

D R A F T  
FOR DISCUSSION ONLY

# UNREGULATED TRANSFERS OF ADOPTED CHILDREN ACT

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NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS

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November 30, 2020

## UNREGULATED TRANSFERS OF ADOPTED CHILDREN ACT

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# **UNREGULATED TRANSFERS OF ADOPTED CHILDREN ACT**

## **TABLE OF CONTENTS**

Prefatory Note.....	1
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### **[ARTICLE] 1**

#### **GENERAL PROVISIONS**

SECTION 101. SHORT TITLE. ....	3
SECTION 102. DEFINITIONS.....	3
SECTION 103. LIMITATION ON APPLICABILITY.....	4

### **[ARTICLE] 2**

#### **PROHIBITED {PLACEMENT}{CUSTODY TRANSFER}**

SECTION 201. DEFINITIONS.....	5
SECTION 202. APPLICABILITY.....	6
SECTION 203. PROHIBITED {PLACEMENT} {TRANSFER OF CUSTODY}.....	6
SECTION 204. PROHIBITED ADVERTISING OR COMMUNICATION.....	9
[SECTION 205. ENFORCEMENT]. ....	10

### **[ARTICLE] 3**

#### **INFORMATION AND GUIDANCE**

SECTION 301. DEFINITIONS.....	12
SECTION 302. SCOPE. ....	12
SECTION 303. GENERAL ADOPTION INFORMATION. ....	13
SECTION 304. INFORMATION ABOUT CHILD.....	14
SECTION 305. GUIDANCE AND INSTRUCTION. ....	17
[SECTION 306. SUPPORT SERVICES].....	20
SECTION 307. CHILD-PLACING AGENCY COMPLIANCE. ....	21
SECTION 308. RULES. ....	22

### **[ARTICLE] 4**

#### **MISCELLANEOUS PROVISIONS**

SECTION 401. UNIFORMITY OF APPLICATION AND CONSTRUCTION.....	23
SECTION 402. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.....	23
SECTION 403. TRANSITIONAL PROVISIONS.....	23
[SECTION 404. SEVERABILITY] .....	24
[SECTION 405. REPEALS; CONFORMING AMENDMENTS] .....	24
SECTION 406. EFFECTIVE DATE.....	25

# UNREGULATED TRANSFERS OF ADOPTED CHILDREN ACT

## Prefatory Note

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

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

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

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

First, Article 2 prohibits an extrafamilial transfer of custody of a child if a parent intends to sever parental rights and responsibilities with regard to the child. The prohibition applies to a parent or guardian with custody of a child as well as to an individual with whom a child has been placed for adoption.

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

## Background

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

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

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

After further discussion, the committee decided to recommend that the act be bifurcated – one article (Article 2) prohibiting unregulated child custody transfers, and another article (Article 3) requiring provision of information and training for prospective adoptive parents. The article prohibiting unregulated child custody transfers applies not only to custody transfers of adopted children with special needs but to unregulated custody transfers of any child. In the committee's opinion, a parent's unregulated custody transfer of a biological child is just as problematic and dangerous as an unregulated custody transfer of an adopted child. The committee's recommendation was approved.

1       \*\* Please note that braces {} indicate that words or terms within the braces are  
2 alternatives for discussion at the committee meeting. They do not indicate that they are  
3 alternatives for inclusion in the final act.

## 4 5                   **UNREGULATED TRANSFERS OF ADOPTED CHILDREN ACT**

### 6                                   **[ARTICLE] 1**

#### 7                                   **GENERAL PROVISIONS**

8           **SECTION 101. SHORT TITLE.** This [act] may be cited as the Unregulated Transfers  
9 of Adopted Children Act.

#### 10                                   **Reporter's Notes**

11  
12           Originally, the scope of this act was limited in its application to adopted children. Since  
13 that time, at the request of the drafting committee, the scope of Article 2 has been expanded to  
14 apply to all children. Thus, it is necessary to choose a new name for the act. Final determination  
15 of the name is a decision of the ULC Executive Committee.

#### 16 17           **SECTION 102. DEFINITIONS.** In this [act]:

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

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

21           (3) "Custody" means exercising physical care and supervision of a child.

22           (4) "Guardian" means a person recognized as a guardian under law of this state.

23           (5) "Parent" means an individual recognized as a parent under law of this state.

24           (6) "Person" means an individual, estate, business or nonprofit entity, public corporation,  
25 government or governmental subdivision, agency, or instrumentality, or other legal entity.

26           (7) "Record" means information that is inscribed on a tangible medium or that is stored in  
27 an electronic or other medium and is retrievable in perceivable form.

28           (8) "State" means a state of the United States, the District of Columbia, Puerto Rico, the  
29 United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of

1 the United States. The term includes a federally recognized Indian tribe.

2 **Legislative Note:** *Eighteen years of age is used in paragraph (1) because it is the common age*  
3 *of majority in the United States. However, if the state's age of majority is defined as a different*  
4 *age, it should be inserted instead.*

## 6 **Reporter's Notes**

7 If the word "placement" is chosen to replace the term "transfer of custody," the definition  
8 of "custody" should be deleted and perhaps replaced with a definition of "placement."  
9

## 10 **Preliminary Comments**

11 The definition of a "child" is limited to an unemancipated child who is under [18] years  
12 of age. The provisions of this act are focused on a child who is in the custody of a parent. Since  
13 an emancipated individual is no longer in the custody of that individual's parent that individual is  
14 not a child for purposes of this act.  
15

16 A "child-placing agency" is a person authorized under state or federal law to identify or  
17 place a child for adoption.  
18

19 The definition of "custody" is derived from, and is substantially similar to, the definition  
20 of "physical custody" used in Section 102(14) of the Uniform Child-Custody Jurisdiction and  
21 Enforcement Act. Article 2 of this act is focused on situations in which a parent or guardian  
22 transfers the physical custody of a child. Although a transfer of "legal custody" of a child, i.e.  
23 the right to make significant life decisions for the child (*see* Uniform Nonparent Custody and  
24 Visitation Act, Section 2(6)) may sometimes be involved in a child-custody transfer, it is the  
25 transfer of physical custody that potentially might endanger a child. Therefore, Article 2 is  
26 focused on transfers of physical custody regardless of whether there is also a transfer of legal  
27 custody.  
28

29 A "guardian" is a person recognized under other state law as the guardian of a child.  
30

31 The definition of "parent" is determined by other law of the enacting state and is derived  
32 from, and substantially similar to, the definition of "parent" as used in Section 2(8) of the  
33 Uniform Nonparent Custody and Visitation Act. It includes an individual who has established a  
34 parent-child relationship with the child in accordance with the various modes for establishing  
35 parentage under state law (*see, e.g.,* Uniform Parentage Act, Section 201).  
36

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

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

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

## **Preliminary Comments**

This act does not apply to an Indian child to the extent the application of this act would conflict with the Indian Child Welfare Act, 25 U.S.C. Sections 1901 through 1963[, as amended].

## **[ARTICLE] 2**

### **PROHIBITED {PLACEMENT}{CUSTODY TRANSFER}**

#### **Reporter's Notes**

Depending on the terminology used throughout this article (i.e. "placement" or "transfer of custody"), the title of the article may need to be changed.

#### **SECTION 201. DEFINITIONS.** In this [article]:

(1) "*In loco parentis*" means a person who has been treated as a parent by a child and who has formed a meaningful parental relationship with a child for a substantial period of time.

(2)] "Fictive kin" means an individual who is unrelated to a child by either birth or marriage but has such a close relationship with the child that the individual may be considered part of the child's family.

**Legislative Note:** If the state law recognizes the doctrine of "*in loco parentis*", the state should adopt bracketed subsection (1).

#### **Reporter's Notes**

1. Although the two terms defined in this section only appear in Section 202, the context of the terms pervades the entire article.

2. The definition of “*in loco parentis*” is derived from and substantially similar to Ariz. Rev. Stat. 25-401(1).

3. The definition of “fictive kin” in subsection (2) is from and almost identical to Fla. Stat. tit. V, sec. 39.4015(2)(d).

**SECTION 202. APPLICABILITY.** This [article] does not apply to a

{placement} {transfer of custody} of a child to a:

(1) parent of the child[ or a person who, at the time of the {transfer} {placement}, is in the status of *in loco parentis* with the child]; or

(2) step-parent, guardian, adult family members, or fictive kin of the child.

**Legislative Note:** *If the state law recognizes the doctrine of “in loco parentis”, the state should adopt bracketed portion of subsection (1).*

## Reporter's Notes

This section provides the exclusions from the applicability of this article that we discussed.

## Preliminary Comments

This section excludes intra-family custody transfers from the operation of Article 2. Subsection (1) excludes transfers to another parent or a person who is *in loco parentis* with the child. Subsection (2) excludes transfers to a step-parent, guardian, family member, or fictive kin of the child.

Prohibition of intra-family custody transfers is not the objective of this [article]. A child of a divorced or separated parent may visit or live with the other parent. Similarly, a child may visit or even live with other family members or fictive kin.

Rather, its objective is to prohibit extra-family custody transfers where, as provided in Section 203, a parent, guardian, or individual with whom the child has been placed for adoption intends to abdicate that individual's rights and responsibilities regarding the child unless the legal processes provided by state law for such transfers are followed.

**SECTION 203. PROHIBITED {PLACEMENT}{TRANSFER OF CUSTODY}.**

(a) A parent or guardian of a child, or an individual with whom a child has been placed for adoption, may not {place} {transfer custody of} or allow a prior {placement} {transfer of

1 custody} of a child to continue with another person with the intent of abdicating the rights and  
2 responsibilities of the respective parent, guardian, or individual regarding the child except  
3 through:

4 (1) adoption or guardianship;

5 (2) judicial award of custody;

6 (3) placement by or through a child-placing agency; or

7 (4) other judicial or tribal action.

8 (b) A person may not knowingly {solicit} {obtain} or facilitate a {placement} {transfer of  
9 the custody} of a child in violation of subsection (a).

10 (c) A violation of this section is a [misdemeanor].

11 (d) The [Department of Child Protection] may take action under [insert cite to state's  
12 child welfare law] for a violation of this section if there is actual or threatened harm to the child.

13 {(e) This section does not prohibit a parent or guardian of a child, or an individual with  
14 whom a child has been placed for adoption, from {placing} {transferring custody of} the child if  
15 the transfer is permitted by law of the state other than this [act].}

### 16 **Reporter's Notes**

17  
18 1. Depending on which of the alternative terminologies (i.e. "placement" or "transfer of  
19 custody") we decide upon, the name of this section may have to be changed.

20  
21 2. The original word ("solicit") may not be the correct one for subsection (b). (I've  
22 tentatively suggested "obtain;" an alternative word might be "receive.") Soliciting is really a  
23 form of advertising/communicating, and advertising/communicating to find a child is dealt with  
24 in Section 204. I think that this subsection should deal only with prohibiting a person from  
25 actually "obtaining" or "receiving" custody of a child if the transfer is in violation of subsection  
26 (a).

27  
28 3. Is the proper location of subsection (d) in this section or in Section 205? It appears to  
29 be an exception to enforcement of the article only by the Attorney General. The Department of  
30 Child Protection may take action under other law of the state for a violation of this article when  
31 there is an actual or threatened harm to the child. Indeed, placed here it might suggest that even

1 the Attorney General does not have the authority to act unless there is harm or a threat of harm to  
2 the child.

3  
4 4. Since Section 202 is very extensive in permitting intrafamily transfers, and since this  
5 section provides that the act does not prohibit extrafamily transfers if there is no intent to  
6 abdicate parental rights and obligations (e.g. boarding school), it's not clear that subsection (e) is  
7 needed. I could add a further Comment to this section to bring together the fact that Section 202  
8 permits intrafamily transfers and this section limits non-intrafamily transfers only if there is an  
9 intent to abdicate parental obligations.

## 10 11 **Preliminary Comments**

12  
13 Subsection (a) sets out the essential objective of this article – a parent, guardian, or an  
14 individual with whom a child has been placed for adoption may not transfer custody of the child  
15 to a non-family member with the intent of abdicating the parent's, guardian's, or individual's  
16 rights and responsibilities regarding the child. A transfer of custody of the child by whatever  
17 means, including by power of attorney, is not permitted.

18  
19 This section is designed to protect a child from potentially being transferred to the  
20 custody of a person who might not be fit to provide for the health, safety, and well-being of the  
21 child. It is also designed to protect a child from being transferred to the custody of a person who  
22 might be a child trafficker or sexual molester.

23  
24 The intent aspect of this section is significant. If the transfer of a child's custody is not  
25 with the intent of abdicating parental rights and responsibilities, the transfer does not violate this  
26 subsection. For example, a transfer of custody of a child to a boarding school, childcare  
27 provider, or babysitter is not normally with an intent to abdicate parental rights and  
28 responsibilities and would not be prohibited.

29  
30 This section prohibits a transfer of custody of a child with the intent of releasing parental  
31 rights and responsibilities unless the transfer is accomplished through proceedings or processes  
32 recognized and governed by other state law. Thus, this section does not prohibit a transfer of  
33 custody of a child to a prospective adoptive parent incident to an adoption, to a guardian incident  
34 to a guardianship, or to a transferee designated in a judicial award of custody or other judicial or  
35 tribal action.

36  
37 Subsection (a) applies to a custody transfer made by a parent, who is defined in Section  
38 102(5). It applies to a custody transfer made by a guardian of the child, who is defined in  
39 Section 102(4). Finally, it applies to a custody transfer made by "an individual with whom a  
40 child has been placed for adoption."

41  
42 "An individual with whom a child has been placed for adoption" is separately identified  
43 because, during the period between a child's placement with the individual and the finalization  
44 of the child's adoption, the individual is not yet the parent of the child. Nor, in most cases, is the  
45 individual a guardian of the child in the sense that a guardian is appointed by a judicial decree.  
46 To protect a child from an unregulated custody transfer by the individual, the individual is

specifically included among those to whom this section applies.

Subsection (b) prohibits a third party from obtaining a transfer of custody of a child that is prohibited in subsection (a). In doing so, it imposes a prohibition upon a receiving person that is reciprocal with the prohibition imposed on a parent, guardian, or individual with whom a child has been placed for adoption. Subsection (b) also prohibits a person from acting as an intermediary to facilitate a transfer of custody prohibited in subsection (a).

Subsection (c) provides that a violation of this section is treated as a [misdemeanor]. The penalties for violating the section will be determined by other state law. The subsection applies to a parent, guardian, or individual with whom a child has been placed for adoption who transfers custody of a child. It also applies to a person who receives or solicits the transfer of a child and a person who facilitates the transfer of a child.

#### **SECTION 204. PROHIBITED ADVERTISING OR COMMUNICATION.**

##### **Alternative A for the committee to consider**

{(a) A person may not advertise or communicate, orally or in a record, including by broadcast or in print or electronic media, that the person seeks to make, receive, or facilitate the {placement} {transfer of custody} of a child if the person knows or reasonably should know the transfer would violate Section 202.}

##### **Alternative B for the committee to consider**

{(a) In this Section, “advertise” means to communicate in person or by any public medium, including newspaper, magazine, or other print medium; outdoor signage visible to the public; broadcast media, including radio or television; or electronic media, including electronic mail, text messaging, chat room, internet site or account, or any similar means of communication through the internet.

(b) No person may advertise to:

(1) find a prospective {placement} {transfer of custody} for a child in violation of Section 202(a);

(2) locate a child for a prospective {placement} {transfer of custody} in violation

1 of Section 202(b); or

2 (3) facilitate a prospective {placement} {transfer of custody} of a child in  
3 violation of Section 202(b), whether or not for compensation.}

#### 4 **End of Alternatives**

5 [{(b)} {(c)} A violation of subsection (a) is a [misdemeanor].]

#### 6 **Reporter's Notes**

7  
8 There are two alternatives for the first subsection(s):

9  
10 Alternative A is essentially unchanged from prior versions.

11  
12 Alternative B has two subsections. Subsection (a) gives a more extensive definition of  
13 advertising than the prior version. The language is derived from Wis. Stat. 48.825(a).

14  
15 Subsection (b) is more specific and directed as to the person providing the prohibited  
16 advertising. It also aligns more directly with the prohibiting subsections of Section 203 than did  
17 the prior version.

#### 18 **Preliminary Comments**

19  
20  
21 Unregulated child-custody transfers frequently are promoted by some form of  
22 advertisement or communication. This has usually been by use of the Internet where a parent  
23 might search for advertisements or notices from persons seeking a child. However, other forms  
24 of communication might be used such as newspaper or word of mouth. Subsection (a) prohibits  
25 the use of any advertisement or communication, no matter what its form, or whether it is oral or  
26 writing. It specifically identifies various media but is not necessarily limited to those media.

27  
28 The advertising prohibition applies to a person who seeks to make a transfer of custody  
29 of a child in violation of Section 203(a), i.e. a parent or guardian. It also applies to a person who  
30 solicits to obtain a transfer of custody of a child, i.e. a third party seeking a child, and an  
31 intermediary who seeks to facilitate the transfer of a child in violation of Section 203(b).

32  
33 **[SECTION 205. ENFORCEMENT.** If the [Attorney General] has probable cause to  
34 believe that a person has violated this [article], the [Attorney General] may investigate and {take  
35 action as provided by law of the state other than this [act].} {;

36 (1) for a violation of Section 203(a) or 203(b), take action as provided by law of the state  
37 other than this [act];

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

**Legislative Note:** This section is bracketed because other law of the state might already provide authorization for the state's [Attorney General] to investigate suspected violations of this [article] and enforce it.

An adopting state should insert the appropriate law enforcement officer who will investigate and bring proceedings under this section. That officer may be the Attorney General or other officer who has statewide jurisdiction. Or it may be a local law enforcement officer such as a District Attorney.

### Reporter's Notes

1. The prior version of this section gave authority to investigate suspected violations of Article 2 and enforce its provisions to the Department of Child Protection. There was concern that the Department might unnecessarily intervene and interfere with appropriate, reasonable custody transfers by parents dealing with difficult situations, particularly in minority families. Providing the Department with the authority to investigate suspected violations and enforce the act might similarly give it authority to intervene and interfere unnecessarily. Instead, the authority to investigate and enforce is now put with the Attorney General (or other appropriate law enforcement authority).

Nevertheless, even though the investigation and enforcement authority is now with the Attorney General, it is likely that, in many cases, due to the Department's authority under existing child abuse and child neglect statutes to investigate cases of potential child endangerment, the Department will be the entity initially investigating and making any request for enforcement to the Attorney General. Even in those cases where the matter comes before the Attorney General from a source other than the Department, it is likely that the Attorney General will ask for evaluation and input from the Department, thus involving the Department in the investigation. Therefore, it's not clear that the involvement of the Department can be totally removed.

2. It's not clear that this section is needed at all since, at least in most states, the attorney general already has the authority to enforce the laws of the states.

3. Might it be better simply to state it as expressed in the first alternative (i.e., "take action as provided by law of the state other than this [act]"), rather than to enumerate individually the powers as stated in the alternative with subsections (1) and (2).

4. Since any investigation initiated under this section may lead to enforcement of the penal provisions in the act, it's questionable whether "reasonably suspects," the standard in the prior version, is sufficiently rigorous to authorize investigation and prosecution. "Probable cause" is the better standard and is now used in the section.

1           5. See Reporter’s Note 3 to Section 203.

2  
3                                   **Preliminary Comments**  
4

5           This section provides the Attorney General with the authority to investigate a situation if  
6 it has probable cause to suspect that a person has violated this article and to take action or bring  
7 proceedings appropriate to the situation.  
8

9                                   **[[ARTICLE] 3**

10                               **INFORMATION AND GUIDANCE**

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

17           **SECTION 301. DEFINITIONS.** In this [article], “prospective adoptive parent” means  
18 an individual who has been approved or permitted under law of this state other than this [act] to  
19 adopt a child.

20                                   **Preliminary Comments**

21           A “prospective adoptive parent” in this article is an individual who has already been  
22 approved to adopt a child. The approval process and requirements are governed by other state  
23 law.  
24

25           **SECTION 302. SCOPE.** This [article] applies to placement for adoption of a child  
26 who:

- 27           (1) has been or is in foster or institutional care;  
28           (2) previously has been adopted in a state;  
29           (3) has been or is being adopted under the law of a foreign country;  
30           (4) has come or is coming to a state from a foreign country to be adopted; or  
31           (5) is not a citizen of the United States.

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Section 302 provides a list of those circumstances. The list was developed from a review of placements identified by some states that have already enacted provisions similar to those in this article (e.g. Utah {citation}), as well as from the experiences of child-placement professionals.

(a) Before a child-placing agency identifies a child for or places a child in an adoption prospective adoptive parent, the agency shall provide or cause to be provided to the parent adoption information in subsection (b).

(1) possible physical, mental, emotional, and behavioral issues concerning  
y, loss, and trauma which a child might experience before or after adoption and probable  
on a child of leaving familiar ties and surroundings;

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

and resources available to help avoid disruption or dissolution; and

## Reporter's Notes

In subsection (a), I'm not sure why there are two alternative events before which the child-placing agency must provide information to the prospective adoptive parent – before an agency identifies a child for adoption *or* before an agency places a child for adoption. Identification of a child for adoption with a prospective adoptive parent will always occur before or, at the latest, at the same time as the placement of the child with that parent. If provision of the information by the latter date, i.e. placement, is sufficient, it would seem unnecessary to use

1 the earlier date too.

## 2 3 Preliminary Comments 4

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

10  
11 Subsection (a) requires the provision of general adoption information regarding the  
12 adoption of children with a heightened degree of risk for disruption of the adoption to the  
13 prospective adoptive parent. The information required is generic and not child-specific, i.e. it is  
14 not focused on a particular child. The information is, however, related in a general way to the  
15 types of issues that might be confronted during or after the adoption of a child with a heightened  
16 degree of risk for disruption of the adoption. The objective of this section is to inform the  
17 prospective adoptive parent about various matters that the parent might not have appreciated and  
18 that might affect the parent's decision to proceed further along the adoption pathway.

19  
20 Subsection (a) also specifies that the information must be provided to a prospective  
21 adoptive parent before a child is {identified or} {placed} in an adoption with the parent. Since  
22 this adoption information is generic, it may be provided in a standard format. Further, the child-  
23 placing agency need not personally provide the information to the parent as long as the agency  
24 causes the information to be provided to the parent.

25  
26 Subsections (b)(1), (b)(2), and (b)(3) specify information about three general matters that  
27 might arise in an adoption of a child with a heightened degree of risk for disruption of the  
28 adoption.

29  
30 Subsection (b)(4) requires the child-placing agency to inform the prospective adoptive  
31 parent about the prohibition on transferring custody of the child contained in Article 2.

## 32 33 SECTION 304. INFORMATION ABOUT CHILD.

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

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

39 (1) the child's family, cultural, racial, religious, ethnic, linguistic, and educational

1 background;

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

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

5 (4) the child’s medical history, including immunizations;

6 (5) the medical history of the child’s family;

7 (6) the history of any adoptive or out-of-home placement of the child and the  
8 reason the adoption or placement was ended;

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

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

13 (9) available records relevant to the information.

14 (c) If, before an adoption is finalized, additional information under subsection (b) that is  
15 material to an informed decision to adopt the child becomes known or reasonably ascertainable  
16 to the child-placing agency, the agency shall provide the information to the prospective adoptive  
17 parent.

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

### 21 **Reporter’s Notes**

22  
23 1. Sections 303(a) and 305(b) state that the child-placing agency “shall provide or cause  
24 to be provided” information or guidance. Section 304(a) provides only that the child-placing  
25 agency “shall provide” the information. Might entities other than a child-placing agency be the  
26 actual provider of the information on behalf of an agency? If so, should we add “or cause to be

provided” to subsection (a) so that its absence doesn’t suggest that the agency must be the actual provider of the information?

2. Should abuse and neglect be added to the list of items for disclosure in subsection (b)? It could be in a separate subparagraph or as an addition to an existing subparagraph.

3. Is the meaning of “out-of-home placement” in subsection (b)(6) clear? Does it need further clarification?

4. Subsection (c) only imposes an ongoing duty to disclose information “before an adoption is finalized.” Should there be an ongoing duty to disclose to the adoptive parents any information discovered after the adoption is finalized?

### **Preliminary Comments**

Subsection (a) requires the provision of information to the prospective adoptive parent that is child specific. It is information about the specific child that the child-placing agency is proposing to place with the parent. The objective is to inform the parent about various matters in the child’s history or background that might affect the parent’s decision to proceed further in this particular adoption. Its objective is to avoid surprises to the parent at a later date that might result in an unsuccessful adoption or perhaps in a desire to transfer custody of the child in violation of Article 2.

The child-specific matters about which the child-placing agency must inform the prospective adoptive parent are listed in subsection (b):

Subsection (b)(1) requires information on various aspects of the child’s background.

Subsection (b)(2) requires information on various aspects of the child’s health, and subsection (b)(3) on circumstances which might adversely affect those aspects of the child’s health.

Subsection (b)(4) requires information on the child’s medical history, and subsection (b)(5) requires information on the medical history of the child’s family.

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

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

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

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

1 Subsection (c) states that if, after the placement and before the finalization of the  
2 adoption, additional information about the child that is material to a successful adoption becomes  
3 known or reasonably ascertainable to the child-placing agency, it must provide that information  
4 to the prospective adoptive parent.  
5

6 The requirement in subsection (a) that a child-placing agency provide information to the  
7 prospective adoptive parent applies to information that is “known or reasonably ascertainable by  
8 the agency.” Subsection (d) requires an agency to make reasonable efforts to ascertain  
9 information material to the parent’s decision to adopt. These subsections recognize that some  
10 information about a particular child might not be ascertainable even after reasonable effort. This  
11 might be particularly true in an international adoption if, due to limitations imposed by the  
12 country of origin or the foreign child-care institution with custody of the child, the information is  
13 not provided to the agency. In some cases, it might be obvious to the agency that, after using  
14 reasonable efforts, it is still unable to obtain certain information about the child (e.g. the child’s  
15 medical history is totally absent), and this lack of information should be pointed out to the  
16 parent. However, in other cases, even after using reasonable efforts, the absence of information  
17 might not be obvious to the agency (e.g. the child has a particular medical condition that is not  
18 apparent from any other information in the record), and it would not have reason to make any  
19 further investigation about the issue.  
20

## 21 **SECTION 305. GUIDANCE AND INSTRUCTION.**

22 (a) In this section, “inter-country adoption” means a placement for adoption of a foreign-  
23 born child who resides outside the United States and is eligible to immigrate to the United States  
24 under United States immigration law. The term includes an adoption finalized in the child’s  
25 country of residence at the time of the placement or in a state.

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

30 (c) The guidance and instruction under subsection (b) must address:

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

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

33 (B) attachment disorder, trauma exposure, or a similar emotional issue;

(C) fetal-alcohol-spectrum disorder, drug exposure, malnutrition, or similar adversity;

(D) separation from siblings or significant caregivers; and

(E) any difference in ethnicity, race, or cultural identity between the child and the prospective adoptive parent or another child of the parent;

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

and

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

(d) The guidance and instruction under subsection (b) must be provided:

(1) for adoption of a child residing in the United States, {a reasonable time} before the adoption is finalized; or

(2) for an inter-country adoption, {a reasonable time} before the child enters the United States.

### Reporter's Notes

1. The second sentence of subsection (a) provides that an inter-country adoption “includes an adoption finalized in the child’s country of residence at the time of the placement . . .” Is “at the time of the placement” necessary? Would it not be sufficient simply to state that the term “includes an adoption finalized in the child’s country of residence”? Under the current wording, it would be particularly problematic if the actual finalization of the foreign adoption occurred after the child left the foreign country and entered the US since the adoption would not be finalized “at the time of the placement” but afterwards.

2. Subsection (b) requires the child-placing agency to provide guidance and instruction in order to prepare the adoptive parent to respond to needs of the child “which are known or reasonably ascertainable by the agency.” Identical language is in subsection 304(a) regarding provision of child-specific information to the parent. To affirm that obligation, subsection 304(d) specifically requires the agency to make reasonable efforts to ascertain the information. Should we also provide in this section, perhaps as a separate subsection, that the agency has a duty to make reasonable efforts to ascertain the needs of the child?

3. Should “neglect” be added to subsection (c)(1)(B)?

4. At the ULC Interim Hearing, it was observed that the language of subsection (d) might appear to allow a child-placing agency to provide the guidance and instruction required by the section to the prospective adoptive parents five minutes before the adoption or placement. The suggestion was that it be provided a reasonable time before the adoption or placement. I've tentatively added that language within {} because it doesn't seem to fully address the situation. In fact, addressing it in the act itself might be very cumbersome and confusing. Would it be better to address it in the Comments? Would it be better to retain the "reasonable time" language in the act, or would the Comments be sufficient?

## Preliminary Comments

Subsection (a) defines an inter-country adoption as a placement for adoption of a foreign-born child who, at the time of the placement, resides outside of the United States. Since the child will be immigrating to the United States, the child must be eligible to immigrate to the United States. Adoptions of foreign-born children are often finalized in the child's country of residence before the child immigrates to the United States. However, an adoption may also be finalized in a state of the United States.

Subsection (b) requires a child-placing agency to provide guidance and instruction to an adoptive parent to prepare the parent to respond effectively to the needs of the child. As with information required to be provided by Section 303(a), the child-placing agency need not personally provide the guidance and instruction to the parent as long as the agency causes it to be provided to the parent.

Subsection (b) limits the child-placing agency's obligation to provide the guidance and instruction to needs of the child which known to or reasonably ascertainable by the agency.

Subsection (c) sets out the matters which the guidance and instruction must address. They are a subset of the matters about which the child-placing agency must provide information under Sections 303(b) and 304(b):

Subsection (c)(1)(A) relates to subsection 304(b)(6).

Subsections (c)(1)(B) and (c)(1)(C) relate to subsections 303(b)(1), 304(b)(2), 304(b)(3), 304(b)(4), and 304(b)(8).

Subsection (c)(1)(D) relates to subsection 303(b)(1).

Subsection (c)(1)(E) relates to subsection 304(b)(1).

Subsection (c)(2) relates to subsection 304(b)(7).

Subsection (c)(3) is a general grouping of all other matters that the child-placing agency considers important to the adoption.

Subsection (d)(1) requires the guidance and instruction be provided to the prospective

1 adoptive parent of a child residing in the United State before the adoption is finalized. Thus, the  
2 guidance and instruction may be provided after the placement with the parent is completed as  
3 long as it is provided before the adoption is finalized.  
4

5 However, in subsection (d)(2), the guidance and instruction for a prospective adoptive  
6 parent in an inter-country adoption must be provided before the child enters the United States.  
7 This is unlike the timing of the guidance and instruction in the adoption of children residing in  
8 the United States. This difference in timing is because it will be too late to wait until the  
9 adoption is finalized to provide the guidance and instruction in an inter-country adoption. By  
10 that date, the child will have left the child's country of origin and the care and support received  
11 there and travelled to and arrived in the United States. Waiting until that time does not promote  
12 a decision that is beneficial either to the child or the parent. If the parent should, at that later  
13 date, decide not to adopt the child because of the newly provided guidance and instruction, the  
14 child will likely either be returned to the child's country of origin or placed in a child welfare  
15 system alien to the child's prior experience. Providing the guidance and instruction at an earlier  
16 date will allow the parent to make an earlier decision which, if it is not to adopt, will be much  
17 less harmful to the child's well-being than a delayed decision. The timing for the provision of  
18 the guidance and instruction in an inter-country adoption is, in most cases, the same as the timing  
19 for the provision of the information required in Section 304.  
20

## 21 **[SECTION 306. SUPPORT SERVICES.**

22 (a) After a child is placed with a prospective adoptive parent and after an adoption is  
23 finalized, if the child or parent requests support services to help preserve the placement or  
24 adoption, the child-placing agency placing the child or the [Department of Child Protection] shall  
25 provide information about how to access services that may assist the child or parent to respond  
26 effectively to adjustment, behavioral, and other challenges that may arise after the child is placed  
27 or adopted.

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

29 (1) parenting-skills training and education, individual and family counseling,  
30 respite care, and other parent skill-based programs; and

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

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

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

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

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

## Reporter's Notes

In the first line of subsection (a), should the times be in the disjunctive instead of the conjunctive, i.e. replace the “and” with an “or”? Using the conjunctive seems to be repetitive and say the request must be at both times. Would it be correct to provide “If a child who was placed for adoption or whose adoption was finalized, or an adoptive parent, requests support services to help preserve the placement or adoption . . .?” Should a time limit be imposed?

## Preliminary Comments

This section requires the child-placing agency or the Department of Child Protection to provide information on how to access support services to help preserve the placement or adoption. It is designed to allow the state to take advantage of funds available to it under the federal Family First Prevention Services Act. Participation in the services made available under that act will fund, or assist in funding, the services specified in this section.

The information specified in subsection 306(b), if requested by the child or the parent, must be provided during either or both the post-placement period before the adoption is finalized and after adoption is finalized.

Subsection (b) states that the access information that must be provided includes:

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

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

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

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

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

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

2 **Legislative Note:** *An adopting state should insert the appropriate law enforcement officer who*  
3 *will investigate and bring proceedings under this section. That officer may be the Attorney*  
4 *General or other officer who has statewide jurisdiction. Or it may be a local law enforcement*  
5 *officer such as a District Attorney.*

### 7 **Reporter's Notes**

9 1. During the ULC Interim Reading a question was raised about how a failure to comply  
10 with the various requirements of Article 3 would relate to a wrongful adoption action against the  
11 child-placing agency. Since this article imposes a statutory duty on a child-placing agency, a  
12 breach of that duty would be relevant evidence in a wrongful adoption action. Is that our intent?  
13 Is further consideration of the possible implications needed? Should additional provisions be  
14 added to the act regarding a wrongful adoption?

16 2. Also, during the ULC Interim Reading, a question was raised about what penalty  
17 should be imposed on the state if it doesn't comply. From the context of the question, I'm not  
18 sure that the questioner was actually asking about what penalty should be imposed if the state  
19 didn't investigate or bring proceedings against a child-placing agency. Rather he might have  
20 been asking about what penalty should be imposed on the state if the child-placing agency was  
21 actually the state's department of child protection. Thoughts; suggestions?

### 23 **Preliminary Comments**

25 Article 3 places a number of obligations regarding the provision of information and  
26 services on the child-placing agency. This section allows the attorney-general to investigate an  
27 alleged failure of an agency to comply with this article. The attorney general may also bring  
28 proceedings to enforce the article. Among the various forms of relief that the attorney general  
29 might seek are a revocation or suspension of the agency's license, injunctive relief, and a  
30 pecuniary penalty. Other forms of relief might also be available under state law.

32 **SECTION 308. RULES.** The [Department of Child Protection] {shall} {may} adopt  
33 rules to prescribe the content of and manner for providing the information and guidance and  
34 instruction required by Sections 303, 304, [and]305[, and 306].]

### 35 **Reporter's Notes**

37 Should "shall" in the first line of the section be changed to "may?" In some states a delay  
38 in adopting agency rules might lead to an inordinate delay in the enforcement of the act.

### 40 **Preliminary Comments**

42 This section authorizes the Department of Child Protection to adopt rules to establish the

1 content and manner of providing the information and the guidance and instruction required in  
2 Article 3.

3  
4 **[ARTICLE] 4**

5 **MISCELLANEOUS PROVISIONS**

6 **SECTION 401. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In  
7 applying and construing this uniform act, consideration must be given to the need to promote  
8 uniformity of the law with respect to its subject matter among states that enact it.

9 **Preliminary Comments**

10  
11 This provision encourages judicial construction that will maintain uniformity among the  
12 various states adopting the act.

13  
14 **SECTION 402. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL**  
15 **AND NATIONAL COMMERCE ACT.** This [act] modifies, limits, or supersedes the federal  
16 Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq.,  
17 but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or  
18 authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15  
19 U.S.C. Section 7003(b).

20 **Preliminary Comments**

21  
22 This section responds to the specific language of the Electronic Signatures in Global and  
23 National Commerce Act and is designed to avoid preemption of state law under that federal  
24 legislation.

25  
26 **SECTION 403. TRANSITIONAL PROVISIONS.**

27 (a) [Article] 2 applies to:

- 28 (1) a {placement} {transfer of custody} on or after [the effective date of this [act]],  
29 (2) advertising on or after the [effective date of this [act]]; and  
30 (3) a {placement} {transfer of custody} before [the effective date of this [act]] in

1 which the custody continues in a transferee on or after [the effective date of this [act]].

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

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

#### 5 **Preliminary Comments**

6  
7 Subsections (a)(1) and (a)(2) provide that Article 2 applies prospectively, i.e. to transfers  
8 of custody and advertising that occur after the effective date of the act. However, if a transfer of  
9 custody has occurred before the date of enactment that would be a violation of Article 2 and  
10 continues after the effective date of the act, subsection (a)(3) provides that the Article also  
11 applies to it.

12  
13 Subsection (b) provides that Article 3 applies to placements that occur more than 60 days  
14 after the effective date of the act. This period allows time for child-placing agencies to prepare  
15 for and apply the provisions of Article 3.

16  
17 **[SECTION 404. SEVERABILITY.** If any provision of this [act] or its application to  
18 any person or circumstance is held invalid, the invalidity does not affect other provisions or  
19 applications of this [act] which can be given effect without the invalid provision or application,  
20 and to this end the provisions of this [act] are severable.]

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

#### 23 **Preliminary Comments**

24  
25 This is the standard severability provision for uniform laws.

#### 26 **[SECTION 405. REPEALS; CONFORMING AMENDMENTS.**

27  
28 (a) . . . .

29 (b) . . . .

30 (c) . . . .]

#### 31 **Preliminary Comments**

32  
33 This section lists laws that this act supervenes.

