

DRAFT
FOR DISCUSSION ONLY

UNREGULATED TRANSFERS OF ADOPTED CHILDREN ACT

**[Name change for consideration:
PROTECTION OF ADOPTED CHILDREN ACT]**

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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September 18, 2019

UNREGULATED TRANSFERS OF ADOPTED CHILDREN ACT

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UNREGULATED TRANSFERS [PROTECTION] 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?

1 **UNREGULATED TRANSFERS [PROTECTION] OF ADOPTED CHILDREN ACT**

2 **ARTICLE I**

3 **SHORT TITLE AND DEFINITIONS**

4 **SECTION 1-101. SHORT TITLE.** This [act] may be cited as the Unregulated
5 Transfers of Adopted Children Act [name change for consideration: Uniform Protection of
6 Adopted Children Act].

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

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

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

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

14 (A) receiving, accepting, or ~~providing~~ exercising custody ~~or care for a of the child~~
15 ~~pending an adoptive placement or other substitute care~~ child, temporarily or
16 permanently, to find an individual to adopt the child; or

17 (B) placing ~~a the~~ child, temporarily or permanently, for adoption or substitute
18 care.

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

- 20 (A) from a state child-welfare agency;
- 21 (B) who had been previously adopted;
- 22 (C) with a diagnosed attachment or trauma-related disorder;
- 23 (D) with a physical, mental, or emotional disability;

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 or adoptive home or residential child-care ...

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][citizen] off from 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 referring placing a child to 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 to the parent, receives the information required by Section 4-2-102 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 of 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)

Commented [AG10]: A question was raised about what was meant by a child from a foreign country, i.e. resident or citizen. Is citizenship or residency more important for our purposes?

Consider a US citizen child who happens to be a resident of Russia at the time of adoption vs a Russian citizen child who happens to be a US resident at the time of adoption. Also consider a child born in Russia of US citizen parents, i.e. dual citizen. Which is more important – citizenship or residency?

Also see below re: Marshall Islands.

Commented [AG11]: A comment was made from the floor distinguishing a child adopted from Canada vs. another foreign country (i.e. non-Hague Convention country). Should we try to make that distinction? Is it wise to use the Hague Convention as the distinguishing criterion or is that convention subject to change that we might not want to recognize?

A question was raised about the Marshall Islands. I believe it is a sovereign country, but it is also described as an associated state with the US. The status is interesting;

Commented [AG12]: See comment in subsection (2), above.

Commented [AG13]: It was suggested that "training" was not the correct term to use here since "training" suggested that the process had to be "hands on." I've tentatively used the term "guidance," but other terms might be as good or better, e.g. "education."

Commented [AG14]: It was suggested that we include a requirement that the adoptive parents acknowledge in writing that they received the information and preparation. I did not include it here because I think it is, or at least should be, standard operating procedure for the agency to require the acknowledgement without our saying so. Am I correct?

Commented [AG15]: A question was raised about the meaning of the word "referring" as used here. Do we mean that the info must be provided before the agency transfers custody of the child to the adoptive parents, before placement of the child with the adoptive parents (which may be before transfer of custody), or before making any

Commented [AG16]: As raised above, do we want to include lawyers in the definition of child-placing agency? If so, they will have to assure that prospective adoptive parents receive this information and preparation. Will there be any issues regarding how it is enforced against them; i.e. by board of bar overseers vs under subsection (b) of this

Commented [AG17]: A comment from a commissioner was that the term "ensure" was too strong. Someone also stated that it was unclear whether the agency had to provide the info itself or whether some other entity could provide it (see above Comment). I've tried to solve both of those questions in this revision. I can certainly add more in the

Commented [AG18]: Revised subsection (a) to be less pedantic, hopefully?

1 may bring an [title of action] action in the courts of this state against the child-placing agency for
2 the [failure].

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

5 **SECTION ~~42-102~~. INFORMATION TO PROSPECTIVE ADOPTIVE PARENT.**

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

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

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

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

15 (2) available records of the child's:

16 (A) family's medical ~~history~~;

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

19 (C) history of any institutionalization or ~~adoptive~~ or foster-home
20 placement and the reason any institutionalization or placement was terminated;

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

23 (4) other information known or reasonably should be known by the child-placing
24 agency which is material to a successful ~~adoption~~.

Commented [AG19]: It was suggested that the adoptive parents should have a cause of action against the child-placing agency for its failure to provide the info required in subsection (a). I'm not sure that a specific statement is actually necessary to accomplish that result since the cause of action probably would already exist in the state's "common law." Nevertheless, subsection (c) is a crude attempt to provide it expressly in the act.

A question was also raised about whether a prospective adoptive parent could file an action to compel the agency to provide the info. It seems to me highly unlikely that a prospective adoptive parent would ever file such an action. If the adoptive parents knew about the agency's duties and simply asked for the info, why would an agency refuse knowing that to refuse could result in loss of a license (and perhaps damages). If the adoptive parents didn't know about the agency's duties, they wouldn't file the action before the adoption.

Commented [AG20]: Will the term "available" be sufficient to allow the child-placing agency to refuse to disclose information that is closed under a binding confidentiality agreement of one or both of the biological parents or is located in the child's protected services records? I.e. does a confidentiality agreement or the closed nature of a child's protected records make them not "available"?

Commented [AG21]: A question was asked about whether we should require genetic testing. I did not include it here but could do so. Requiring genetic testing seems to go beyond the normal info that is provided in an adoption, but that may be changing. Also, genetic testing has a price which will drive up the cost of the adoption to the child-placing agency or perhaps result in the state being required to provide it (thus requiring a fiscal note).

Commented [AG22]: Concern was raised about immunizations. Not sure if the term has to be in the body of the law. If it's included under the term "physical health" dealing with it in the Comment might be sufficient.

Commented [AG23]: A question was asked about how the agency could comply with this section if a prior adoption was a closed adoption. One answer might be that it's not "available" (see Comment above).

Another answer might be that if the state allowed closed adoptions (or did when the child was previously adopted), the release of that info would be "prohibited by ... the law of this state" as provided in the preamble to this subsection.

Commented [AG24]: A question was asked about whether a child should be able to have more information or less information provided to the prospective parents. I did not include any right of the child to reduce the info because I think that we are saying that a prospective adoptive parent has an absolute right (within the other limits of this section) to have that info. As to additional info, it would seem that the child (probably an older child) could simply provide the prospective adoptive parents with that info directly without a statute saying so.

1 (b) Information regarding a child provided to a prospective adoptive parent by a child-
2 placing agency under subsection (a) is confidential information. If a prospective adoptive parent
3 does not complete adoption of the child, the prospective adoptive parent may not disclose the
4 information to another person unless obligated to do so by law of this ~~state~~ other than this [act].

Commented [AG25]: A question was raised about the confidentiality of the info. The context in which the question was raised concerned a prospective adoptive parent who fails to complete the adoption. Subsection (b) tries to deal with that issue.

I don't think that the confidentiality issue should apply an adoptive parent who actually completes the adoption. For example, it may be necessary for the adoptive parents to provide that info to the child's doctor, to school authorities when the child starts school, etc. The prospective adoptive parent might also be obliged under other state law to disclose that info; e.g. inquiry by the attorney general about the agency's compliance with this act.

6 **SECTION 52-103. PREPARATION AND TRAINING GUIDANCE FOR**
7 **PROSPECTIVE ADOPTIVE PARENT ALL HIGH-RISK ADOPTIONS.** A child-placing
8 agency shall ~~ensure that provide~~ cause to be provided? a prospective adoptive parent in a high-
9 risk adoption, ~~or cause to be provided to the parent, receives not less than~~ [30] hours of adoption
10 preparation and ~~training guidance, if applicable, on:~~ on the following topics:

Commented [AG26]: Because of the confusion concerning what preparation and guidance are required for all high-risk adoptions and those that are required only when applicable to the facts of the individual high-risk adoption, I've broken the provisions into two groupings. Section 2-103 requires the info be provided in all high-risk adoptions, and Section 2-104 requires the info be provided only if the facts of the individual high-risk adoption call for it. The items that are in each category can be changed if we desire.

11 (+1) the effect on a child of leaving familiar ties and surroundings and the loss
12 and identity issues that a child ~~may~~ might experience in adoption;

13 (52) information on the financial resources, insurance coverage, and time
14 management necessary for a successful placement of a child;

15 (63) medical, therapeutic, and educational services available for a child, including
16 language-acquisition training;

17 (74) how to access post-placement and post-adoption services that assist an
18 adoptive parent and child to respond effectively to required adjustment, behavioral change, and
19 other difficulty;

Commented [AG27]: We were asked to make it clear that we are requiring a total of 30 hours or preparation and guidance. However, if we divide the preparation and guiding as suggested into mandatory (Section 2-103 and "where applicable" Section 2-104, do we want to apply the entire 30 hours, or some specific portion (e.g. 20 hours), to the mandatory section and the rest of it to the "as applicable" section? Or should we make no specific time requirement for the "as applicable" section and require the time to be "as needed)?

20 (85) issues that lead to a disruption of an adoptive placement or the dissolution of
21 an adoption, including how an adoptive parent might access resources to avoid disruption or
22 dissolution; and

23 (6) the prohibition under Section 3-102

1 **SECTION 52-104. ADDITIONAL PREPARATION AND TRAINING GUIDANCE**

2 **FOR PROSPECTIVE ADOPTIVE PARENT CERTAIN HIGH-RISK ADOPTIONS**. A

3 child-placing agency shall ~~ensure that provide~~ cause to be provided? a prospective adoptive

4 parent in a high-risk adoption, ~~or cause to be provided to the parent, receives not less than~~ [30??]

5 hours of adoption preparation and ~~training guidance, if applicable, on:~~ on the following topics if

6 applicable to the high-risk adoption:

7 ~~(21)~~ (21) the effect on a child of ~~institutionalization~~ institutional care or a previous

8 adoption or foster-care placement, and the effect of multiple placements;

9 ~~(32)~~ (32) attachment disorder, trauma exposure, and similar emotional problems of a

10 child;

11 ~~(43)~~ (43) the effect on a child of fetal-alcohol-spectrum disorder, drug exposure,

12 malnutrition, and similar risks;

13 ~~(5) information on the financial resources, insurance coverage, and time management~~

14 ~~necessary for a successful placement of a child;~~

15 ~~(6) medical, therapeutic, and educational services available for a child, including~~

16 ~~language acquisition training;~~

17 ~~(7) how to access post placement and post adoption services that assist an adoptive~~

18 ~~parent and child to respond effectively to required adjustment, behavioral change, and other~~

19 ~~difficulty;~~

20 ~~(8) issues that lead to a disruption of an adoptive placement or the dissolution of an~~

21 ~~adoption, including how an adoptive parent might access resources to avoid disruption or~~

22 ~~dissolution;~~

23 ~~(94)~~ (94) adopting a child of a different ethnicity, race, or cultural identity than the

Commented [AG28]: See comment in prior section

Commented [AG29]: "if pertinent"??

Commented [AG30]: A question was raised about the meaning of "institutionalization." Interestingly, it's difficult to find an acceptable definition of the term. As a possible resolution to the problem, I've changed the term from "institutionalization" to "institutional care". Any other suggestions or definitions?

Commented [AG31]: Should this topic be in the prior section on mandatory guidance?

1 prospective adoptive parent;
2 (405) steps necessary for a child to acquire United States citizenship;
3 (446) if a prospective adoptive parent seeks to adopt two or more ~~unrelated~~
4 children:
5 (A) the differing needs of children based on their ages, backgrounds, and
6 length of time in ~~institutionalization~~ or foster care; and
7 (B) the time-management requirements and other challenges of
8 adopting more than one child;
9 (12) ~~the prohibition under Section 6~~; and
10 (137) other matters the child-placing agency considers important to a successful
11 adoption.

12 ARTICLE III

13 PROHIBITED TRANSFERS OF ADOPTED CHILDREN

14 SECTION 3-101. PROHIBITED TRANSFER.

15 (a) In this section:

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

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

22 (b) Except as otherwise provided in subsection (c), an individual, with the intent to
23 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??

1 ~~child, who intends to relinquish the legal rights and responsibilities as a parent or guardian of an~~
2 ~~adopted child~~ may not ~~knowingly~~ transfer physical custody of the child to, or ~~knowingly~~ allow a
3 ~~prior~~ temporary transfer of physical custody to continue with, ~~another~~ person without complying
4 with law of this state other than this [act] relating to:

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

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

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

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

15 (ef) A person who violates this section is guilty of a [class B misdemeanor].

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

19 **SECTION 73-102. INVESTIGATION; TERMINATION OF CERTAIN LEGAL** 20 **RIGHTS.**

21 (a) If the [Department of Child Protection] reasonably suspects a violation of Section 63-
22 101, the [Department] shall investigate under law of this state other than this [act].

23 (b) If the [Department of Child Protection] determines that an adoptive parent has

Commented [AG37]: Questions were raised about using the term “relinquish” which may have a different meaning elsewhere in child welfare law.

We state in subsection (d) that a relinquishment is an abandonment of the child. Therefore, rather than using a term (“relinquish”) which may be problematic, I suggest using the term “abandon.” However, since “abandon” may connote more of a passive surrender, I added the term “renounce” to cover a more active surrender.

Is “abandon” sufficient? Should it be changed to “ignore”? Or might “ignore” be added to the list? What about “not exercise”?

Commented [AG38]: I’m not sure what the term “knowingly” means or does here. I think we may have used it to mean that the transfer had to be intentional on the part of the parent. If that’s the case, I think it is unnecessary since we say elsewhere in this subsection that the transfer must be with the intent to renounce or abandon.

An alternative interpretation of “knowingly” is that the parent must be cognitive of the fact that she or he is makin...

Commented [AG39]: Should this be the “[Department of Child Protection]” as was suggested by someone at the annual meeting?

Commented [AG40]: Initially we had an exclusion for “a member of the child’s federally recognized Indian tribe.” At some point that was removed; don’t recall why or if it was intentional. If we exclude the application of this act to an Indian child to which the IWCA applies, I don’t think that ...

Commented [AG41]: Questions were raised about the under-inclusiveness (and perhaps the over-inclusiveness) of this list of relatives. Other family members were suggested, including relatives to the third degree of consanguinity or kinship. Also should an “adult family friend” be included ...

Commented [AG42]: We were asked to consider any conflicts between this act and any safe haven law(s) of the adopting state. Those laws usually apply to newborns, but it might be possible that some of them apply to adopted child. A subsection such as this could be added as an option if a ...

Commented [AG43]: Concerns were raised about the imposition of a criminal penalty. We might rely on subsection (d)’s declaration that the transfer of physical custody is abandonment and allow other state law determine whether there is any criminal sanction to be imposed for ...

Commented [AG44]: One commissioner stated that attorneys are mandated reporters in his state but only as to matters outside the attorney/client privilege. Do we have a problem here or is it fair to say that if the matter is protected by the attorney/client privilege that the attorney is not a ...

Commented [AG45]: Should there be a provision for the appointment of a guardian ad litem for the child to represent the child’s best interests.

Commented [AG46]: Should we specify what the Department should investigate??

1 violated Section ~~63-101~~, the [Department] may in the best interests of the adopted child:

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

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

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

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

9 **SECTION ~~83-103~~. PROHIBITED ADVERTISING.**

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

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

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

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

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

23 (c) This section does not apply to advertising by:

Commented [AG47]: What do we mean by “knowingly?” Do we really mean “intentionally?” Or is any modifier necessary at all here? I.e. should all advertising be prohibited regardless of intent? If the criminalization provision is removed in subsection (c), does that make a difference?

Commented [AG48]: It was suggested that we define the term “advertise.” The terminology I used here is taken nearly verbatim from the Revised Uniform Law on Notarial Acts, which also prohibited certain forms of advertising.

Concern was also raised regarding the First Amendment. Nevertheless, if our objective is proper, i.e. to protect adopted children from unregulated transfers, reasonable restrictions on advertising needed to accomplish that purpose are also proper under the Constitution.

Commented [AG49]: A question was raised about whether we can prohibit advertising outside our national borders. I think (not being very sure about this) that, if the person doing the advertising is physically within the US borders, the law may be enforced against that person. But if the person is outside the US borders, there may be no effective way to enforce it. That being said, I don’t think that inability to enforce it in some cases is a reason not to have the prohibition that can be enforced at least to the extent possible.

Commented [AG50]: Question was asked about whether the Department could take other steps to prevent the advertising. I added this to try to make it clear that they could.

Commented [AG51]: Question was asked whether the Department could take steps to ameliorate the effects of advertising, e.g. put notices in the newspaper telling parents to disregard such advertising. I added this to try to make it clear that they could.

(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; ~~or~~

(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 144-103. 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)

Commented [AG52]: It was suggested that agencies licensed by other states should also be included.

Commented [AG53]: This issue was raised. I believe it referred to an agency licensed to provide respite care; see Comment to Section 3-102(b).

Commented [AG54]: It was suggested that other professionals should be added to this list who can advertise their services. Who should they be? Social workers, professional counselors, ... ?

Commented [AG55]: Concern was raised regarding the criminal sanctions. Should we continue with the current sanction or delete it and rely on an injunction obtained under subsection (b)? ... how often would the Department actually seek an injunction? ... how costly would that be? ... a Fiscal Note?

Commented [AG56]: Does the language accomplish what we intend?

1 (b)

2 (c)]

3 **SECTION ~~134~~-105. EFFECTIVE DATE.** This [act] takes effect