



GENERAL STATUTES COMMISSION

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MEMORANDUM

To: House Rules, Calendar, and Operations of the House
From: General Statutes Commission
Re: HB 104 (GSC Unif. Unreg. Child Cust. Trfr. Act/Art. 3)
Date: February 27, 2023

General Comments

This bill, recommended by the General Statutes Commission, would enact Article 3 of the Uniform Unregulated Child Custody Transfer Act. The Uniform Law Commission promulgated the Act in 2021. Utah and Washington enacted it in 2022 and South Carolina and Colorado have introduced bills on it this year.

The purpose of this bill is to prevent unlawful transfers of custody of minors by better preparing adoptive parents for issues that may arise when caring for certain adopted minors. It requires adoption agencies to provide all of the following to prospective adoptive parents of minors who fall within the scope of the bill: general information about adoption, specific information about the minor, guidance and instruction on effectively meeting the needs of the minor, and, after placement for adoption, information about financial assistance and support services. The bill would give the Department of Health and Human Services authority to enforce the new provisions.

In addition to publishing all its drafts online, the General Statutes Commission circulated a draft to the Administrative Office of the Courts, Department of Health and Human Services, Department of Justice, UNC School of Government, North Carolina Bar Association, Conference of Clerks of Superior Court, North Carolina Advocates for Justice, North Carolina Justice Center, and others. There is no known opposition to this bill.

Background

Current law prohibits the transfer of physical custody of a minor to a person other than a relative, or other individual that has a substantial relationship with the minor, without legal authorization or in a manner that is grossly negligent in the care of the minor. Current law also requires certain disclosures to prospective adoptive parents about any minor before placing the minor for adoption.

Specific Comments

Section 1 enacts a new Part ("Information and Guidance") in Article 3 of Chapter 48 of the General Statutes that consists of the following new sections:

G.S. 48-3-230 ("Title and purpose") provides that this Part may be cited as the Information and Guidance Provisions of the Uniform Unregulated Child Custody Transfer Act. The General Statutes Commission added that the purpose of the Part is to prevent the unlawful transfer of custody of minors as prohibited by G.S. 14-321.2. The Uniform Unregulated Child Custody Transfer Act includes an article to prohibit unlawful transfers of custody of minors but that article

is not included in this bill because G.S. 14-321.2 already prohibits this conduct. The purpose language in G.S. 48-3-230 provides a link between the existing prohibition on unlawful transfers of custody and the requirements of this new Part.

G.S. 48-3-231 ("Definitions") defines certain terms. Some terms used in this Part are defined in G.S. 48-1-101 and apply to all of Chapter 48. For example, the term "agency" is defined in G.S. 48-1-101(4) as an entity licensed or otherwise authorized to place minors for adoption, including a county department of social services in this State.

G.S. 48-3-232 ("Scope") provides that this Part applies to a minor that has been or is in foster or institutional care, has previously been adopted, has been or is being adopted under the law of a foreign country, has come or is coming from a foreign country to be adopted, or is not a citizen of the United States.

G.S. 48-3-233 ("General adoption information") requires that, before placing a minor to whom this Part applies for adoption, an agency must provide the prospective adoptive parent general adoption information. The information has to address certain physical, mental, emotional, and behavioral issues an adopted minor may experience, the effect that resources may have on meeting the needs of the minor, things that can cause disruption or dissolution of an adoption and how to avoid disruption or dissolution, and the criminal prohibition on unlawful transfers of the custody of minors under G.S. 14-321.2

G.S. 48-3-234 ("Nonidentifying information about minor") provides that, before placing a minor to whom this Part applies for adoption, an agency must provide information that is nonidentifying but that is specific to the minor, in addition to the health and family background information provided under G.S. 48-3-205. This additional information includes any circumstances that could adversely affect the minor's physical, mental, emotional, or behavioral health, the history of prior adoption or placement of the minor and the reason the adoption or placement ended, and resources available to the adoptive parent and the minor to assist in responding effectively to difficulties. The agency must also provide records relevant to all of the information provided and must provide updated information if it later becomes known to the agency.

G.S. 48-3-235 ("Guidance and instruction") requires that, before an adoption is finalized (or in accordance with federal law for an intercountry adoption), an agency must provide to the prospective adoptive parent guidance and instruction specific to the minor to help the parent respond effectively to the minor's needs. The information must address the potential effect on the minor of the following, if applicable: any previous adoptions or placements, trauma, malnutrition, neglect, abuse, drug exposure, separation from a sibling or caregiver, and a difference in cultural identity between the prospective parent and minor. The agency must also provide information about the process of US citizenship for the minor.

G.S. 48-3-236 ("Information about financial assistance and support services") provides that, when requested by an adopted minor or the minor's adoptive parent, an agency must provide information on how to obtain financial assistance or support services to respond effectively to challenges and to help preserve the placement or adoption.

G.S. 48-3-237 ("Agency compliance") provides that the Department of Health and Human services may investigate allegations that an agency has failed to comply with this Part and may initiate administrative proceedings and take appropriate enforcement action.

G.S. 48-3-238 and **G.S. 48-3-239** are standard uniform act provisions relating to uniformity of application and construction and to the federal Electronic Signatures in Global and National Commerce (ESIGN) Act, respectively.

Section 2 amends G.S. 48-3-205 as follows:

- In subsection (a), removes language notwithstanding any other provision of law since no other provision of law is known to be in direct conflict with this G.S. section, changes "must" to "shall" for internal consistency, adds clarifying language for an inclusive list, modernizes the format of the list, replaces legalese with plain English, and removes unnecessary language.
- In subsection (b), replaces legalese with plain English and changes "may not" to "shall not" to conform to this State's drafting conventions.

Section 3(a) provides that, if a court holds a provision of this act to be invalid, the provisions of this act are severable.

Section 3(b) authorizes the Revisor of Statutes to print drafters comments.

Section 3(c) provides that this act is effective when it becomes law and applies to placement of a minor for adoption beginning 60 days after that date.