

D R A F T  
FOR DISCUSSION ONLY

# Unregulated Transfers of Adopted Children Act

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Uniform Law Commission

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March 18, 2021

## **Unregulated Transfers of Adopted Children Act**

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# **Unregulated Transfers of Adopted Children Act**

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# Unregulated Transfers of Adopted Children Act

## Prefatory Note

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

Some parents found that after the birth or adoption of their child they experienced considerable difficulty or even an inability to care for or effectively manage the child's behavior. In many of those cases the difficulty 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 decided to transfer custody of their child to another person – a person sometimes unknown to them whom they found through friends or acquaintances or, in some cases, a person found through the Internet or other media. In many cases, there was no evidence showing that the person to whom 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 might have been 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 relinquish 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. It also prohibits advertising in which a person seeks to transfer custody of, or locate, a child in violation of the article, or to facilitate such a transfer.

Second, Article 3 deals with the adoption of children with special needs, i.e., those 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, various health or behavioral issues before they might 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 a child-placing agency or 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, 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 during 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 scope of the act was expanded to apply not only to the adoption of inter-country children but also to the adoption of all children with certain special needs – similar to the Utah approach {citation}.

After further discussion, the act was 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 was expanded to apply not only to custody transfers of adopted children with special needs but also to custody transfers of any child. A parent's unregulated custody transfer of a biological child is just as problematic and dangerous the child as an unregulated custody transfer of an adopted child.

1                                   **Unregulated Transfers of Adopted Children Act**

2   **[Article] 1**

3   **General Provisions**

4                   **Section 101. Short Title**

5                   This [act] may be cited as the Unregulated Transfers of Adopted Children Act.

6   **Reporter's Notes**

7  
8                   Originally, the scope of this act was limited in its application to adopted children and the  
9                   current title was appropriate. Since that time, at the request of the drafting committee, the scope  
10                  of Article 2 has been expanded to apply to all children. Thus, it is necessary to choose a new  
11                  name for the act. Final determination of the name is a decision of the ULC Executive Committee.  
12                  The drafting committee suggests Uniform Unregulated Child Custody Transfer Prevention Act  
13                  as its first choice for the title. The committee's second choice is Uniform Unregulated Custody  
14                  Transfer Prevention Act.

15  
16                   **Section 102. Definitions**

17                  In this [act]:

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

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

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

22                                   (4) "Guardian" means a person recognized as a guardian under law of this state  
23                  other than this [act].

24                                   (5) "Inter-country adoption" means a placement for adoption of a foreign-born  
25                  child who resides outside the United States and is eligible to immigrate to the United States  
26                  under United States immigration law. The term includes an adoption finalized in the child's  
27                  country of residence or in a state.

28                                   (6) "Parent" means an individual recognized as a parent under law of this state

1 other than this [act].

2 (7) “Person” means an individual, estate, trust, partnership, business or nonprofit  
3 entity, public corporation, government or governmental subdivision, agency, or instrumentality, or  
4 other legal entity.

5 (8) “Record” means information that is inscribed on a tangible medium or that is  
6 stored in an electronic or other medium and is retrievable in perceivable form.

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

10 **Legislative Note:** *Eighteen years of age is bracketed in paragraph (1) because it is the common*  
11 *age of majority in the United States. However, if the state’s age of majority is a different age, the*  
12 *state’s age of majority should be inserted instead.*

13  
14 *If a term other than “guardian” is used in the laws of the state to designate a person other than*  
15 *a parent who has the legal authority and duty to care for a child, that term should be inserted*  
16 *instead.*

## 17 Preliminary Comments

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

23  
24 2. A “child-placing agency” is a person authorized under state or federal law to identify  
25 or place a child for adoption.

26  
27 3. The definition of “custody” is derived from, and is substantially similar to, the  
28 definition of “physical custody” used in Section 102(14) of the Uniform Child-Custody  
29 Jurisdiction and Enforcement Act. Article 2 of this act is focused on situations in which a parent  
30 or guardian transfers the physical custody of a child. A transfer of “legal custody” of a child,  
31 i.e., the right to make significant life decisions for the child (*see* Uniform Nonparent Custody and  
32 Visitation Act, Section 2(6)), might sometimes be involved in a child-custody transfer. It is,  
33 however, the transfer of physical custody that potentially might endanger a child. Therefore,  
34 Article 2 is focused on transfers of physical custody regardless of whether there is also a transfer  
35 of legal custody.

36  
37 4. A “guardian” is a person recognized under other law of the enacting state as the



1 guardian of a child.

2  
3 5. An inter-country adoption is a placement for adoption of a foreign-born child who, at  
4 the time of the placement, resides outside of the United States. Since the child will be  
5 immigrating to the United States, the child must be eligible to immigrate to the United States.  
6 Adoptions of foreign-born children are often finalized in the child's country of residence before  
7 the child immigrates to the United States. However, an adoption may also be finalized in a state  
8 of the United States.

9  
10 6. The definition of "parent" is determined by other law of the enacting state.

11  
12 7. The definitions of "person," "record", and "state" are the standard Uniform Law  
13 Commission definitions of those terms.

### 14 15 **Section 103. Limitation on Applicability**

16 This [act] does not apply to an Indian child, as defined in the Indian Child Welfare Act,  
17 25 U.S.C. Section 1903(4),[ as amended,] to the extent application would conflict with the Indian  
18 Child Welfare Act, 25 U.S.C. Sections 1901 through 1963[, as amended].

19 ***Legislative Note:** It is the intent of this act to incorporate future amendments to the cited federal*  
20 *law. However, in a state in which the constitution or other law does not permit incorporation of*  
21 *future amendments when a federal statute is incorporated into state law, the phrase "as*  
22 *amended" should be omitted from subsection (a)(3). The phrase also should be omitted in a*  
23 *state in which, in the absence of a legislative declaration, future amendments are incorporated*  
24 *into state law.*

### 25 26 **Preliminary Comments**

27  
28 This act does not apply to an Indian child to the extent the application of this act would  
29 conflict with the Indian Child Welfare Act, 25 U.S.C. Sections 1901 through 1963[, as  
30 amended].

### 31 32 **[Article] 2**

### 33 **Prohibition of Unregulated Custody Transfer**

#### 34 **Section 201. Definition**

35 In this [article], "intermediary" means a person that assists or facilitates a transfer of  
36 custody of a child, whether or not for compensation.

### 37 **Preliminary Comments**

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

## 6 7 **Section 202. Applicability**

8 This [article] does not apply to a transfer of custody of a child to:

9 (1) a parent of the child;

10 (2) a guardian of the child or an individual with whom the child has been placed  
11 for adoption;

12 (3) a stepparent of the child;

13 (4) an adult individual who:

14 (A) is related to the child; or

15 (B) is not related to the child and has a close relationship for a substantial  
16 period with the child or the parent or guardian of the child; or

17 (5) an Indian custodian of the child[ or member of the child’s customary family  
18 unit as recognized by the child’s indigenous group by law of this state other than this [act]].

19 **Legislative Note:** *If the state’s law permits the transfer of custody of a child to a member of the*  
20 *child’s customary family unit as recognized by the child’s indigenous group, the state should*  
21 *include the bracketed portion of paragraph (5).*

## 22 23 **Preliminary Comments**

24  
25 1. This section excludes intra-family and family-like custody transfers from the  
26 operation of Article 2. Prohibition of intra-family or family-like custody transfers is not the  
27 objective of this article. Rather, its objective is to prohibit extra-family custody transfers in  
28 which, as provided in Section 203, a parent, guardian, or individual with whom the child has  
29 been placed for adoption intends to relinquish that person’s rights and responsibilities regarding  
30 the child without pursuing the legal processes required by state law for such transfers.

31  
32 Thus, under this article a divorced or separated parent may transfer custody of a child to  
33 the other parent for purposes of visiting or living with the other parent. Similarly, a parent may  
34 transfer custody of a child to visit or live with other adult family members or individuals who are

1 not family member but with whom the child or parent has established a close relationship for a  
2 substantial period of time.

3  
4 2. A parent has an inherent right to custody of the parent's child. Subdivision (1)  
5 recognizes that right. Although that right may be limited to some extent by a child custody  
6 agreement or divorce decree, that limitation is not within the scope of this act.

7  
8 3. Subdivision (2) excludes a guardian or an individual with whom a child has been  
9 placed for adoption from the prohibition of the article. These individuals have a special  
10 relationship with the child which is recognized by a court or through some other formal process  
11 recognized by state law. ("An individual with whom a child has been placed for adoption" is  
12 separately identified here since, during the period between placement of the child with the  
13 adoptive parent and the finalization of the adoption, the adoptive parent may not be considered  
14 either a parent or a guardian; see Section 203, Comment 3.)

15  
16 4. Subdivision (3) excluded a step-parent from the prohibition of this article. A step-  
17 parent has a special relationship with the child arising from the marital relationship existing  
18 between the child's parent and the step-parent.

19  
20 5. Subdivision (4)(A) recognizes that custody transfers to adult family members,  
21 including stepparents, are not intended to be within the scope of this article. It is a common and  
22 accepted experience that custody of a child might be transferred to an adult family member when  
23 the parent is unable to care for the child. For example, a parent may be deployed in the armed  
24 services or incarcerated in a penal institution. Alternatively, a parent may be experiencing  
25 medical difficulties, perhaps even one brought about by drug abuse. In those cases, the transfer  
26 of custody of a child to an adult family member is not prohibited by this article. Indeed, that  
27 custody transfer might be the preferential avenue to follow.

28  
29 6. Subdivision 4(B) recognizes that custody transfers to individuals who are not  
30 members of the child's family should be treated the same as custody transfers to family members  
31 if the transferee individual has a close relationship for a substantial period with the child or the  
32 parent or guardian of the child.

33  
34 One example of individuals who are covered by subdivision 4(B) a "fictive kin." In  
35 many circumstances, especially in certain cultures, individuals who are not related to the child  
36 but who have a close and long-standing relationship with the child or parent are, effectively,  
37 considered by the family as family members. For purposes of this article, they have a  
38 sufficiently close relationship that they are treated in a fashion similar to family members. (See  
39 Fla. Stat. tit. V sec. 39.4015(2)(d) for a definition of "fictive kin.")

40  
41 Another example are individuals who are *in loco parentis* with the child. Some states  
42 recognize the doctrine of *in loco parentis* under which an individual who has been treated as a  
43 parent by the child and who has formed a meaningful parental relationship with the child for a  
44 substantial period is treated as a parent. This doctrine involves not just a "close relationship" as  
45 with a fictive kinship, but a "meaningful parental relationship." Being a more substantial  
46 relationship with the child than exists with a fictive kinship, a person who is *in loco parentis* with

1 the child is treated in a similar fashion.

2  
3 It is recognized that identification of an individuals in subdivision 4(B) are not as clear-  
4 cut as is identification of members of the child's family by birth or marriage. For purposes of  
5 this article, it is presumed that a parent identifying a transferee as having a close relationship for  
6 a substantial period with the child or the parent or guardian is doing so in good faith. The burden  
7 of demonstrating otherwise is on a person challenging such a transfer.  
8

9 7. Subdivision (5) recognizes an Indian custodian as an individual to whom a parent may  
10 transfer custody of a child. As relevant to this article, an Indian custodian is an Indian individual  
11 to whom temporary physical care, custody, and control of an Indian child has be transferred by a  
12 parent. An Indian custodian is recognized under the federal Indian Child Welfare Act, 25 USC  
13 Section 1903. If state law recognizes an Indian tribe under its law that is not recognized under  
14 federal law, an Indian custodian of that tribe would also be included.  
15

16 State law might also recognize that a parent may transfer custody of a child to a member  
17 of a child's customary family unit as recognized by the child's indigenous group. An example of  
18 such a law exists in Hawaii {citation}. The bracketed clause in subdivision (5) specifically  
19 recognizes that a member of the child's customary family is a permitted transferee of custody.  
20

21 8. For some purposes it may be preferential, and in some cases required, that legal  
22 processes specified by law of the state other than this act be followed to accomplish custody  
23 transfers to some of the individuals listed above. Although this section excludes the listed  
24 transferees from the scope of this act, a custody transfer must still comply with legal processes  
25 required by other state law.  
26

### 27 **Section 203. Prohibited Custody Transfer**

28 (a) A parent or guardian of a child or an individual with whom a child has been placed for  
29 adoption may not transfer custody of a child to another person, or allow a prior transfer of  
30 custody of a child to another person to continue, with the intent permanently to relinquish the  
31 parent's, guardian's, or individual's rights and responsibilities regarding the child except  
32 through:

33 (1) adoption or guardianship;

34 (2) judicial award of custody;

35 (3) placement by or through a child-placing agency; [or]

36 (4) other judicial or tribal action[; or]

1 (5) . . . .].

2 (b) A person may not receive custody of a child, or act as an intermediary in a transfer of  
3 custody of a child, if the person knows or reasonably should know the transfer violates  
4 subsection (a).

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

6 (d) The fact that a transfer of custody of a child or a continuance of a prior transfer of  
7 custody of a child by a parent or guardian of the child or the individual with whom the child was  
8 placed for adoption might subsequently become permanent does not in and of itself establish the  
9 intention of the parent, guardian, or individual, at the time of transfer or continuance,  
10 permanently to relinquish rights and responsibilities regarding the child.

11 **Legislative Note:** Subsection (a)(5) is bracketed. It is intended that the state insert here each  
12 process permitted by law of the state for transfer of custody of a child that is not included in the  
13 preceding subsections.

14  
15 Subsection (c) designates a violation of this section as a misdemeanor. It is intended that the  
16 state insert the degree or level of misdemeanor. Alternatively, the state may designate a  
17 violation as a specific crime, e.g., child endangerment or abandonment. The state may also  
18 insert another category of crime, e.g., felony or infraction.

## 20 Preliminary Comments

21  
22 1. Subsection (a) sets out the essential objective of this article – a parent or guardian of a  
23 child, or individual with whom a child has been placed for adoption may not transfer custody of  
24 the child to person who is a non-family member with the intent of permanently relinquishing the  
25 parent's, guardian's, or individual's rights and responsibilities regarding the child. Similarly, a  
26 parent, guardian, or individual who initially made a transfer without an intent to relinquish rights  
27 and responsibilities regarding the child may not later decide to allow the transfer to continue  
28 after adopting an intent to relinquish those rights and responsibilities.

29  
30 A transfer of custody of the child by whatever means, including by power of attorney, is  
31 not permitted.

32  
33 This section is designed to protect a child from being transferred to the custody of a  
34 person who might not be fit to provide for the health, safety, and well-being of the child. It is  
35 also designed to protect a child from being transferred to the custody of a person who might be a  
36 child trafficker or sexual molester.

1           2. The intent aspect in subsection (a) is significant. If a transfer of a child's custody is  
2 not made with the intent of relinquishing the rights and responsibilities of the parent, guardian, or  
3 individual with whom the child has been placed for adoption, the transfer does not violate this  
4 subsection. Furthermore, the intent must be that the transfer and relinquishment of rights and  
5 responsibilities are permanent. A temporary or short-term transfer does not violate the  
6 provisions of this subsection. For example, a transfer of custody of a child to the care of a  
7 boarding school, childcare provider, or babysitter is not normally with an intent to abdicate the  
8 rights and responsibilities of the parent, guardian, or individual and, furthermore, is not intended  
9 to be permanent. Those custody transfers are not be prohibited by this section.

10  
11           3. Subsection (a) prohibits a transfer of custody of a child with the intent of releasing the  
12 rights and responsibilities of the custodian unless the transfer is accomplished through adoption,  
13 guardianship, or other processes listed in paragraphs (1) through (4). Thus, for example, this  
14 section does not prohibit a transfer of custody of a child to a prospective adoptive parent incident  
15 to an adoption, to a guardian incident to a guardianship, or to a transferee designated in a judicial  
16 award of custody or other judicial or tribal action.

17  
18           In addition, paragraph (5), if enacted by a state, specifically exempts a child custody  
19 transfer from the prohibition of this section if the transfer is in accordance with other law of the  
20 state. For example, state law might specifically authorize a transfer of custody of a child in  
21 situations such as the deployment of the parent in the armed services or the incarceration of the  
22 parent. It might also specifically authorize a parent to transfer custody of a child pursuant to a  
23 safe house law {citation}.

24  
25           4. "An individual with whom a child has been placed for adoption" is separately  
26 identified in subsection (a) because, during the period between a child's placement with an  
27 individual and the finalization of the child's adoption, the individual is not yet the parent of the  
28 child. Nor, in most cases, is the individual a guardian of the child in the sense that a guardian is  
29 appointed by a judicial decree. To protect such a child from an unregulated custody transfer by  
30 the individual, the individual is specifically included in the definition of custodian.

31  
32           5. Subsection (b) prohibits a third party from obtaining custody of a child if the transfer  
33 of custody is prohibited in subsection (a). In doing so, it imposes a prohibition on the receiving  
34 person that is reciprocal in nature to the prohibition imposed on the transferring individual, i.e.,  
35 the parent, guardian, or individual with whom a child has been placed for adoption.

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

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

1           6. Subsection (c) provides that a violation of this section is a misdemeanor. The  
2 subsection applies to a parent, guardian, or individual with whom a child has been placed for  
3 adoption who transfers custody of a child. It also applies to a person who receives or solicits the  
4 transfer of a child and an intermediary who facilitates the transfer of a child.  
5

6           The exact degree or level of misdemeanor is left to the state in insert. A state may also  
7 designate a violation of this section as a specific crime, e.g., child endangerment or  
8 abandonment. The penalties attendant to a violation are determined by other state law.  
9 Although the drafters of the act strongly believe that a violation of this section should be  
10 categorized as a misdemeanor, the term is bracketed, and a state may insert another category of  
11 crime it determines appropriate, e.g., felony or infraction.  
12

13           7. Subsection (d) recognizes that although a parent might transfer custody of a child  
14 without intending permanently to relinquish parental rights or responsibilities, subsequent facts  
15 or circumstances may result in the transfer becoming permanent. In such a situation, the fact that  
16 the transfer subsequently becomes permanent does not, of itself, establish that the parent, when  
17 initiating the transfer of custody, had an intent to make a permanent transfer. Other  
18 corroborating evidence would be needed to prove the intent.  
19

20           For example, a parent who is suffering from a drug addiction may transfer custody of a  
21 child to another individual intending the transfer to be temporary, thereby permitting the parent  
22 to obtain treatment for the addiction. If the parent should then become institutionalized or fail to  
23 recover from the addiction and not regain custody of the child, the fact that the transfer has  
24 effectively become permanent does not establish that the initial transfer, or subsequent failure to  
25 regain custody, of the child was done with an intent to permanently relinquish parental rights and  
26 responsibilities.  
27

#### 28           **Section 204. Authority of the [Department of Child Protection]**

29           (a) If the [department of child protection] has probable cause to believe that custody of a  
30 child has been {or will be} transferred in violation of Section 203(a), the [department] may  
31 conduct a home visit to assess the welfare of the child and to facilitate compliance with Section  
32 203(a).  
33

34           (b) Nothing in this [act] prevents the [department of child protection] from taking  
35 appropriate action necessary to protect a child from harm.  
36

37           ***Legislative Note:** The state should insert the title of the appropriate state agency responsible for*  
38 *child protective services.*  
39

#### **Preliminary Comments**

1           1. Subsection (a) allows the department of child protection to conduct a home visit to  
2 assess the welfare of the child in order to facilitate compliance with Section 203(a). In order to  
3 conduct the home visit, the department must have probable cause to believe that custody of a  
4 child has been {or will be} transferred in violation of Section 203(a). Mere suspicion or hearsay  
5 is insufficient.

6  
7           The purpose of this subsection is not only to allow the department to determine whether  
8 there has been a transfer in violation of Section 203(a), but also allow it to assist the parent,  
9 guardian, or individual with whom the child has been placed for adoption. In some cases that  
10 assistance might involve counseling the parent, guardian, or individual and the child. In others it  
11 might involve advice and assistance in utilizing the legitimate means of transferring custody of a  
12 child as specified in Section 203(a),

13  
14           2. Subsection (b) is intended to make it clear that regardless of the other provisions of  
15 this Article which give wide latitude to the custody transfer decisions of the parent, guardian, or  
16 individual with whom the child has been placed for adoption, the department may nonetheless  
17 take appropriate action to protect the child from harm.

## 18           **Section 205. Prohibited Advertising**

19  
20           (a) A person may not solicit or advertise to:

21                   (1) find a person to which to make a transfer of custody of a child in violation of  
22 Section 203(a);

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

24                   (3) act as an intermediary in a transfer of custody of a child in violation of Section  
25 203(b).

26           (b) A violation of subsection (a) is a [misdemeanor].

27           **Legislative Note:** Subsection (b) designates a violation of this section as a misdemeanor. It is  
28 intended that the state insert the degree or level of misdemeanor. Alternatively, the state may  
29 designate a violation as a specific crime, e.g., solicitation to transfer custody of a child. The  
30 state may also another category of crime, e.g., felony or infraction.

## 31                                   **Preliminary Comments**

32  
33  
34           1. Since child custody transfers that would violate Section 203 are not made to family  
35 members or family-like individuals, there is usually no existing personal connection or  
36 relationship between a parent and a person to whom a transfer will be made. To arrange such a  
37 transfer, therefore, it is usually necessary to search for and locate an interested party. That  
38 search might be accomplished by some form of solicitation or advertising.



1  
2 That advertising might involve use of the Internet through which a parent places  
3 advertisements or notices stating that the parent is seeking to transfer custody of a child.  
4 However, other forms of communication might be used, such as newspaper advertisements or  
5 announcements.  
6

7 Even though advertising is initiated to transfer custody of a child, it might not result in a  
8 completed transfer. Nonetheless, advertising, an initial step in a prohibited custody transfer, has  
9 been performed. To prevent this precursor step, advertising for the transfer is separately  
10 prohibited.  
11

12 2. Three specific situations of prohibited advertising are identified. A parent might  
13 initiate the advertising in an attempt to find a person to whom the parent might transfer custody  
14 of a child in violation of Section 203(a). Alternatively, a third person might initiate the  
15 advertising in an attempt to locate a child, i.e., the third person is seeking to locate a child whose  
16 custody would be transferred to that person in violation of Section 203(b). Finally, an  
17 intermediary who seeks to facilitate or assist a parent, a third party, or both with a custody  
18 transfer that would violate Section 203(b) might initiate the advertising.  
19

20 It should be noted that even though advertising prohibited by this section might be  
21 separately initiated by all three parties (parent, transferee, and intermediary) in any individual  
22 custody transfer, it need not be. Only one party, for example an intermediary, might conduct the  
23 advertising. In that case, although all three parties might engage in a child custody transfer  
24 prohibited by Section 203, only one of them will have engaged in advertising prohibited by this  
25 section.  
26

27 3. Subsection (b) states that a violation of this section is treated as a misdemeanor. The  
28 exact degree or level of misdemeanor is left to the state in insert. A state may also designate a  
29 violation of this section as a specific crime, e.g., solicitation to transfer custody of a child. The  
30 penalties attendant to a violation of subsection (a) are determined by other state law. Although  
31 subsection (b) categorizes prohibited advertising as a misdemeanor, the term is bracketed, and a  
32 state may insert another category of crime it determines appropriate, e.g., felony or infraction.  
33

#### 34 **[Section 206. Enforcement**

35 If the [law enforcement authority] has probable cause to believe that a person has violated  
36 this [article], the [law enforcement authority] may investigate and take action as provided by law  
37 of this state other than this [act].]

38 ***Legislative Note:*** This section should be omitted if other law of the state already authorizes a  
39 state officer to take action to enforce this act.  
40

41 A state should insert the appropriate law enforcement authority that will investigate and  
42 bring proceedings under this section.

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## Preliminary Comments

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

This article states that violations of Section 203 and 204 are misdemeanors and, thus, criminal sanction would be one remedy. Other relief may be available under state law in some situations. For example, the Attorney General might seek injunctive relief to enjoin continuing advertising that is in violation of Section 204. If a licensed child-placing agency is acting as an intermediary in violation of Sections 203 or 204, the Attorney General may, in addition to any other relief sought, pursue administrative relief to revoke the agency's license.

2. This section specifies that, to proceed with an investigation of an alleged violation of this article, the Attorney General must have probable cause to believe that there has been a violation of the article. What amounts to probable cause will depend on the circumstances of the alleged violation and must be seen in the light of state and federal due process requirements.

### Section 207. Reporting to Department of State

If the [department of child protection] makes a home visit under Section 204(a) of a child adopted or placed through an inter-country adoption, it shall provide a copy of the report on the welfare and the plan for permanency of the child to the United States Department of State.

***Legislative Note:*** The state should insert the title of the appropriate state agency responsible for child protective services.

## Preliminary Comments

In many instances when children are adopted or placed through an inter-country adoption, the child's country of origin asks the United States Department of State to inform it custody of the child has been transferred in an unregulated custody transfer. In order to facilitate the Department of State, this section requires the department of child protection, if it conducts a home visit under Section 204(a), to provide a copy of its report on the welfare of the child and as assessment on the plan for permanency of the child to the Department.

At the time of the drafting of this act, the appropriate office within the Department of State to which the report should be submitted is the Office of Children's Issues, Bureau of Consular Affairs.

## [[Article] 3

39  
40

## Information and Guidance

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

### Section 301. Definition

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

### Preliminary Comments

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

### Section 302. Scope

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

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

### Preliminary Comments

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

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.

1           **Section 303. General Adoption Information**

2           (a) Before a child-placing agency places a child for adoption with a prospective adoptive  
3 parent, the agency shall provide or cause to be provided to the prospective adoptive parent  
4 general adoption information. The information must be provided a reasonable time before the  
5 placement.

6           (b) The information required by subsection (a) must include:

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

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

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

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

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

15                   (4) prohibitions under Sections 203 and 204.

16                                   **Preliminary Comments**

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

23  
24           2. Subsection (a) requires the provision of general adoption information to the  
25 prospective adoptive parent regarding adoptions that have a heightened degree of risk for  
26 disruption of the adoption. The information that must be provided is generic and not child-  
27 specific, i.e., it is not focused on any particular child. The information is, however, related in a  
28 general way, to the types of issues that might be encountered during or after the adoption of a  
29 child with a heightened degree of risk for disruption of the adoption. The objective of this  
30 section is to inform the prospective adoptive parent about various matters that the parent might  
31 not have appreciated and that might affect the parent's decision to proceed further along the

1 adoption pathway. By provision of the information, it seeks to enhance the chances that a  
2 placement, once made, will result in a successful adoption.

3  
4 Subsection (a) also specifies that the information must be provided to a prospective  
5 adoptive parent a reasonable time before the child-placing agency places the child in an adoption  
6 with the parent. Since this adoption information is generic, it may be provided in a standard  
7 format. Further, the child-placing agency need not personally provide the information to the  
8 parent as long as the agency causes the information to be provided to the parent.

9  
10 3. Subsections (b)(1), (b)(2), and (b)(3) specify information about three general matters  
11 that might arise in an adoption that has a heightened degree of risk for disruption of the adoption.

12  
13 4. Subsection (b)(4) requires the child-placing agency to inform the prospective adoptive  
14 parent about the prohibition on transferring custody of the child contained in Article 2.

### 15 16 **Section 304. Information About Child**

17 (a) Except as prohibited by law of this state other than this [act], before a child-placing  
18 agency places a child for adoption with a prospective adoptive parent, the agency shall provide  
19 or cause to be provided to the prospective adoptive parent information specific to the child which  
20 is known or reasonably obtainable by the agency. The information must be provided a reasonable  
21 time before the placement.

22 (b) The information under subsection (a) must include:

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

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

26 (3) a circumstance that might affect the child's physical, mental, emotional, or  
27 behavioral health adversely;

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

29 (5) the medical history of the child's genetic parents or siblings;

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

1 (7) the child's United States immigration status;

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

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

6 (c) A child-placing agency placing a child for adoption shall make a reasonable effort to  
7 obtain information about the child material to the prospective adoptive parent's informed  
8 decision to adopt the child.

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

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

### 16 Preliminary Comments

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

26  
27 As with information required to be provided by Section 303(a), the child-placing agency  
28 need not personally provide the information to the parent as long as the agency causes it to be  
29 provided to the parent.

30  
31 2. The child-specific matters about which the child-placing agency must inform the

1 prospective adoptive parent are listed in subsection (b).

2  
3 Subsection (b)(1) requires information on various aspects of the child's general  
4 background.

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

6 Subsection (b)(3) requires information on circumstances that might adversely affect  
7 aspects of the child's health.

8 Subsection (b)(4) requires information on the child's medical history.

9 Subsection (b)(5) requires information on the medical history of the child's family.

10 Subsection (b)(6) requires information regarding any prior adoptive or out-of-home  
11 placement (e.g., foster care, congregated care, etc.) and the reason the adoption or placement  
12 ended.

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

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

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

20  
21 3. The requirement in subsection (a) that a child-placing agency provide information to  
22 the prospective adoptive parent applies to information that is "known or reasonably obtainable  
23 by the agency" before placing the child. Subsection (c) requires an agency to make reasonable  
24 efforts to obtain information material to the parent's decision to adopt.

25  
26 This subsection recognizes that some information about a particular child might not be  
27 obtainable even after reasonable effort. This might be particularly true in an international  
28 adoption if, due to limitations imposed by the country of origin or a foreign child-care institution  
29 that had prior custody of the child, the information is not provided to the agency. In some cases,  
30 it might be obvious to the agency that, after using reasonable efforts, it is still unable to obtain  
31 certain information about the child (e.g., the child's medical history is totally absent), and this  
32 lack of information should be pointed out to the parent. However, in other cases, even after  
33 using reasonable efforts, the absence of information might not be obvious to the agency (e.g., the  
34 child has a particular medical condition that is not apparent from any other information in the  
35 record), and it would not have reason to make any investigation about the issue.

36  
37 4. Subsection (d) states that if, after the placement and before the finalization of the  
38 adoption, additional information required by subsection (b) about the child which is material to a  
39 successful adoption becomes known or reasonably obtainable to the child-placing agency, it  
40 must provide that information to the prospective adoptive parent. It imposes a duty on the  
41 agency that continues until the adoption is finalized to act reasonably in obtaining material  
42 information and providing it to the parent.

43  
44 5. Subsection (e) pertains to the child-placing agency's duty to provide information after  
45 the adoption is finalized. It states that if information required by subsection (b) about the child  
46 does, in fact, become available to the child-placing agency after the adoption is finalized, the

1 agency must make reasonable efforts to locate and provide the information to the adoptive  
2 parents. It does not place a duty on the agency to continue to make efforts to obtain the  
3 information but requires the agency to provide it to the parents if it should discover it. It also  
4 recognizes that an agency might not continue to have up-to-date location information about the  
5 parents and merely imposes a duty to make reasonable efforts to locate them in order to provide  
6 the information.

### 7 8 **Section 305. Guidance and Instruction**

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

13 (b) The guidance and instruction under subsection (b) must include, if applicable:

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

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

16 (B) attachment disorder or similar emotional issue, fetal-alcohol-spectrum  
17 disorder, or malnutrition;

18 (C) neglect, abuse, drug exposure, or similar adversity;

19 (D) separation from a sibling or significant caregiver; and

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

22 (2) available federal information on the process for the child to acquire United  
23 States citizenship; and

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

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

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



1 (2) for an inter-country adoption, in accordance with federal law.

2 (d) A child-placing agency placing a child for adoption shall make a reasonable effort to  
3 ascertain the needs of the child which it must address under subsection (b).

#### 4 **Preliminary Comments**

5  
6 1. Subsection (a) defines an inter-country adoption as a placement for adoption of a  
7 foreign-born child who, at the time of the placement, resides outside of the United States. Since  
8 the child will be immigrating to the United States, the child must be eligible to immigrate to the  
9 United States. Adoptions of foreign-born children are often finalized in the child's country of  
10 residence before the child immigrates to the United States. However, an adoption may also be  
11 finalized in a state of the United States.

12  
13 2. Subsection (b) requires a child-placing agency to provide guidance and instruction to  
14 an adoptive parent to prepare the parent to respond effectively to the needs of the child. As with  
15 information required to be provided by Sections 303 and 304, the child-placing agency need not  
16 personally provide the guidance and instruction to the parent as long as the agency causes it to be  
17 provided to the parent.

18  
19 3. Subsection (b) limits the child-placing agency's obligation to provide the guidance  
20 and instruction to needs of the child which are known to or reasonably ascertainable by the  
21 agency.

22  
23 4. Subsection (c) sets out the matters that the guidance and instruction must address.  
24 They generally relate to matters about which the child-placing agency must provide information  
25 under Sections 303(b) and 304(b).

26  
27 5. Subsection (d)(1) requires the guidance and instruction for a prospective adoptive  
28 parent of a child residing in the United State to be provided a "reasonable time" before the  
29 adoption is finalized. A "reasonable time" will depend on the circumstances, but it must be  
30 sufficient to provide the prospective adoptive parent reasonable time to implement the guidance  
31 and instruction and make an informed decision as to whether to proceed with the adoption.

32  
33 However, waiting until a reasonable time before an adoption is finalized to provide  
34 guidance and instruction to a prospective adoptive parent in an inter-country adoption may be too  
35 late. By that date, the child will have left the child's country of origin and the care and support  
36 received there and travelled to and arrived in the United States. Waiting until that time does not  
37 promote a decision that is beneficial either to the child or the parent. Subsection (d)(2) requires  
38 that the information be provided to the prospective adoptive parent in accordance with federal  
39 law, which at the current time is before the child enters the United States {citation}.

40  
41 6. Subsection (e) requires the child-placing agency to make reasonable efforts to  
42 ascertain the needs of the child in order to provide the prospective adoptive parent with the  
43 guidance and instruction required by this section.

1  
2 **[Section 306. Information About Financial Assistance and Support Services**

3 (a) If a child who was placed for adoption or whose adoption was finalized or the  
4 adoptive parent of the child requests financial assistance or support services to help preserve the  
5 placement or adoption, the child-placing agency placing the child or the [department of child  
6 protection] shall provide information about how to access financial assistance or support services  
7 that might assist the child or parent to respond effectively to adjustment, behavioral, and other  
8 challenges that may have arisen.

9 (b) The support services that may be requested under subsection (a) include:

10 (1) parenting-skills training and education, individual and family counseling,  
11 respite care, and other similar services; and

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

14 ***Legislative Note:*** *This section should be omitted if other law of the enacting state provides for*  
15 *financial assistance and support services. If the state:*

16 (1) *does not require the provision of post-adoption support services, the state should*  
17 *enact this section;*

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

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

24  
25 *The state should insert the title of the appropriate state agency responsible for child protective*  
26 *services.*

27  
28 **Preliminary Comments**  
29

30 1. Subsection (a) requires the child-placing agency or the [department of child  
31 protection] to provide information on how to access support services and financial assistance to  
32 help preserve the placement or adoption. It is designed to allow the state to take advantage of  
33 funds available to it under the federal Family First Prevention Services Act {citation}.  
34

1 If the information is requested by either a child or a parent, it must be provided during  
2 either or both the post-placement period before the adoption is finalized and after adoption is  
3 finalized.

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

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

8 (2) information on access to services from a qualified clinician to prevent and  
9 treat mental health or substance abuse issues (Subsection (b)(2)).  
10

11 The access information on support services specified in subsection (b) overlaps to some  
12 extent information or guidance and instruction required in Sections 303, 304, and 305.  
13

#### 14 **Section 307. Child-Placing Agency Compliance**

15 The [Attorney General] may investigate an allegation that a child-placing agency has  
16 failed to comply with this [article] and bring a proceeding against the child-placing agency to  
17 enforce this [article].

18 ***Legislative Note:** The state should insert the title of the appropriate law enforcement officer to*  
19 *investigate and bring a proceeding under this section.*  
20

#### 21 **Preliminary Comments**

22  
23 Article 3 places a number of obligations regarding the provision of information and  
24 services on the child-placing agency. This section allows the Attorney-General to investigate an  
25 alleged failure of an agency to comply with this article. The Attorney General may also bring  
26 proceedings to enforce the article. Among the various forms of relief that the Attorney General  
27 might seek are a revocation or suspension of the agency's license, injunctive relief, and a  
28 pecuniary penalty. Other forms of relief might also be available under state law.  
29

#### 30 **Section 308. Rules**

31 The [department of child protection] may adopt rules to prescribe the content and manner  
32 of providing the services required by Sections 303, 304, [and] 305[, and 306].

33 ***Legislative Note:** The state should insert the title of the appropriate state agency responsible for*  
34 *child protective services.*  
35

#### 36 **Preliminary Comments**

37  
38 This section authorizes the [department of child protection] to adopt rules to establish the  
39 content and manner of providing the information and the guidance and instruction required in

Article 3.

## **[Article] 4**

### **Miscellaneous Provisions**

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

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

#### **Preliminary Comments**

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

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

##### **Act**

This [act] modifies, limits, or supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

#### **Preliminary Comments**

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

#### **Section 403. Transitional Provisions**

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

(1) a transfer of custody:

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

(B) before [the effective date of this [act]], if the custody continues in the transferee on or after [the effective date of this [act]]; and

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

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

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

#### **Preliminary Comments**

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

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

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

#### **[Section 404. Severability]**

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

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

#### **Preliminary Comments**

This is the standard severability provision for uniform laws.

#### **Section 405. Repeals; Conforming Amendments**

(a) . . . .

(b) . . . .

(c) . . . .

1 **Preliminary Comments**

2 This section lists laws that this act supervenes.

3

4 **Section 406. Effective Date**

5 This [act] takes effect . . . .

6 **Preliminary Comments**

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