UNREGULATED TRANSFERS OF ADOPTED CHILDREN ACT

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Commented [AG1]: I’m tentatively suggesting this structure for the act for two reasons. (Not sure if the Style Committee will agree.)

First, during the floor discussion at the Annual Meeting, it became quite clear to me that many commissioners (as would legislators and judges) were have difficulty understanding the twofold operation of the act – info for high-risk adoptions and prohibited transfers of adopted children. I think (at least hope) that separating the two functions of the act into separate articles with clear titles will make it easier to identify and understand the two objectives of the act.

Second, it was suggested that the prohibited transfers material should come before the high-risk adoption material (which I didn’t do at this point). If we wish to change the order, this structure would make it very easy to accomplish – just switch articles 2 and 3 (and change a couple of internal cross references).

Thoughts?
UNREGULATED TRANSFERS [PROTECTION] OF ADOPTED CHILDREN ACT

ARTICLE I

SHORT TITLE AND DEFINITIONS

SECTION 1-101. SHORT TITLE. This [act] may be cited as the Unregulated Adoptions of Adopted Children Act.

SECTION 1-102. DEFINITIONS. In this [act]:

(1) “Adopted child” means a child who, under the law of a state or a foreign country, was adopted by final decree or for whom a petition to adopt is pending or is in the process of being adopted.

(2) “Child” means an unmarried individual who is under [18] years of age.

(3) “Child-placing agency” means a person that engages, under law of this state other than this [act], in facilitating the adoption of a child by:

   (A) receiving, accepting, or providing exercising custody or care for an adopted child, temporarily or permanently, to find an individual to adopt the child; or

   (B) placing the child, temporarily or permanently, for adoption or substitute care.

(4) “High-risk adoption” means adoption of a child:

   (A) from a state child-welfare agency;

   (B) who had been previously adopted;

   (C) with a diagnosed attachment or trauma-related disorder;

   (D) with a physical, mental, or emotional disability;

   (E) who is in the process of being adopted, in accordance with the laws of a state other than this [act], to: (A) place the child in a foster or adoptive home or residential child care; or

   (F) is pending an adoptive placement or other substitute care for the child, temporarily or permanently.

Commented [AG2]: A name suggested by Barbara Atwood – “Uniform Protection of High Risk and Adopted Children Act.” Another suggested by Heidi Cox – “Uniform Custody Transfers of Previously Adopted Children Act.”

I’ve tentatively used this one. It states the overall purpose of the act - protecting adopted children - and leaves the details of the protection (high risk, unregulated transfers, etc.) for description in the act itself. Suggestions???

Also any change needs Executive Committee approval.

Commented [AG3]: Does petition cover the waterfront?

Commented [AG4]: Changed the portion of the definition dealing with a child in the process of being adopted (thanks Barbara for the suggested language).

It was also suggested that a child who is in the process of being adopted not be included in the definition but instead be dealt with in later sections where needed. However, there are at least three other sections that deal with an “adopted child” and each would need language such as used here. It seems cleaner and easier to use a single definition of a child who is in the process of being adopted in the term “adopted child” in the definitions section rather than define multiple times later.

Commented [AG5]: A question was raised about the application of this act to Indian children to whom the Indian Child Welfare Act (IWCA) applies.

Although I’m not sure, the unregulated transfer provisions of this act might apply if the child were adopted in accordance with the IWCA and later the adoptive parents were to engage in an unregulated transfer of the child, although some provisions of the IWCA might require special procedures (see e.g. 25 USC 1916).

With regard to providing information and guidance in at-risk adoptions, there is no similar provision in the IWCA (see 2 ...)

Commented [AG6]: This is based on a definition suggested by Barbara.

An alternate definition based on a suggestion by Heidi is: “Child placing agency” means a person licensed or certified under the laws of a state other than this [act] to: (A) place a child in a foster care or adoptive home; or

Commented [AG7]: Is “high risk” the best term/word to use here? One or more commissioners raised some issue with this term at the annual meeting. Is there a better one without as much “baggage?”

Commented [AG8]: Should we add “foster care” either here or as a separately listed criterion? Does the term “state child-welfare agency” include foster care?

Commented [AG9]: At least one commissioner thought that term “child-welfare agency” can be confused with “child-placing agency.” Might it be better to use “[Department of Child Protection]?”
(E) with known adverse effects from prenatal exposure to alcohol or drugs; or

(F) who, at the time of the adoption, was a resident of a foreign country.

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

(6) “Prospective adoptive parent” means an individual who applies to a child-placing agency to adopt a child.

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

ARTICLE II

INFORMATION, PREPARATION, AND GUIDANCE IN HIGH-RISK ADOPTIONS

SECTION 32-101. HIGH-RISK ADOPTION: INFORMATION; PREPARATION

AND TRAINING/GUIDANCE

(a) Before placing a child with a prospective adoptive parent in a high-risk adoption, a child-placing agency shall ensure that provide the parent, or cause to be provided, the prospective adoptive parent, receives the information required by Section 42-102 and the preparation and training guidance required by Section 52-103.

(b) Failure to ensure that a prospective adoptive parent receives the information, preparation or training required by a child-placing agency to comply with subsection (a) is a violation of the duties of a child-placing agency under law of this state other than this [act] under which the agency is licensed.

(c) An adoptive parent who does not receive the information, preparation or guidance required by subsection (a) because a child-placing agency failed to comply with subsection (a)
may bring an [title of action] action in the courts of this state against the child-placing agency for
the failure.

Legislative Note: Before adopting this act, a legislature should review the state’s child-placing
agency licensing law to determine whether an amendment is needed to implement subsection (b).

SECTION 42-102. INFORMATION TO PROSPECTIVE ADOPTIVE PARENT.

(a) Unless prohibited by Federal law, or the law of this state other than this [act] or the
law of the child’s country of origin, a child-placing agency in a high-risk adoption shall [ensure
that provide a prospective adoptive parent, or ] cause to be provided to the a prospective
adoptive parent, information on the following topics:

(1) available social history of the child, including:

(A) the child’s family, cultural, racial, religious, ethnic, linguistic, and
educational background; and

(B) any condition-circumstance to which the child was likely to have been
exposed and which might adversely affect the child’s physical or mental health;

(2) available records of the child’s:

(A) family’s medical history;

(B) physical health, immunizations, mental health, behavioral issues, and
 exposure to trauma; and

(C) history of any institutionalization or foster-home
placememt and the reason any institutionalization or placement was terminated;

(3) information about, and documentation of, the child’s United States
immigration status, if applicable; and

(4) other information known or reasonably should be known by the child-placing
agency which is material to a successful adoption.
(b) Information regarding a child provided to a prospective adoptive parent by a child-placing agency under subsection (a) is confidential information. If a prospective adoptive parent does not complete adoption of the child, the prospective adoptive parent may not disclose the information to another person unless obligated to do so by law of this state other than this act.

SECTION 2-103. PREPARATION AND TRAINING/GUIDANCE FOR PROSPECTIVE ADOPTIVE PARENT ALL HIGH-RISK ADOPTIONS. A child-placing agency shall cause to be provided a prospective adoptive parent in a high-risk adoption, or cause to be provided to the parent, receives not less than [30] hours of adoption preparation and training/guidance, if applicable, on the following topics:

1. the effect on a child of leaving familiar ties and surroundings and the loss and identity issues that a child may experience in adoption;
2. information on the financial resources, insurance coverage, and time management necessary for a successful placement of a child;
3. medical, therapeutic, and educational services available for a child, including language-acquisition training;
4. how to access post-placement and post-adoption services that assist an adoptive parent and child to respond effectively to required adjustment, behavioral change, and other difficulty;
5. issues that lead to a disruption of an adoptive placement or the dissolution of an adoption, including how an adoptive parent might access resources to avoid disruption or dissolution; and
6. the prohibition under Section 3-102
SECTION 52-104. ADDITIONAL PREPARATION AND TRAINING GUIDANCE FOR PROSPECTIVE ADOPTIVE PARENTS CERAIN HIGH-RISK ADOPTIONS. A child-placing agency shall ensure that a prospective adoptive parent in a high-risk adoption, or cause to be provided to the parent, receives not less than 30 hours of adoption preparation and training guidance, if applicable, on the following topics if applicable to the high-risk adoption:

1. The effect on a child of institutional care or a previous adoption or foster-care placement, and the effect of multiple placements;
2. Attachment disorder, trauma exposure, and similar emotional problems of a child;
3. The effect on a child of fetal-alcohol-spectrum disorder, drug exposure, malnutrition, and similar risks;
4. Information on the financial resources, insurance coverage, and time management necessary for a successful placement of a child;
5. Medical, therapeutic, and educational services available for a child, including language acquisition training;
6. How to access post-placement and post-adoption services that assist an adoptive parent and child to respond effectively to required adjustment, behavioral change, and other difficulties;
7. Issues that lead to a disruption of an adoptive placement or the dissolution of an adoption, including how an adoptive parent might access resources to avoid disruption or dissolution;
8. Adopting a child of a different ethnicity, race, or cultural identity than the
prospective adoptive parent;

(405) steps necessary for a child to acquire United States citizenship;

(446) if a prospective adoptive parent seeks to adopt two or more unrelated
children:

(A) the differing needs of children based on their ages, backgrounds, and
length of time in institutionalization or foster care; and

(B) the time-management requirements and other challenges of
adopting more than one child;

(12) the prohibition under Section 6; and

(137) other matters the child-placing agency considers important to a successful
adoption.

ARTICLE III

PROHIBITED TRANSFERS OF ADOPTED CHILDREN

SECTION 3-101. PROHIBITED TRANSFER.

(a) In this section:

(1) “Transfer of physical custody” means delivery of supervision or
control of a child to another person or allowing another person to exercise supervision or control
of a child regardless of the length of time of the transfer.

(2) “Temporary transfer of physical custody of an adopted child” means a
transfer in which an adoptive parent does not intend to renounce or abandon the legal rights and
responsibilities as a parent or guardian of the adopted child.

(b) Except as otherwise provided in subsection (c), an individual, with the intent to
renounce or abandon the legal rights and responsibilities as a parent or guardian of an adopted

Commented [AG32]: See comment in subsection (1), above. Any other suggestions or definitions?

Commented [AG33]: It was suggested that the term “transfer” or “transfer of physical custody” be defined. That is a rather difficult challenge. What I’ve done here is attempt to define the term very inclusively i.e. to cover any form of transfer whether active (“delivery”) or passive (“allowing”) and also regardless of the length of time. Later in sec. 3-102, we can exclude “temporary” transfers, or any other forms of transfer do not wish to include. This undoubtedly needs work; suggestions??

Commented [AG34]: We initially had included a time limit on the temporary transfer, but subsequently decided that the temporary nature of the transfer ended when the adoptive parent later formed the intent to renounce or abandon the child to the temporary transferee. That seemed to be a difficult nuance for many commissioners to grasp; they seemed to be looking for an actual time limit. Should there be one?

In the alternative, should the term “temporary” be changed to “permitted.” I think that what we are trying to say is that a transfer to one of the “permitted” persons is OK regardless of the length of the transfer UNLESS there is a subsequent (or concurrent) intent to renounce or abandon parenthood. If that’s the case, since the intent issue is spelled out in subsection (a), there is no longer a need to worry about how “temporary” the transfer might be. I.e. a transfer to a permitted transferee is OK unless there is an intent to abandon.

Commented [AG35]: Do we want to use the word “intent” here?

Commented [AG36]: One or two commissioners raised questions regarding the constitutionality (equal protection) of a provision that singles out transfers of adopted children and not biological children. Our response has been that there has been a greater experience of unregulated transfer with adopted children as opposed to biological children. Also, our scope was expanded from foreign adopted children to all adopted children; it does not include biological children. I’m not sure I see anything we can do to respond to the concern (other than write it up in a Comment). Suggestions??
child who intends to relinquish his legal rights and responsibilities as a parent or guardian of an adopted child may not knowingly transfer physical custody of the child to, or knowingly allow a prior temporary transfer of physical custody to continue with, another person without complying with law of this state other than this [act] relating to:

(1) adoption or guardianship;
(2) judicial transfer of custody; or
(3) placement with a child-placing agency.

(c) This section does not prohibit an individual may make a temporary transfer of physical custody of an adopted child to a parent, step-parent, grandparent, adult sibling, adult uncle or aunt, or legal guardian of the child.

(d) This section does not prohibit transfer of physical custody of an adopted child under the “safe haven” laws of this state.

(ce) A transfer of physical custody of an adopted child in violation of this section is abandonment of the child.

(df) A person who violates this section is guilty of a class B misdemeanor.

gg If a person who is a mandated reporter under law of this state other than this [act] reasonably believes this section has been violated, the person shall report the suspected violation to the [Department of Child Protection].

SECTION 73-102. INVESTIGATION; TERMINATION OF CERTAIN LEGAL RIGHTS.

(a) If the [Department of Child Protection] reasonably suspects a violation of Section 63-101, the [Department] shall investigate under law of this state other than this [act].

(b) If the [Department of Child Protection] determines that an adoptive parent has...
violated Section 63-101, the [Department] may, in the best interests of the adopted child:

(1) provide reunification support and services to the adoptive parent and child;

(2) take the adopted child into temporary protective custody under law of this state other than this [act];

(3) bring an action in court under law of this state other than this [act] to terminate the legal rights of the adoptive parent to parentage of the child; or

(4) take other action under law of this state other than this [act] to protect the best interests of the adopted child.

SECTION 83-103. PROHIBITED ADVERTISING.

(a) Except as otherwise provided in subsection (c), a person may not knowingly advertise or represent, whether orally or in writing, including on broadcast media, print media, and the Internet that the person, in violation of Section 63-101:

(1) seeks to adopt an adopted child or take an adopted child into permanent physical custody;

(2) will find a placement for permanent physical custody of an adopted child or arrange for or assist in an adoption, adoptive placement, or other placement for permanent physical custody of an adopted child; or

(3) will transfer permanent physical custody of an adopted child for adoption or other placement.

(b) The [Department of Child Protection] may bring an action to enjoin or take other measures to prevent a person from advertising or making representations in violation of subsection (a) or ameliorate the effects of advertising and representations.

(c) This section does not apply to advertising by:
(1) the [Department of Child Protection] or a licensed child-placing agency
licensed under the law of this state other than this [act] to place a child for adoption, in a licensed
institution, foster home, or group home, or in the home of a guardian;

(2) a licensed foster-care center, adoption-resource center, or post-adoption
resource center licensed by this state under law of this state other than this [act], or

(3) an agency licensed to provide caregiving to adopted children;

(d) This section does not prohibit an attorney licensed to practice law in this state from
advertising the attorney’s availability to provide services relating to adoption of a child.

(e) A person that violates this section is guilty of a [class B misdemeanor].

ARTICLE IV

UNIFORMITY, TRANSITION, SEVERABILITY, REPEALS AND EFFECTIVE DATE

SECTION 94-101. UNIFORMITY OF APPLICATION AND CONSTRUCTION.

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

SECTION 104-102. TRANSITIONAL PROVISION. This act applies to actions
taken and duties or responsibilities imposed on and after the effective date of this [act].

SECTION 114-103. SEVERABILITY. If any provision of this [act] or its application
to any person or circumstance is held invalid, the invalidity does not affect other provisions or
applications of this [act] which can be given effect without the invalid provision or application,
and to this end the provisions of this [act] are severable.

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

SECTION 124-104. REPEALS; CONFORMING AMENDMENTS.

(a) . . . .
SECTION 434-105. EFFECTIVE DATE. This [act] takes effect . . . .