

D R A F T

FOR DISCUSSION ONLY

# UNREGULATED TRANSFERS OF ADOPTED CHILDREN ACT

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

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NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS

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October 4-5, 2019 Drafting Committee Meeting



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September 18, 2019

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

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1                   **UNREGULATED TRANSFERS OF ADOPTED CHILDREN ACT**

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

4                               **Reporter’s Note**

5  
6               I’m tentatively suggesting this structure for the act for two reasons. (Not sure if the Style  
7 Committee will agree.)  
8

9               First, during the floor discussion at the Annual Meeting, it became quite clear to me that  
10 many commissioners (as would legislators and judges) were have difficulty understanding the  
11 twofold operation of the act – info for high-risk adoptions and prohibited transfers of adopted  
12 children. I think (at least hope) that separating the two functions of the act into separate articles  
13 with clear titles will make it easier to identify and understand the two objectives of the act.  
14

15               Second, it was suggested that the prohibited transfers material should come before the  
16 high-risk adoption material (which I didn’t do at this point). If we wish to change the order, this  
17 structure would make it very easy to accomplish – just switch articles 2 and 3 (and change a  
18 couple of internal cross references).  
19

20               Thoughts?  
21

22                               **ARTICLE I**

23                               **SHORT TITLE AND DEFINITIONS**

24               **SECTION 1-101. SHORT TITLE.** This [act] may be cited as the Unregulated  
25 Transfers of Adopted Children Act [Name change for consideration: Protection of Adopted  
26 Children Act].

27                               **Reporter’s Note**

28  
29               A name suggested by Barbara Atwood – “Uniform Protection of High Risk and Adopted  
30 Children Act.” Another suggested by Heidi Cox – “Uniform Custody Transfers of Previously  
31 Adopted Children Act.”  
32

33               I’ve tentatively used this one. It states the overall purpose of the act - protecting adopted  
34 children - and leaves the details of the protection (high risk, unregulated transfers, etc.) for  
35 description in the act itself. Suggestions??  
36

37               Also, any change needs Executive Committee approval.

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

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

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

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

7                   (A) receiving, accepting, or exercising custody of the child pending an adoptive  
8 placement or other substitute care; or

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

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

11                   (A) from a state child-welfare agency;

12                   (B) who had been previously adopted;

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

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

15                   (E) with known adverse effects from exposure to alcohol or drugs; or

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

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

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

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

## Reporter's Note

Subsection (1): Does “petition” cover the waterfront?

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.

Subsection (2) 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 25 USC 1915). I’m not sure whether that should be interpreted to preclude this act’s requirements or this act’s requirements would supplement the IWCA requirements.

If we wish to exclude the application of this act to an Indian child who is subject to the IWCA we might add a sentence here which states: “This [act] does not apply to a child to whom the Indian Child Welfare Act applies.”

Subsection (3): 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 facility; or (B) find other temporary or long-term substitute care.

We will need to decide whether we want to include attorneys in the definition and should consider what it means to do so. If we wish to exclude them, it may be as simple as an exclusion similar to that in sec. 3-104(d) regarding advertising.

It was raised (more than once) at the annual meeting that the act should apply to a child-placing agency licensed in another state. Should the provision regarding “under the law of this state...” be changed?

1 Subsection (4): Is “high risk” the best term/word to use here? One or more  
2 commissioners raised some issue with this term at the annual meeting. Is there a better one  
3 without as much “baggage?”  
4

5 (A) Should we add “foster care” either here or as a separately listed criterion?  
6 Does the term “state child-welfare agency” include foster care?  
7

8 At least one commissioner thought that term “child-welfare agency” can be confused  
9 with “child-placing agency.” Might it be better to use “[Department of Child Protection]”?  
10

11 (F) A question was raised about what was meant by a child from a foreign  
12 country, i.e. resident or citizen. Is citizenship or residency more important for our purposes?  
13

14 Consider a US citizen child who happens to be a resident of Russia at the time of  
15 adoption vs a Russian citizen child who happens to be a US resident at the time of adoption.  
16 Also consider a child born in Russia of US citizen parents, i.e. dual citizen. Which is more  
17 important – citizenship or residency?  
18

19 A comment was made from the floor distinguishing a child adopted from Canada vs.  
20 another foreign country (i.e. non-Hague Convention country). Should we try to make that  
21 distinction? Is it wise to use the Hague Convention as the distinguishing criterion or is that  
22 convention subject to change that we might not want to recognize?  
23

24 A question was raised about the Marshall Islands. I believe it is a sovereign country, but  
25 it is also described as an associated state with the US. The status is interesting; Wikipedia  
26 (excuse my research source) states: It “gives the U.S. sole responsibility for international defense  
27 of the Marshall Islands. It gives islanders the right to emigrate to the United States and to work  
28 there.”

29 Assuming the Marshall Islands is a foreign country, sometimes our selection of resident  
30 vs citizen might make a difference in the application of this act. If child born in the Marshall  
31 Islands and adopted from there (i.e. child is both resident and citizen of the Marshall Islands), the  
32 use of resident vs citizen makes no difference. But if the child were born in Hawaii and then  
33 moved back to the Marshall Islands (i.e. child is a US citizen (probably a dual citizen) but a  
34 resident of the Marshall Islands), the use of resident vs citizen makes a difference.  
35

36 Subsection (7): See also Note for subsection (2), above.  
37  
38

## 38 **ARTICLE II**

### 39 **INFORMATION, PREPARATION, AND GUIDANCE IN HIGH-RISK ADOPTIONS**

#### 40 **SECTION 2-101. HIGH-RISK ADOPTION: INFORMATION; PREPARATION** 41 **AND GUIDANCE.**

42 (a) Before placing a child with a prospective adoptive parent in a high-risk adoption, a

1 child-placing agency shall provide the parent, or cause to be provided to the parent, the  
2 information required by Section 2-102 and the preparation and guidance required by Section 2-  
3 103.

4 (b) Failure of a child-placing agency to comply with subsection (a) is a violation of the  
5 duties of a child-placing agency under law of this state other than this [act] under which the  
6 agency is licensed.

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

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

### 13 **Reporter's Note**

14  
15 It was suggested that "training" was not the correct term to use here since "training"  
16 suggested that the process had to be "hands on." I've tentatively used the term "guidance," but  
17 other terms might be as good or better, e.g. "education."

18  
19 Subsection (a): Revised wording of subsection (a) to be less pedantic, hopefully?  
20

21 It was suggested that we include a requirement that the adoptive parents acknowledge in  
22 writing that they received the information and preparation. I did not include it here because I  
23 think it is, or at least should be, standard operating procedure for the agency to require the  
24 acknowledgement without our saying so. Am I correct?  
25

26 It was also suggested that the adoptive parents be required to submit to some kind of  
27 exam to see if they listened to what was provided to them. I think someone's response was that  
28 if the session was an online session there might be such a test but not if the session was in  
29 person. Again, it seems to me that the decision as administering a test is for the agency. But  
30 maybe there is other thinking on this??  
31

32 A question was raised about the meaning of the word "referring" as used here. Do we  
33 mean that the info must be provided before the agency transfers custody of the child to the  
34 adoptive parents, before placement of the child with the adoptive parents (which may be before  
35 transfer of custody), or before making any reference of the particular child to the adoptive  
36 parents, or . . . ? Heidi suggested the word "placing" which I've used??



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

5  
6 How may the agency provide the services, i.e. by providing in-person preparation and  
7 guidance vs providing prepackaged or online programs? In a prior meeting, I believe that we  
8 suggested that much, if not most, of the education and training might be prepackaged and/or  
9 online. I'm not sure we came to a final conclusion on the point. If prepackaged or online info  
10 were permissible, it should be available to lawyers who engage in child-placing. See also  
11 Reporter's Note for next subsection.

12  
13 More generally, a question was raised about how this act would apply to private  
14 adoptions, i.e. even those not arranged by lawyers. How will those facilitators provide the  
15 education and training? Again, they could use prepackaged and online material?

16  
17 A comment from a commissioner was that the term "ensure" was too strong. Someone  
18 also stated that it was unclear whether the agency had to provide the info itself or whether some  
19 other entity could provide it (see above Note). I've tried to solve both of those questions in this  
20 revision. I can certainly add more in the Comments about who may provide the info and how.

21  
22 Subsection (c): It was suggested that the adoptive parents should have a cause of action  
23 against the child-placing agency for its failure to provide the info required in subsection (a). I'm  
24 not sure that a specific statement is actually necessary to accomplish that result since the cause of  
25 action probably would already exist in the state's "common law." Nevertheless, subsection (c) is  
26 a crude attempt to provide it expressly in the act.

27  
28 A question was also raised about whether a prospective adoptive parent could file an  
29 action to compel the agency to provide the info. It seems to me highly unlikely that a  
30 prospective adoptive parent would ever file such an action. If the adoptive parents knew about  
31 the agency's duties and simply asked for the info, why would an agency refuse knowing that to  
32 refuse could result in loss of a license (and perhaps damages). If the adoptive parents didn't  
33 know about the agency's duties, they wouldn't file the action before the adoption.

## 34 35 **SECTION 2-102. INFORMATION TO PROSPECTIVE ADOPTIVE PARENT.**

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

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

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

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

5 (2) available records of the child’s:

6 (A) family medical history;

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

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

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

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

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

### 19 **Reporter’s Note**

20  
21 Subsection (a)(1): Will the term “available” be sufficient to allow the child-placing  
22 agency to refuse to disclose information that is closed under a binding confidentiality agreement  
23 of one or both of the biological parents or is located in the child’s protected services records?  
24 I.e. does a confidentiality agreement or the closed nature of a child’s protected records make  
25 them not “available”?

26  
27 Subsection (a)(2)(A): A question was asked about whether we should require genetic  
28 testing. I did not include it here but could do so. Requiring genetic testing seems to go beyond

1 the normal info that is provided in an adoption, but that may be changing. Also, genetic testing  
2 has a price which will drive up the cost of the adoption to the child-placing agency or perhaps  
3 result in the state being required to provide it (thus requiring a fiscal note).

4  
5 Subsection (a)(2)(B): Concern was raised about immunizations. Not sure if the term has  
6 to be in the body of the law. If it's included under the term "physical health" dealing with it in  
7 the Comment might be sufficient.

8  
9 Subsection (a)(2)(C): A question was asked about how the agency could comply with this  
10 section if a prior adoption was a closed adoption. One answer might be that it's not "available"  
11 (see Comment above).

12  
13 Another answer might be that if the state allowed closed adoptions (or did when the child  
14 was previously adopted), the release of that info would be "prohibited by ... the law of this state"  
15 as provided in the preamble to this subsection.

16  
17 Subsection (a)(4): A question was asked about whether a child should be able to have  
18 more information or less information provided to the prospective parents. I did not include any  
19 right of the child to reduce the info because I think that we are saying that a prospective adoptive  
20 parent has an absolute right (within the other limits of this section) to have that info. As to  
21 additional info, it would seem that the child (probably an older child) could simply provide the  
22 prospective adoptive parents with that info directly without a statute saying so.

23  
24 Subsection (b): A question was raised about the confidentiality of the info. The context  
25 in which the question was raised concerned a prospective adoptive parent who fails to complete  
26 the adoption. Subsection (b) tries to deal with that issue.

27  
28 I don't think that the confidentiality issue should apply an adoptive parent who actually  
29 completes the adoption. For example, it may be necessary for the adoptive parents to provide  
30 that info to the child's doctor, to school authorities when the child starts school, etc. The  
31 prospective adoptive parent might also be obliged under other state law to disclose that info; e.g.  
32 inquiry by the attorney general about the agency's compliance with this act.

### 33 34 **SECTION 2-103. PREPARATION AND GUIDANCE FOR ALL HIGH-RISK**

35 **ADOPTIONS.** A child-placing agency shall provide a prospective adoptive parent in a high-  
36 risk adoption, or cause to be provided to the parent, not less than [30] hours of adoption  
37 preparation and guidance on the following topics:

38 (a) the effect on a child of leaving familiar ties and surroundings and the loss and identity  
39 issues that a child might experience in adoption;

40 (b) information on the financial resources, insurance coverage, and time management

1 necessary for a successful placement of a child;

2 (c) medical, therapeutic, and educational services available for a child, including  
3 language-acquisition training;

4 (d) how to access post-placement and post-adoption services that assist an adoptive  
5 parent and child to respond effectively to required adjustment, behavioral change, and other  
6 difficulty;

7 (e) issues that lead to a disruption of an adoptive placement or the dissolution of an  
8 adoption, including how an adoptive parent might access resources to avoid disruption or  
9 dissolution; and

10 (f) the prohibition under Section 3-102

#### 11 **Reporter's Note**

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

18  
19 We were asked to make it clear that we are requiring a total of 30 hours of preparation  
20 and guidance. However, if we divide the preparation and guiding as suggested into mandatory  
21 (Section 2-103 and "where applicable" Section 2-104, do we want to apply the entire 30 hours,  
22 or some specific portion (e.g. 20 hours), to the mandatory section and the rest of it to the "as  
23 applicable" section? Or should we make no specific time requirement for the "as applicable"  
24 section and require the time to be "as needed)?

#### 25 26 **SECTION 2-104. ADDITIONAL PREPARATION AND GUIDANCE FOR**

27 **CERTAIN HIGH-RISK ADOPTION.** A child-placing agency shall provide a prospective

28 adoptive parent in a high-risk adoption, or cause to be provided to the parent, not less than [??]

29 hours of adoption preparation and guidance on the following topics if applicable to the high-risk

30 adoption:

- 1 (1) the effect on a child of institutional care or a previous adoption or foster-care  
2 placement, and the effect of multiple placements;
- 3 (2) attachment disorder, trauma exposure, and similar emotional problems of a child;
- 4 (3) the effect on a child of fetal-alcohol-spectrum disorder, drug exposure, malnutrition,  
5 and similar risks;
- 6 (4) adopting a child of a different ethnicity, race, or cultural identity than the prospective  
7 adoptive parent;
- 8 (5) steps necessary for a child to acquire United States citizenship;
- 9 (6) if a prospective adoptive parent seeks to adopt two or more children:
- 10 (A) the differing needs of children based on their ages, backgrounds, and length  
11 of time in institutional or foster care; and
- 12 (B) the time-management requirements and other challenges of adopting more  
13 than one child; and
- 14 (7) other matters the child-placing agency considers important to a successful adoption.

#### 15 **Reporter's Note**

16 See Reporter's Note for Section 2-103 re: 30 hours.

17  
18 Would the term "if pertinent" be better than "if applicable"?

19  
20 Subsection (1): Should this topic be in Section 2-103 on mandatory guidance?

21  
22 A question was raised about the meaning of "institutionalization." Interestingly, it's  
23 difficult to find an acceptable definition of the term. As a possible resolution to the problem,  
24 I've changed the term from "institutionalization" to "institutional care". Any other suggestions  
25 or definitions?

26  
27 Subsection (6)(A): See comment in subsection (1), above. Any other suggestions or  
28 definitions?

1 **ARTICLE III**

2 **PROHIBITED TRANSFERS OF ADOPTED CHILDREN**

3 **SECTION 3-101. PROHIBITED TRANSFER.**

4 (a) As used in this section:

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

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

11 (b) Except as otherwise provided in subsection (b), an individual, with the intent to  
12 renounce or abandon the legal rights and responsibilities as a parent or guardian of an adopted  
13 child, may not transfer physical custody of the child to, or allow a prior temporary transfer of  
14 physical custody to continue with, another person without complying with law of this state other  
15 than this [act] relating to:

16 (1) adoption or guardianship;

17 (2) judicial transfer of custody; or

18 (3) placement with a child-placing agency.

19 (c) An individual may make a temporary transfer of physical custody of an adopted child  
20 to a parent, step-parent, grandparent, adult sibling, adult uncle or aunt, or legal guardian of the  
21 child.

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

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

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

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

### **Reporter's Note**

Subsection (a): These definitions apply only in this section.

Subsection (1): 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 to 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 subsection (c), we can exclude “temporary” transfers, or any other forms of transfer do not wish to include. This undoubtedly needs work; suggestions??

Subsection (2) 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.

Subsection (b): Do we want to use the word “intent” here?

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 Questions were raised about using the term “relinquish” which may have a different  
2 meaning elsewhere in child welfare law.  
3

4 We state in subsection (e) that a relinquishment is an abandonment of the child.  
5 Therefore, rather than using a term (“relinquish”) which may be problematic, I suggest using the  
6 term “abandon.” However, since “abandon” may connote more of a passive surrender, I added  
7 the term “renounce” to cover a more active surrender.  
8

9 Is “abandon” sufficient? Should it be changed to “ignore”? Or might “ignore” be added  
10 to the list? What about “not exercise”?  
11

12 I’m not sure what the term “knowingly” means or does here. I think we may have used it  
13 to mean that the transfer had to be intentional on the part of the parent. If that’s the case, I think  
14 it is unnecessary since we say elsewhere in this subsection that the transfer must be with the  
15 intent to renounce or abandon.  
16

17 An alternative interpretation of “knowingly” is that the parent must be cognitive of the  
18 fact that she or he is making a transfer. However, I don’t think that the situations we are dealing  
19 with involve unwitting parents who do not realize that they are making a transfer. Therefore,  
20 I’ve deleted it.  
21

22 Subsection (b)(3): Should this be the “[Department of Child Protection]” as was  
23 suggested by someone at the annual meeting?  
24

25 Subsection (c): Questions were raised about the under-inclusiveness (and perhaps the  
26 over-inclusiveness) of this list of relatives. Other family members were suggested, including  
27 relatives to the third degree of consanguinity or kinship. Also, should an “adult family friend” be  
28 included as it is in the Utah act?  
29

30 How should boarding schools and similar entities be dealt with? I.e. should they be  
31 included in the list of “permitted” transferees?  
32

33 It was suggested that “respite care” be permitted to provide relief for an adoptive parent  
34 in difficult situations. Who would be the person to whom custody would be transferred in a  
35 respite care situation?  
36

37 Initially we had an exclusion for “a member of the child’s federally recognized Indian  
38 tribe.” At some point that was removed; don’t recall why or if it was intentional. If we exclude  
39 the application of this act to an Indian child to which the IWCA applies, I don’t think that we  
40 need to worry about replacing it here. However, if there is some way that this act could apply to  
41 an Indian child, then we should consider adding it back.  
42

43 Subsection (d): We were asked to consider any conflicts between this act and any safe  
44 haven law(s) of the adopting state. Those laws usually apply to newborns, but it might be  
45 possible that some of them apply to adopted child. A subsection such as this could be added as  
46 an option if a state does have such an applicable law. However, I’m not sure if “safe haven” law



1 is an acceptable term and use it here only as a placeholder??

2  
3 Subsection (e): Concerns were raised about the imposition of a criminal penalty. We  
4 might rely on subsection (d)'s declaration that the transfer of physical custody is abandonment  
5 and allow other state law determine whether there is any criminal sanction to be imposed for  
6 abandonment. What problems does that approach entail?

7  
8 Subsection (f): One commissioner stated that attorneys are mandated reporters in his state  
9 but only as to matters outside the attorney/client privilege. Do we have a problem here or is it  
10 fair to say that if the matter is protected by the attorney/client privilege that the attorney is not a  
11 mandated reporter on that matter?

12  
13 **SECTION 3-102. INVESTIGATION; TERMINATION OF CERTAIN LEGAL**  
14 **RIGHTS.**

15 (a) If the [Department of Child Protection] reasonably suspects a violation of Section 3-  
16 101, the [Department] shall investigate under law of this state other than this [act].

17 (b) If the [Department of Child Protection] determines that an adoptive parent has  
18 violated Section 3-101, the [Department] may, in the best interests of the adopted child:

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

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

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

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

26 **Reporter's Note**

27 Subsection (a): Should there be a provision for the appointment of a guardian ad litem for  
28 the child to represent the child's best interests.

29  
30 Should we specify what the Department should investigate??  
31

1           **SECTION 3-103. PROHIBITED ADVERTISING.**

2           (a) Except as otherwise provided in subsection (c), a person may not knowingly advertise  
3 or represent, whether orally or in writing, including on broadcast media, print media, and the  
4 Internet, that the person, in violation of Section 3-101:

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

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

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

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

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

16                   (1) the [Department of Child Protection] or a licensed child-placing agency to  
17 place a child for adoption, in a licensed institution, foster home, or group home, or in the home  
18 of a guardian;

19                   (2) a licensed foster-care center, adoption-resource center, or post-adoption  
20 resource center ; or

21                   (3) an agency licensed to provide caregiving to adopted children.

22           (d) This section does not prohibit an attorney licensed to practice law in this state from  
23 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].

### Reporter's Note

Subsection (a): 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 (e), does that make a difference?

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.

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.

Subsection (b): 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.

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.

Subsection (c)(2): It was suggested that agencies licensed by other states should also be included.

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

Subsection (d): 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, ...?

Subsection (e): 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?

1 **ARTICLE IV**

2 **UNIFORMITY, TRANSITION, SEVERABILITY, REPEALS AND EFFECTIVE DATE**

3 **SECTION 4-101. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In

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

6 **[SECTION 4-102. TRANSITIONAL PROVISION.** This act applies to actions taken  
7 and duties or responsibilities imposed on and after the effective date of this [act].]

8 **Reporter's Note**

9 Does the language accomplish what we intend?

10 **[SECTION 4-103. SEVERABILITY.** If any provision of this [act] or its application to  
11 any person or circumstance is held invalid, the invalidity does not affect other provisions or  
12 applications of this [act] which can be given effect without the invalid provision or application,  
13 and to this end the provisions of this [act] are severable.]

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

16  
17 **[SECTION 4-104. REPEALS; CONFORMING AMENDMENTS.**

18 (a) . . . .

19 (b) . . . .

20 (c) . . . .]

21 **SECTION 4-105. EFFECTIVE DATE.** This [act] takes effect . . . .