

Unregulated Transfers of Adopted Children Act

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Overview of the Model Act

- The ULC Model act serves as a statutory framework to address:
 - After a child's birth or adoption, parents attempting to transfer custody of child to another person without oversight or involvement of courts or child placement agencies
 - Benevolent motive – legitimately unable to provide for child
 - Sinister motive – child trafficking/ molesters or \$\$
- Either way → child custody transfers to unknown individuals found through the internet with no consideration of whether person assuming custody has ability or means to care for the child
 - Provide oversight to protect well-being of children and guidance to prospective adoptive parents to create greater likelihood of successful adoptive outcomes

Origins and Key Issues

- Greater awareness in recent years
- Piecemeal legislative efforts across the U.S.A.
- Focus on international adoptions initially
 - Now covers all children, domestically or internationally
 - Biological relation to parent attempting to transfer custody irrelevant
- Bifurcation
 - Criminalize unregulated child custody transfers + authorize investigative/enforcement powers
 - Information, guidance, and training to improve outcomes

Provisions of the Act

Article 1: General Provisions

- Title - “Unregulated Transfers of Adopted Children Act”
 - Subject to change given new scope
- Definitions
 - Child = unemancipated, in custody of parent, under state’s age of majority
 - Custody → focus on physical custody > legal custody
 - Intercountry adoption = foreign-born child residing outside of USA
 - Includes adoptions of foreign-born children when adoption finalized in the foreign country or in the USA

Provisions of the Act

Article 2: Prohibitions

- Exemptions from the prohibition on unregulated custody transfer
 - 202(1) – focus on transferor
 - Temporary placement with another, but parent continues to support/ make decisions for child
 - 202(2) – focus on transferee
 - Transfers to family members or those akin to family
 - Not an exhaustive list → left to discretion of enacting state

Provisions of the Act

Article 2: Prohibitions

- Prohibited child custody transfers under Section 203
 - 203(a) – intent to permanently relinquish rights and responsibilities for the child
 - Covers any means to effectuate the transfer of custody (usually power of attorney)
 - Parent, guardian, or individual with whom child was placed for adoption
 - 203(b) – prohibits 3rd party from obtaining custody if custody transfer covered under 203(a)
 - Reciprocal to prohibitions for parent, guardian or individual with whom child placed for adoption
 - Includes intermediaries who assist/ facilitate custody transfer (whether compensated or not)
 - “know or reasonably should know” that custody transfer prohibited
 - 203(c) – class of the offense = misdemeanor
 - Specific intent + circumstantial proof
 - 203(d) – no intent to permanently relinquish rights at first, but later becomes permanent?
 - Alone does not establish requisite criminal intent

Provisions of the Act

Article 2: Prohibitions

- 204 - Department of Child Protection Authority/ Responsibility
 - 204(a) – home visits to ensure compliance w/ 203(a)
 - Requires probable cause to believe prohibited custody transfer has or will occur
 - Counseling/ assistance to effect a lawful transfer of custody
 - 204(b) – intercountry adoptions and Department of State rules
 - Copy of report on welfare check to Department of State + assessment of plan for permanent placement
 - 204(c) – discretion of parents/ guardians in custody transfer decisions not supreme
 - May take action deemed appropriate to protect child from harm

Provisions of the Act

Article 2: Prohibitions

- 205 – Prohibited Advertising
 - 205(a) – three instances of prohibited advertising
 - Parent initiated
 - 3rd person/ potential transferee initiated
 - Intermediary initiated
 - Intent to engage in an advertisement for a prohibited custody transfer
 - 205(b) – class of the criminal offense for prohibited advertising
 - Up to enacting state
- 206 – Enforcement
 - Authorizes state law enforcement to investigate alleged prohibited custody transfers/ advertisements

Provisions of the Act

Article 3: Information and Guidance

- Optional for enacting states, but recommended if law lacks comparable requirements → Goal of increasing successful adoption outcomes
- 302 – Scope
 - List of circumstances likely to create heightened risk of disruption/ dissolution of an adoption
- 303 – General Adoption Information
 - Generic, general information applicable to all children prospective adoptive parents should consider
- 304 – Objective, Child-Specific Information
- 305 – Material guidance and instruction to effectively respond to needs of child
 - Provided a “reasonable time” before adoption finalized
- 306 – Financial Assistance and Support Services

Current Virginia Law

- VA Adoption Law
 - Title 63.2, Subtitle 3, Chapter 12
 - Unregulated transfers of adopted children impermissible, but not specifically mentioned in Code
 - 2 Broad Types of Adoption – Agency Placement and Non-Agency Placement
 - Judicial oversight and approval before finalizing transfer of custody
- VA Department of Social Services Adoption Requirements
 - Foster to adoption model with demanding process
 - Orientation → foster parent training → home study/ in-person meetings → background checks → medical screenings → family visits → paperwork → 6-month post-placement supervision w/ minimum 3 agency visits → finalization through the courts
- VA Parent Placement Requirements (§ 63.2-1232)
 - Where parent seeks to relinquish rights and finds “suitable” adoptive placement for child
 - Informed consent + counseling + home study + informational disclosures of family/ child and any money or property exchanged in connection with adoption + judicial approval
- Safety and well-being of child paramount
- Passage of HB 2542 (2019)

Stakeholder Input for Virginia Adoption

- VBA – Wills, Trust, and Estates – generally supportive, but no substantive comments on the model Act at this time
- Virginia Poverty Law Center + Legal Aid Justice Center
 - Harmonize with existing law
 - VA uses “custodians” and not “guardians” in Code
 - Gather input from cultural groups in VA on protections for “customary family” practices
 - Consideration of birth parent for placement in certain circumstances

Analysis and Recommendation

- Benefits
 - Explicit and detailed prohibitions act as deterrent with criminal penalties
 - Preventative measures → better adoption outcomes, especially for high-risk children
 - Enhancing safety and well-being of children and provision of important info
- Issues
 - Too many additional hurdles to an already stringent adoption process
 - Uncertainty whether this is a sufficient problem in VA
 - Model Act would amend existing criminal penalty for advertising adoption felony → misdemeanor)
- No radical conflicts with existing Virginia laws and policies

Questions and Comments?

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Thank you for your time and attention.