intent. Corroborating evidence would be
17 needed to prove the intent.
18

19 For example, a parent or guardian who is suffering from a substance use disorder might
20 transfer custody of a child to another individual intending the transfer to be temporary, thereby
21 permitting the parent or guardian to obtain treatment for the disorder. If the parent or guardian
22 should then become institutionalized or fail to recover from the disorder and not regain custody
23 of the child, the fact that the transfer has effectively become permanent does not, of itself,
24 establish that the initial transfer of the child was made with an intent to sever the relationship
25 between the parent or guardian and the child or abandon the rights or responsibilities of the
26 parent or guardian regarding the child. Furthermore, even if the parent or guardian recovers from
27 the disorder but allows the custody with the transferee to continue, that does not establish, per se,
28 the requisite intent at the time of the transfer of custody. Other factors may be present to explain
29 the continuance of the custody of the child with the transferee.
30

31 This subsection applies only to parents and guardians. It does not apply to an individual
32 with whom a child has been placed for adoption.
33

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

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

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

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

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

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

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

9

10

Comments

11

12

1. Subsection (a) allows the department of child protection to conduct a home visit to
13 assess the welfare of the child to facilitate or assure compliance with Section 203(a).

14

15

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

21

22

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

25

26

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

32

33

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

39

40

At the time of the drafting of this act, the appropriate office within the Department of

1 State to which the report should be submitted is the Office of Children’s Issues, Bureau of
2 Consular Affairs.

3
4 3. Subsection (c) is intended to make clear that regardless of the other provisions of this
5 article which give wide latitude to the custody transfer decisions of the parent, guardian, or
6 individual with whom the child has been placed for adoption, the department of child protection
7 may nonetheless take appropriate action to protect the child from harm.
8

9 **Section 205. Prohibited Soliciting or Advertising**

10 (a) A person may not solicit or advertise to:

11 (1) find a person to which to make a transfer of custody in violation of Section
12 203(a);

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

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

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

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

18
19 **Comments**
20

21 1. Since child custody transfers that would violate Section 203 are not made to family
22 members or family-like individuals (see Section 202), usually no preexisting personal connection
23 or relationship exists between a parent and a person to whom a transfer will be made. To arrange
24 such a transfer it is, therefore, usually necessary to search for and locate an interested party. That
25 search might be accomplished by some form of solicitation or advertising.
26

27 That advertising might involve use of the Internet through which a parent places
28 advertisements or notices stating that the parent is seeking to transfer custody of a child.
29 However, other forms of communication might also be used, such as newspaper advertisements
30 or announcements.
31

32 Even though advertising is initiated to transfer custody of a child, it might not result in a
33 completed transfer. Nonetheless, advertising, an initial step in a prohibited custody transfer, has
34 been performed. To prevent this precursor step, advertising for the transfer is separately
35 prohibited.
36

37 2. Soliciting and advertising may be seen as a form of speech. The First Amendment of
38 the United State Constitution protects freedom of speech and does not allow the government to
39 interfere with that speech. However, that prohibition is not absolute. The government may

1 prohibit speech if that speech is related to an illegal activity. To withstand judicial scrutiny, that
2 prohibition must directly advance a compelling state interest and must be narrowly drawn to
3 focus on speech aimed at a violation of a core prohibition in the act.
4

5 This act deals with a compelling state interest – the protection of children from the
6 dangers that may result from an unregulated custody transfer. As set forth in Section 203 and
7 further described in its Comments, this act is designed to protect a child and prevent the child
8 from being transferred into the custody of a person who might not be fit to provide for the health,
9 safety, and well-being of the child. It is also designed to protect a child from being transferred
10 into the custody of a person who might be a child trafficker or sexual molester.
11

12 This prohibition on solicitation or advertising is narrowly focused on speech that is aimed
13 at a violation of a core prohibition of the act. The core prohibition in the act is an unregulated
14 child custody transfer. As noted above, some form of solicitation or advertising is usually
15 involved in located persons to whom or from whom custody of a child might be transferred. In
16 reality, solicitation or advertising is an initial step in achieving an unregulated child custody
17 transfer. The limitation on speech set forth in this section is narrowly focused on that core
18 prohibition. Only speech that is aimed at implementing or facilitating an unregulated child
19 custody transfer is prohibited. No other speech is affected. This limitation will not have a wider
20 sweep than is necessary to accomplish the core prohibition of the act.
21

22 3. Three specific situations of prohibited advertising are identified. A parent, guardian, or
23 individual with whom a child has been placed for adoption might initiate the advertising in an
24 attempt to find a person to whom the parent might transfer custody of a child in violation of
25 Section 203(a). Alternatively, a third person might initiate the advertising in an attempt to locate
26 a child, i.e., the third person is seeking to locate a child whose custody would be transferred to
27 that person in violation of Section 203(b). Finally, an intermediary seeking to facilitate or assist a
28 parent, guardian, or individual, or a third party, or both with a custody transfer that would violate
29 Section 203(b) might initiate the advertising.
30

31 It should be noted that even though advertising prohibited by this section might be
32 separately initiated by all three parties (a parent, guardian, or individual, a transferee, and an
33 intermediary) in any individual custody transfer, it need not be. Only one party, for example an
34 intermediary, might conduct the advertising. In that case, although all three parties might engage
35 in a child custody transfer prohibited by Section 203, only one of them will have engaged in
36 advertising prohibited by this section.
37

38 4. To be in violation of this section, the person engaging in the solicitation or advertising
39 must have an intent to make or receive a transfer of custody of a child in violation of Section 203
40 or act as an intermediary in such a transfer. Thus, it is possible in an appropriate circumstance
41 that a person might lack sufficient *mens rea* to be guilty of a violation of this section.
42

43 5. Subsection (b) states that a violation of this section is a crime. The exact degree or
44 level of crime is left to the state in insert. A state may insert the category of crime it determines
45 appropriate, e.g., felony, misdemeanor, or infraction. A state may also designate a violation of
46 this section as a specific crime defined by other state law, e.g., solicitation to transfer custody of

1 a child. The penalties attendant to a violation would then be determined by the other state law.

2
3 6. Section 230 of the Communications Decency Act (47 U.S.C. Section 230) protects
4 interactive computer service platforms from liability due to solicitation or advertising conducted
5 by other persons using the service platform. The prohibitions and penalties in this section apply
6 only to the persons who conduct the solicitation or advertising. They do not apply to the
7 computer service platform.

8
9 **[Section 206. Enforcement**

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

13 ***Legislative Note:** A state should omit this section if other law of the state already authorizes a*
14 *state officer to take action to enforce this act.*

15
16 *A state should insert the appropriate law enforcement authority that will investigate and bring a*
17 *proceeding under this section.*

18
19 **Comments**

20
21 1. This section provides the appropriate law enforcement authority with the authority to
22 investigate an alleged violation of this article if the law enforcement authority has probable cause
23 to suspect that a person has violated this article and to take appropriate action. The action to be
24 taken will depend on the circumstance and the various remedies available under other state law
25 as well as in this article.

26
27 This article states that violations of Section 203 and 205 are misdemeanors and, thus,
28 criminal sanction would be one remedy. Other relief may be available under state law in some
29 situations. For example, the law enforcement authority may seek injunctive relief to enjoin
30 continuing advertising that is in violation of Section 205. If a licensed child-placing agency is
31 acting as an intermediary in violation of Sections 203 or 205, the law enforcement authority may,
32 in addition to any other relief sought, pursue administrative relief for revocation of the agency's
33 license.

34
35 2. This section specifies that, to proceed with an investigation of an alleged violation of
36 this article, the law enforcement authority must have probable cause to believe that there has
37 been a violation of the article. What amounts to probable cause will depend on the circumstances
38 of the alleged violation and must be seen in the light of state and federal due process
39 requirements.

40
41 **[[Article] 3**

1 **Information and Guidance**

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

7
8 **Section 301. Definition**

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

11 **Comments**

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

17
18 **Section 302. Scope**

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

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

25 **Comments**

26
27 Article 3 is designed to enhance the likelihood of a positive outcome for an adoption in
28 which there is a heightened degree of risk for a disruption or dissolution of the adoption. Its
29 provisions apply only to adoptions in which circumstances at the time of the placement of the
30 child with a prospective adoptive parent indicate that there is a heightened degree of risk.

31
32 Section 302 provides a list of circumstances which are likely to result in a heightened
33 degree risk for disruption or dissolution of the adoption. The list was developed from a review of
34 placements identified by some states that have already enacted provisions similar to those in this

1 article, as well as from the experiences and opinions of child-placement professionals.

2
3 **Section 303. General Adoption Information**

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

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

8 (A) identity, loss, and trauma that a child might experience before, during,
9 or after adoption; and

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

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

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

15 (4) prohibitions under Sections 203 and 205.

16 **Comments**

17
18 1. Section 303 is the first of four sections that require a person, usually the child-placing
19 agency involved in the placement of the child, to provide information or assistance to the
20 prospective adoptive parent. Each section requires the provision of a different kind of
21 information or assistance and, in some cases, at a different time during the progress of a
22 placement or adoption.

23
24 2. Subsection (a) requires the provision of general adoption information to the
25 prospective adoptive parent regarding adoptions that have a heightened degree of risk for
26 disruption of the adoption. The information that must be provided is generic and not child-
27 specific, i.e., it is not focused on any particular child. The information is, however, related in a
28 general way, to the types of issues that might be encountered during or after the adoption of a
29 child with a heightened degree of risk for disruption or dissolution of the adoption.

30
31 The objective of this section is to inform the prospective adoptive parent about various
32 matters that the parent might not have appreciated and that might affect the parent's decision to
33 proceed further along the adoption pathway. By requiring the provision of the information, it

1 seeks to enhance the chances that a placement, once made, will result in a successful adoption.

2
3 Subsection (a) also specifies that the information must be provided to a prospective
4 adoptive parent a reasonable time before the child-placing agency places the child with the
5 parent. Since this adoption information is generic, it may be provided in a standard format.
6 Further, the child-placing agency need not personally provide the information to the parent as
7 long as the agency causes the information to be provided to the parent. Nevertheless, the
8 provider should do more than merely dispense the information to the prospective adoptive
9 parent. It should be reasonably satisfied that the parent has digested the information and
10 understands it.

11
12 3. Subsections (b)(1), (b)(2), and (b)(3) require the distribution of information about a
13 variety of matters that might arise in an adoption that has a heightened degree of risk for
14 disruption or dissolution.

15
16 4. Subsection (b)(4) requires the child-placing agency to inform the prospective adoptive
17 parent about the prohibitions on unregulated custody transfer of a child and advertising for an
18 unregulated custody transfer set out in Article 2.

19
20 **Section 304. Information About Child**

21 (a) Except as prohibited by other law of this state, within a reasonable time before a
22 child-placing agency places a child for adoption with a prospective adoptive parent, the agency
23 shall provide or cause to be provided to the prospective adoptive parent information specific to
24 the child that is known or reasonably obtainable by the agency and that is material to the
25 prospective adoptive parent's informed decision to adopt the child. The information must
26 include:

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

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

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

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

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

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

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

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

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

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

12 (c) If, after an adoption is finalized, additional information under subsection (a) becomes
13 known to the child-placing agency, the agency shall make a reasonable effort to provide the
14 information to the adoptive parent.

15 **Comments**

16
17 1. Subsection (a) requires provision of child specific information to the prospective
18 adoptive parent before placement of the child with the parent. It is information about the specific
19 child that the child-placing agency is proposing to place with the parent. The purpose is to
20 inform the parent about various matters in the child’s personal history or background that might
21 affect the parent’s decision to proceed further in this particular adoption. Its objective is to avoid
22 surprises to the parent at a later date that might result in an unsuccessful adoption or perhaps in a
23 desire to transfer custody of the child in violation of Article 2. Also, by the provision of the
24 information, it seeks to enhance the chances of a successful adoption.

25
26 The introduction of the section provides that the information must be provided by the
27 child-placing agency unless the distribution of that information is prohibited by other law of the
28 state. This provision recognizes that state law may prohibit the provision of certain private
29 information. For example, the genetic parent’s health information might be considered private
30 and protected by the state’s privacy laws. As limited by that provision, the child-placing agency
31 must nevertheless provide information to the prospective adoptive parent that is “known or
32 reasonably obtainable by the agency.”

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

6
7 2. The child-specific matters about which the child-placing agency must inform the
8 prospective adoptive parent are listed.

9
10 Subsection (a)(1) requires information on various aspects of the child's general
11 background.

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

13 Subsection (a)(3) requires information on previous circumstances, if any, that might
14 adversely affect aspects of the child's health.

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

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

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

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

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

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

27
28 3. Subsection (b) provides that if, after the placement and before the finalization of the
29 adoption, additional information required by subsection (a) about the child becomes known or
30 reasonably obtainable to the child-placing agency, it must provide that information to the
31 prospective adoptive parent. It imposes a duty on the agency that continues until the adoption is
32 finalized to act reasonably in obtaining material information and providing it to the parent.

33
34 4. Subsection (c) pertains to the child-placing agency's duty to provide information after
35 the adoption is finalized. It states that if information required by subsection (a) about the child
36 does, in fact, become known to the child-placing agency after the adoption is finalized, the
37 agency must make reasonable efforts to locate and provide the information to the adoptive
38 parents. It does not place a duty on the agency to continue to make efforts to obtain the
39 information but requires the agency to provide information to the parents if it should obtain it. It
40 also recognizes that an agency might not continue to have up-to-date location information about
41 the parents and imposes a duty to make reasonable efforts to locate them in order to provide the
42 information.

43 44 **Section 305. Guidance and Instruction**

45 (a) A child-placing agency placing a child for adoption shall provide or cause to be

1 provided to the prospective adoptive parent guidance and instruction specific to the child to help
2 prepare the parent to respond effectively to needs of the child which are known or reasonably
3 ascertainable by the agency.

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

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

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

7 (B) multiple adoptions or out-of-home placements;

8 (C) trauma, insecure attachment, fetal alcohol exposure, or malnutrition;

9 (D) neglect, abuse, drug exposure, or similar adversity;

10 (E) separation from a sibling or significant caregiver; and

11 (F) any difference in ethnicity, race, or cultural identity between the child

12 and the prospective adoptive parent or other child of the parent;

13 (2) information available from the federal government on the process for the child

14 to acquire United States citizenship; and

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

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

17 (1) for adoption of a child residing in the United States, a reasonable time before

18 the adoption is finalized; or

19 (2) for an intercountry adoption, in accordance with federal law.

20 **Comments**

21
22 1. Subsection (a) requires a child-placing agency to provide guidance and instruction to
23 an adoptive parent to prepare the parent to respond effectively to the needs of the child. As with
24 information required to be provided by Sections 303 and 304, the child-placing agency need not
25 personally provide the guidance and instruction to the parent as long as the agency causes it to be
26 provided to the parent. Nevertheless, the provider should do more than merely dispense the
27 guidance and instruction to the prospective adoptive parent. Guidance and instruction are

1 educational processes, and the provider should be reasonably satisfied that the parent has gained
2 the necessary training.

3
4 2. Subsection (b) sets out the matters that the guidance and instruction must address.
5 They generally relate to some of the matters about which the child-placing agency must
6 previously provide information to the prospective adoptive parents under Sections 303 and
7 304(a).

8
9 3. Subsection (c)(1) requires the guidance and instruction for a prospective adoptive
10 parent of a child residing in the United State to be provided a “reasonable time” before the
11 adoption is finalized. A “reasonable time” will depend on the circumstances, but it must be
12 sufficient to provide the prospective adoptive parent reasonable time to implement the guidance
13 and instruction and make an informed decision as to whether to proceed with the adoption.

14
15 4. Providing the guidance and instruction to a prospective adoptive parent after a child in
16 an intercountry adoption has been placed with that parent may be too late for an informed
17 decision on adoption. If the adoption is finalized after the child has left the child’s country of
18 origin (for example, in the state where the parent resides), the adoptive parent has already made a
19 significant emotional and financial decision before receiving important guidance and instruction
20 on the adoption. To deal with that circumstance, subsection (c)(2) requires that the guidance and
21 instruction be provided to the prospective adoptive parent in an intercountry adoption in
22 accordance with federal law, which at the time of the drafting of this section is before the child
23 enters the United States.

24
25 **Section 306. Information About Financial Assistance and Support Services**

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

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

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

35 (2) services provided by a qualified clinician to prevent or treat mental health or

1 substance abuse issues.

2 **Comments**

3
4 1. Subsection (a) requires the child-placing agency or the department of child protection
5 to provide information on how to access support services and financial assistance to help
6 preserve a placement or adoption. It is designed to allow the state to take advantage of funds
7 available to it under the federal Family First Prevention Services Act as well as from other
8 sources.

9
10 If information is requested by either a child or a parent, it must be provided regardless of
11 whether the request is made before or after the adoption is finalized.

12
13 2. Subsection (b) states that the information that must be provided includes:

14
15 (1) information on access to parenting-skills training and education, individual
16 and family counseling, respite care, and other parent skill-based programs; and

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

19
20 3. If the state does not require provision of post-adoption financial assistance and support
21 or has only a general statement on assistance and services, the state should enact the assistance
22 and services listed in subsection (b).

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

24
25 (a) The [law enforcement authority] may investigate an allegation that a child-placing
26 agency has failed to comply with this [article] and commence an action for injunctive or other
27 relief or initiate administrative proceedings against the child-placing agency to enforce this
28 [article].

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

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

35
36 *In subsection (b), a state should insert the appropriate state licensing authority that will issue or*

1 *suspend a license under this section.*

2
3 **Comments**
4

5 1. Article 3 places a number of obligations regarding the provision of information and
6 services on the child-placing agency. Subsection (a) allows the law enforcement authority to
7 investigate an alleged failure of an agency to comply with this article. The law enforcement
8 authority may also bring proceedings to enforce the article. Among the various forms of relief
9 that the law enforcement authority might seek is injunctive relief. Other forms of relief might
10 also be available under state law.

11
12 2. Subsection (b) allows the state licensing authority, which previously would have
13 issued an operating license to a child-placing agency, to suspend or revoke that license if the
14 agency fails to comply with this article. The authority may also take other actions permitted by
15 state law.

16
17 **Section 308. Rulemaking Authority**

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

20 **Comments**
21

22 This section authorizes the department of child protection to adopt rules to establish the
23 content and manner of providing the information and the guidance and instruction required in
24 Article 3.

25
26 **[Article] 4**

27 **Miscellaneous Provisions**

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

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

31 **Comments**
32

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

35
36 **Section 402. Relation to Electronic Signatures in Global and National Commerce**

37 **Act**

1 This [act] modifies, limits, or supersedes the Electronic Signatures in Global and National
2 Commerce Act, 15 U.S.C. Section 7001 et seq.[, as amended], but does not modify, limit, or
3 supersede 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices
4 described in 15 U.S.C. Section 7003(b).

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

10

11

Comments

12

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

16

17

Section 403. Transitional Provisions

18

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

19

(1) a transfer of custody:

20

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

21

(B) before [the effective date of this [act]], if the custody continues in the

22

transferee on or after [the effective date of this [act]]; and

23

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

24

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

25

effective date of this [act]].]

26

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

27

28

Comments

29

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

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

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

8 **[Section 404. Severability]**

9 If a provision of this [act] or its application to a person or circumstance is held invalid,
10 the invalidity does not affect another provision or application that can be given effect without the
11 invalid provision.]
12

13 *Legislative Note: Include this section only if the state lacks a general severability statute or a*
14 *decision by the highest court of the state adopting a general rule of severability.*
15

16 **Comments**

17
18 This is the standard severability provision for uniform laws.

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

20 (a) . . .

21 (b) . . .].

22 *Legislative Note: A state should examine its statutes to determine whether conforming revisions*
23 *are required by provisions of this act relating to unregulated child custody transfers and*
24 *provision of information and guidance to prospective adoptive parents. See Articles 2 and 3.*
25

26 **Comments**

27 This section lists laws that this act supervenes.

28 **Section 406. Effective Date**

29 This [act] takes effect . . .

30 **Comments**

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