

D R A F T
FOR DISCUSSION ONLY

UNREGULATED TRANSFERS OF ADOPTED CHILDREN ACT

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

MEETING IN ITS ONE-HUNDRED-AND-TWENTY-EIGHTH YEAR
ANCHORAGE, ALASKA
JULY 12 – 17, 2019



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NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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June 5, 2019

UNREGULATED TRANSFERS OF ADOPTED CHILDREN ACT

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UNREGULATED TRANSFERS OF ADOPTED CHILDREN ACT

Prefatory Note

The problem

Adoptive parents may, due to a crisis within the adoptive family, seek to transfer custody of an adopted child to another person or family without using the judicial system or the child welfare system. The transfer may use the internet and a power of attorney. In most of these cases the state's child welfare agency is unable to determine whether the transfer is safe or whether the transferee is capable of raising the child. This is an unregulated transfer of the custody of a child. Some information also indicates that human trafficking may, on occasion, be involved in such transfers.

In some but not all of these cases the child was adopted in a high-risk adoption. A high-risk adoption is one in which the adoption has an increased likelihood of disruption or re-placement for a second adoption. The adoption is at high risk when factors such as the following are present: the child was previously adopted or is in a foster-care placement, the child has attachment or trauma-related disorder, the child had prenatal exposure to alcohol or drugs, or the child was adopted from another country. Prospective adoptive parents in high-risk adoptions may not appreciate the issues involved or be prepared to deal with them.

The response in the proposed act

High-risk adoptions

Because many of the cases of unregulated transfer involve high-risk adoptions, the proposed act requires that, before referring a child in a high-risk adoption, a child-placing agency provide the prospective adoptive parents with information concerning the child's background and history. The proposed act also requires that, in a high-risk adoption, the child-placing agency ensure that the prospective adoptive parents receive preparation and training prior to the adoption on the issues involved and the resources available to deal with them.

Unregulated custody transfers

The proposed act prohibits adoptive parents from transferring physical custody of an adopted child with the intent of relinquishing their legal rights as parents without complying with the state's laws regarding a further adoption, judicial transfer of the custody, or placement with a child-placing agency. The proposed act makes exceptions for various intra-family custody transfers. Any custody transfer of an adopted child in violation of the act is abandonment of the child and a [class B misdemeanor].

1 The [Department of Child Protection] is authorized to investigate any suspected violation
2 of the act. If it determines that the act has been violated, the [Department] may respond in
3 several ways ranging from providing reunification support and services to the adoptive parents
4 and child to bringing legal proceeding to terminate the parentage rights of the adoptive parents to
5 the child.

6
7 Unregulated transfers are often aided by advertising, frequently on the internet, for the
8 transfer of a child. Therefore, the proposed act provides that a person may not advertise that the
9 person will transfer, facilitate a transfer of, or receive permanent physical custody of a child in
10 violation of the act. Certain exceptions are made to the prohibition. The Department of Child
11 Protection may bring an action to enjoin a person from advertising in violation of this provision.
12 A person who violates this provision is guilty of a [class B misdemeanor].

13
14
15 David Biklen, Chair

16 Arthur Gaudio, Reporter

1 **UNREGULATED TRANSFERS OF ADOPTED CHILDREN ACT**

2 **SECTION 1. SHORT TITLE.** This [act] may be cited as the Unregulated Transfers of
3 Adopted Children Act.

4 **SECTION 2. DEFINITIONS.** In this [act]:

5 (1) “Adopted child” means a child who, under the law of a state or a foreign country, was
6 adopted or is in the process of being adopted.

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

8 (3) “Child-placing agency” means a person that engages, under law of this state other
9 than this [act], in:

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

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

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

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

15 (B) who had been previously adopted;

16 (C) with attachment or trauma-related disorder;

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

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

19 (F) from a foreign country.

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

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

24 (7) “State” means a state of the United States, the District of Columbia, Puerto Rico, the

1 United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of
2 the United States. The term includes a federally recognized Indian tribe.

3 **SECTION 3. HIGH-RISK ADOPTION: INFORMATION; PREPARATION AND**
4 **TRAINING.**

5 (a) Before referring a child to a prospective adoptive parent in a high-risk adoption, a
6 child-placing agency shall ensure that the prospective adoptive parent receives the information
7 required by Section 4 and the preparation and training required by Section 5.

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

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 **SECTION 4. INFORMATION TO PROSPECTIVE ADOPTIVE PARENT.** Unless
14 prohibited by law of this state other than this [act] or the child's country of origin, a child-placing
15 agency shall ensure that a prospective adoptive parent in a high-risk adoption is provided with:

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

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

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

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

22 (A) family's medical history;

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

24 (C) history of any institutionalization or adoptive or foster-home placement and

1 the reason any institutionalization or placement was terminated;

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

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

6 **SECTION 5. PREPARATION AND TRAINING FOR PROSPECTIVE**

7 **ADOPTIVE PARENT.** A child-placing agency shall ensure that a prospective adoptive parent
8 in a high-risk adoption receives at least [30] hours of adoption preparation and training, if
9 applicable, on:

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

12 (2) the effect on a child of institutionalization or a previous adoption or foster-care
13 placement, and the effect of multiple placements;

14 (3) attachment disorder, trauma exposure, and similar emotional problems of a child;

15 (4) the effect on a child of fetal-alcohol-spectrum disorder, drug exposure, malnutrition,
16 and similar risks;

17 (5) information on the financial resources, insurance coverage, and time management
18 necessary for a successful placement of a child;

19 (6) medical, therapeutic, and educational services available for a child, including
20 language-acquisition training;

21 (7) how to access post-placement and post-adoption services that assist an adoptive
22 parent and child to respond effectively to required adjustment, behavioral change, and other
23 difficulty;

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

(9) adopting a child of a different ethnicity, race, or cultural identity than the prospective adoptive parent;

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

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

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

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

(12) the prohibition under Section 6; and

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

SECTION 6. PROHIBITED TRANSFER.

(a) Except as otherwise provided in subsection (b), an individual who intends to relinquish the legal rights and responsibilities as a parent or guardian of an adopted child may not knowingly transfer physical custody of the child to, or knowingly allow a temporary transfer of physical custody to continue with, a person without complying with law of this state other than this [act] relating to:

(1) adoption or guardianship;

(2) judicial transfer of custody; or

(3) placement with a child-placing agency.

(b) This section does not prohibit a temporary transfer of physical custody of an adopted

child to a parent, step-parent, grandparent, adult sibling, adult uncle or aunt, or legal guardian of the child.

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

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

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

SECTION 7. INVESTIGATION; TERMINATION OF CERTAIN LEGAL RIGHTS.

(a) If the [Department of Child Protection] reasonably suspects a violation of Section 6, the [Department] shall investigate under law of this state other than this [act].

(b) If the [Department of Child Protection] determines that an adoptive parent has violated Section 6, the [Department] may:

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

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

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

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

SECTION 8. PROHIBITED ADVERTISING.

(a) Except as otherwise provided in subsection (c), a person may not knowingly advertise

1 that the person, in violation of Section 6:

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

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

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

9 (b) The [Department of Child Protection] may bring an action to enjoin a person from
10 advertising in violation of subsection (a).

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

12 (1) the [Department of Child Protection] or a child-placing agency licensed
13 under the law of this state other than this [act] to place a child for adoption, in a licensed
14 institution, foster home, or group home, or in the home of a guardian; or

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

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

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

20 **SECTION 9. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In
21 applying and construing this uniform act, consideration must be given to the need to promote
22 uniformity of the law with respect to its subject matter among states that enact it.

1 **[SECTION 10. TRANSITIONAL PROVISION.** This act applies to actions taken and
2 duties or responsibilities imposed on and after the effective date of this [act].]

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

7 ***Legislative Note:** Include this section only if this state lacks a general severability statute or a*
8 *decision by the highest court of this state stating a general rule of severability.*
9

10 **[SECTION 12. REPEALS; CONFORMING AMENDMENTS.**

11 (a)

12 (b)

13 (c)]

14 **SECTION 13. EFFECTIVE DATE.** This [act] takes effect