

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Children, Families, and Elder Affairs

BILL: SPB 7002

INTRODUCER: For consideration by the Children, Families, and Elder Affairs Committee

SUBJECT: Adoptions

DATE: December 10, 2013

REVISED: 12/10/13

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Sanford</u>	<u>Hendon</u>		Submitted as Committee Bill

I. Summary:

SPB 7002 requires the court in adoption proceedings to inform the adoptive parents that post-adoption services are available if the family experiences difficulty in caring for the child and that it is unlawful for the family to make a change of custody without court approval. The bill increases the criminal penalty for advertising or offering to the public that a child is available for adoption from a second degree misdemeanor to a third degree felony. The bill removes the necessity for proving willful and criminal intent in any prosecution for an offense under this section. The bill requires all adoption entities that conduct inter-country adoptions to be certified, approved, supervised, or temporarily accredited by one of the accrediting agencies designated by the US State Department. Finally, the bill defines “intercountry adoption” and requires agencies or entities providing intercountry adoption to maintain a record with specified information. The bill is expected to have an insignificant fiscal impact and is effective July 1, 2014.

II. Present Situation:

Investigative Series

Beginning on September 9, 2013, Reuters published a five-part series, titled “The Child Exchange,” which exposed how American parents were using Internet message boards to find new families for children they regretted adopting – a practice that has been called “private re-homing.” Reuters spent 18 months investigating eight message boards where participants advertised unwanted children and examined two dozen cases in which adopted children were re-homed.¹ The investigative series found:

- On average, a child was advertised for re-homing at least once a week.
- The average age range for children being advertised for re-homing is 6 to 14.

¹ Megan Twohey, *The Child Exchange*, REUTERS, Sept. 9, 2013, available at <http://www.reuters.com/investigates/adoption/#article/part1> (last visited Nov. 20, 2013).

- Re-homing is accomplished through basic power of attorney documents which allow the new guardians of the child to enroll the child in school or secure government benefits.
- At least 70 percent of the children offered for re-homing on one Yahoo message board were international adoptees.
- Only 29 states have laws that govern how children can be advertised for adoption.²
- The Interstate Compact for the Placement of Children, which is meant to be a safeguard against the improper placement of children across state lines, is often not enforced by law enforcement.³

On October 29, 2013, Reuters updated its story by reporting that a bipartisan group of 18 federal lawmakers had submitted a letter to the United States House of Representatives subcommittee overseeing adoption requesting a study by the Government Accountability Office. The study would identify gaps in state and federal laws “related to the oversight and prosecution of wrongdoers in the re-homing of children” and would also identify ways to better support struggling adoptive families.⁴

Potential Safeguards

The Interstate Compact for the Placement of Children (ICPC or compact) provides a uniform set of regulations meant to ensure that children placed across state lines for purposes of adoption (public or private) or foster care are placed with individuals who are safe, suitable, and able to provide proper care.⁵ The ICPC establishes the legal, financial, and supervisory responsibilities of all parties involved in the placement.⁶ Like other interstate compacts, the ICPC is a formal, binding agreement among the states that has characteristics of both statutory and contract law. According to the American Public Human Services Association (APHSA), interstate compacts “are enacted by state legislatures that adopt reciprocal laws that substantively mirror one another,” and they are binding on all member states.⁷ Florida has codified the ICPC at s. 409.401, F.S.

The ICPC requires an in-depth home study to be conducted by the receiving state.⁸ This home study must include the assessment of the financial, criminal, social, and medical histories of the

² Florida is one of the 29 states that have addressed this issue. See s. 63.212(1)(g), F.S.

³ *Id.*

⁴ Megan Twohey, *U.S. lawmakers call for action to curb Internet child trading*, REUTERS, available at <http://www.reuters.com/article/2013/10/29/us-adoption-react-idUSBRE99S1A320131029>

⁵ Florida’s Ctr. for the Advancement of Child Welfare Practice, *History of the ICPC*, available at <http://centerforchildwelfare.fmhi.usf.edu/kb/icpc/Forms/AllItems.aspx> (follow “History of ICPC” link under the “Additional Resources” heading) (last visited Mar. 28, 2009).

⁶ *Id.*

⁷ American Public Human Servs. Ass’n, *Interstate Compact for the Placement of Children, Understanding Interstate Compacts*, available at <http://www.aphsa.org/Policy/icpc2006rewrite.htm> (follow “Understanding Interstate Compacts” link under the “Understanding Interstate Commission” heading) (last visited Mar. 28, 2009).

⁸ The current ICPC defines “receiving state” as “the state to which a child is sent, brought, or caused to be sent or brought, whether by public authorities or private persons or agencies, and whether for placement with state or local public authorities or for placement with private agencies or persons.” The compact defines a “sending agency” as “a party state, officer or employee thereof; a subdivision of a party state, or officer or employee thereof; a court of a party state; a person, corporation, association, charitable agency or other entity which sends, brings, or causes to be sent or brought any child to another party state.” See s. 409.401, F.S.

prospective family, as well as a physical evaluation of their home.⁹ The ICPC establishes that once a placement is determined to be suitable, the receiving state is responsible for ongoing supervision and for providing support services to the family, as well as for providing regular reports to the sending state agency and court.¹⁰ The ICPC also contemplates an agreement between the sending and receiving states on how services and supports will be financed.¹¹

Although the compact has been adopted in every state, it is seldom enforced and each state is able to determine the penalties for a violation of the compact. Many states provide for criminal penalties; however, these penalties are generally misdemeanors. Other states do not explicitly provide sanctions for violations of the compact.¹² Florida law provides that a willful and criminal violation of the interstate compact is a third degree felony, s. 63.212, F.S.

An updated ICPC was proposed in 2005, which would standardize the process for placing children across state lines, provide a forum for review and reconsideration of decisions by states, and provide a mechanism for enforcement of ICPC provisions.¹³ Currently, only 12 states have enacted the new ICPC.¹⁴

In addition to the ICPC, Florida also prohibits any individual or entity except an adoption entity from advertising or offering to the public that a minor is sought for adoption. Additionally, Florida law provides that it is “unlawful for any person to publish or broadcast any such advertisement or assist an unlicensed person or entity in publishing or broadcasting any such advertisement.”¹⁵ If a person willfully and with criminal intent violates this law, the person commits a second degree misdemeanor.¹⁶

The Hague Convention

The Hague Convention on the Protection of Children and Co-operation in Respect of Inter-Country Adoption (Hague Convention or convention), is an international agreement that establishes international standards of practice for intercountry adoptions.¹⁷ There are currently 90 countries, including the United States, that are parties to the Hague Convention.¹⁸ The Hague

⁹ *History of the ICPC*, *supra* note 1.

¹⁰ *Id.*

¹¹ *Id.*

¹² See The Interstate Compact on the Placement of Children, *ICPC State Pages*, <http://icpcstatepages.org/> (last visited Nov. 20, 2013).

¹³ Comm. on Children, Families, and Elder Affairs, The Florida Senate, *Bill Analysis and Fiscal Impact Statement CS/SB 2240* (Mar. 25, 2009), available at <http://archive.flsenate.gov/data/session/2009/Senate/bills/analysis/pdf/2009s2240.cf.pdf> (last visited Nov. 20, 2013).

¹⁴ The Interstate Compact for the Placement of Children, *The New ICPC* (Sept. 20, 2013) (on file with the Senate Committee on Children, Families, and Elder Affairs). Florida is one of the 12 states that has adopted the new ICPC, but the new compact will not be effective until enacted by 35 states. See ch. 2009-148.

¹⁵ Section 63.212(1)(g), F.S.

¹⁶ Section 63.212(8), F.S.

¹⁷ Intercountry Adoptions, Bureau of Consular Affairs, U.S. Dep’t of State, *Understanding the Hague Convention*, http://adoption.state.gov/hague_convention/overview.php (last visited Nov. 21, 2013). The Hague Adoption Convention defines “intercountry adoption” as the process by which you adopt a child from a country other than your own through permanent legal means and bring that child to your country of residence to live with you permanently. *Id.* at *What is Intercountry Adoption*, http://adoption.state.gov/adoption_process/what.php (last visited Nov. 21, 2013).

¹⁸ *Id.* at *Convention Countries*, http://adoption.state.gov/hague_convention/countries.php (last visited Nov. 21, 2013).

Convention applies to all adoptions between countries that have joined it and provide adoptees and their adoptive parents greater safeguards than if the parents adopt from a non-Convention country. For example, the Convention requires that countries establish a Central Authority to be the authoritative source of information and point of contact in that country. Additionally, the Convention aims to prevent the abduction of, sale of, or trafficking of children, and works to ensure that intercountry adoptions are in the best interests of children.¹⁹

One key component of the Hague Convention is that certain intercountry adoption services can only be effected by entities that have been accredited by the federal government. Two accrediting entities have been designated by the Department of State to handle accreditation of adoption service providers.²⁰ The accrediting entities evaluate adoption service providers using a set of uniform standards to ensure professionalism and ethical practices.²¹ Only non-profit agencies can be accredited. For-profit agencies and individuals are approved rather than accredited.²² However, an entity engaged in intercountry adoptions does not have to be accredited under certain circumstances, such as if the entity is working under the supervision of an accredited provider, performing limited services, or providing services in non-convention countries.²³ Temporary accreditation is also available under specified circumstances.²⁴

Other Federal Laws

In 2000, Congress enacted the Intercountry Adoption Act of 2000 (IAA), implementing the provisions of the Convention. This federal law provides for civil and criminal penalties for violation of the Convention. The criminal penalties for a knowing and willful violation are a fine of not more than \$250,000, imprisonment for not more than 5 years, or both.²⁵ Most recently, on January 14, 2013, the President signed into law the Intercountry Adoption Universal Accreditation Act of 2012 (UAA). This federal law, effective July 14, 2014, extends the protections and standards of the Convention to all countries, not just other Convention countries, as was previously the case.²⁶

Florida Law

Florida law does not currently require adoption service providers to be accredited by the Hague Convention. Consequently, any enforcement of the provisions of the convention is left to federal authorities.

Florida law does not require the court in an adoption to inform adopting parents that post-adoption services are available or that making a change of custody to a person other than a relative without appropriate court action may constitute a criminal act.

¹⁹ *Understanding the Hague Convention*, *supra* note 15.

²⁰ These two entities are The Council on Accreditation and The Colorado Department of Human Services. Intercountry Adoptions, Bureau of Consular Affairs, U.S. Dep't of State, *Agency Accreditation*, http://adoption.state.gov/hague_convention/accreditation.php (last visited Nov. 21, 2013).

²¹ *Understanding the Hague Convention*, *supra* note 15.

²² See 22 CFR ch. 1 part 96.

²³ *Agency Accreditation*, *supra* note 18.

²⁴ See 22 CFR 96.95.

²⁵ 42 U.S.C. s. 14944.

²⁶ Pub. Law No. 112-276 S. 3331, 112th Cong. (Jan. 14, 2013).

III. Effect of Proposed Changes:

Section 1 of SPB 7002 provides that in the adoption hearing, the court must inform the petitioner that postadoption services are available if the family experiences difficulty caring for the child. The court must also inform the petitioner that making an informal change of custody to a person other than a relative without court action may be a violation of s. 63.212, F.S. and constitute a criminal act.

Section 2 of the bill amends s. 63.212, F.S., making it a third degree felony, rather than a second degree misdemeanor, for a person to advertise or offer to the public, or to publish or broadcast any such advertisement, that a child is available for adoption. The bill also removes the requirement that any of the prohibited acts listed in s. 63.212, F.S., be done willfully and with criminal intent.

Finally, **Section 3** of the bill amends s. 409.175, F.S., to add requirements on an adoption entity conducting intercountry adoptions. Specifically, the bill requires that an adoption entity that conducts intercountry adoptions be accredited, approved, supervised, or temporarily accredited by one of the U.S. Department of State's designated accrediting entities. The bill also requires the adoption entity to meet federal law and regulations pertaining to intercountry adoptions. Additionally, the adoption entity must maintain the following records pertaining to intercountry adoptions:

- All available family and medical history of the birth family.
- All legal documents translated into English.
- All documents required for the child to attain U.S. citizenship.
- All supervisory reports before and after the adoption.

The bill defines an "intercountry adoption" as the process by which a person adopts a child from a country other than his or her own country through permanent legal means, and then brings that child to his or her country of residence to live permanently.

The effective date of the bill is July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

There may be a fiscal impact on some adoption entities who wish to make intercountry adoptions in non-Convention countries and who are not currently accredited or approved.

C. Government Sector Impact:

The increase in criminal penalties is unlikely to have a significant fiscal impact on the criminal justice system due to the low frequency of such crimes. The bill has, however, been referred to the Criminal Justice Impact Conference to assess any fiscal impact on the state's correctional system.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 63.142, 63.212, and 409.175.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.