

NOTE: This bill has been prepared for the signatures of the appropriate legislative officers and the Governor. To determine whether the Governor has signed the bill or taken other action on it, please consult the legislative status sheet, the legislative history, or the Session Laws.



HOUSE BILL 23-1157

BY REPRESENTATIVE(S) Joseph and Weinberg, Armagost, Boesenecker, Bradley, Brown, Duran, English, Garcia, Hamrick, Hartsook, Lindsay, Mabrey, Marshall, Martinez, Mauro, Pugliese, Ricks, Snyder, Story, Titone, Velasco, Young, McCluskie;
also SENATOR(S) Exum and Gardner, Priola.

CONCERNING THE "UNIFORM UNREGULATED CHILD CUSTODY TRANSFER ACT".

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, **add** article 5.5 to title 19 as follows:

ARTICLE 5.5
Uniform Unregulated Child Custody Transfer Act

PART 1
GENERAL PROVISIONS

19-5.5-101. Short title. THIS ARTICLE 5.5 MAY BE CITED AS THE "UNIFORM UNREGULATED CHILD CUSTODY TRANSFER ACT".

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

19-5.5-102. Definitions. IN THIS ARTICLE 5.5:

(1) "CHILD" MEANS AN UNEMANCIPATED INDIVIDUAL UNDER EIGHTEEN YEARS OF AGE.

(2) "CHILD PLACEMENT AGENCY" HAS THE MEANING SET FORTH IN SECTION 26-6-903.

(3) "COUNTY DEPARTMENT" HAS THE MEANING SET FORTH IN SECTION 19-1-103.

(4) "CUSTODY" MEANS THE EXERCISE OF PHYSICAL CARE AND SUPERVISION OF A CHILD.

(5) "INTERCOUNTRY ADOPTION" MEANS AN ADOPTION OR PLACEMENT FOR ADOPTION OF A CHILD WHO RESIDES IN A FOREIGN COUNTRY AT THE TIME OF ADOPTION OR PLACEMENT. THE TERM INCLUDES AN ADOPTION FINALIZED IN THE CHILD'S COUNTRY OF RESIDENCE OR IN A STATE.

(6) "PARENT" HAS THE MEANING SET FORTH IN SECTION 19-1-103.

(7) "PERSON" MEANS AN INDIVIDUAL, ESTATE, BUSINESS OR NONPROFIT ENTITY, PUBLIC CORPORATION, GOVERNMENT OR GOVERNMENTAL SUBDIVISION, AGENCY, OR INSTRUMENTALITY, OR OTHER LEGAL ENTITY.

(8) "RECORD" MEANS INFORMATION THAT IS:

(a) INSCRIBED ON A TANGIBLE MEDIUM; OR

(b) STORED IN AN ELECTRONIC OR OTHER MEDIUM AND RETRIEVABLE IN PERCEIVABLE FORM.

(9) "STATE" MEANS A STATE OF THE UNITED STATES, THE DISTRICT OF COLUMBIA, PUERTO RICO, THE UNITED STATES VIRGIN ISLANDS, OR ANY OTHER TERRITORY OR POSSESSION SUBJECT TO THE JURISDICTION OF THE UNITED STATES. THE TERM INCLUDES A FEDERALLY RECOGNIZED INDIAN TRIBE.

(10) "STATE DEPARTMENT" MEANS THE STATE DEPARTMENT OF HUMAN SERVICES CREATED IN SECTION 24-1-120.

19-5.5-103. Limitations on applicability. THIS ARTICLE 5.5 DOES NOT APPLY TO CUSTODY OF AN INDIAN CHILD, AS DEFINED IN SECTION 1903(4) OF THE FEDERAL "INDIAN CHILD WELFARE ACT OF 1978", 25 U.S.C. SEC. 1903(4), AS AMENDED, TO THE EXTENT CUSTODY IS GOVERNED BY THE FEDERAL "INDIAN CHILD WELFARE ACT OF 1978", 25 U.S.C. SEC. 1901 TO 1963, AS AMENDED.

PART 2
PROHIBITION OF UNREGULATED
CUSTODY TRANSFER

19-5.5-201. Definitions. IN THIS PART 2:

(1) "CUSTODIAN" HAS THE MEANING SET FORTH IN SECTION 19-1-103.

(2) "DIVISION" MEANS THE DIVISION OF CHILD WELFARE.

(3) "FACILITATOR" MEANS A PERSON, PARTNERSHIP, CORPORATION, ASSOCIATION, FIRM, AGENCY, OR INSTITUTION, OTHER THAN AN ADOPTION EXCHANGE, COUNTY DEPARTMENT, OR CHILD PLACEMENT AGENCY, THAT OFFERS, GIVES, CHARGES, OR RECEIVES MONEY OR OTHER CONSIDERATION OR THING OF VALUE IN CONNECTION WITH LOCATING OR IDENTIFYING, FOR PURPOSES OF ADOPTION, ANY CHILD, BIRTH PARENT, EXPECTANT NATURAL PARENT, OR PROSPECTIVE ADOPTIVE PARENT.

(4) "GUARDIAN" MEANS A PERSON OTHER THAN A PARENT WHO HAS THE LEGAL AUTHORITY AND DUTY TO CARE FOR A CHILD.

(5) "INTERMEDIARY" MEANS A PERSON WHO ASSISTS OR FACILITATES A TRANSFER OF CUSTODY OF A CHILD, WHETHER OR NOT FOR COMPENSATION.

19-5.5-202. Applicability. (1) THIS PART 2 DOES NOT APPLY TO A TRANSFER OF CUSTODY OF A CHILD BY A PARENT, GUARDIAN, OR CUSTODIAN OF THE CHILD TO:

(a) A PARENT OF THE CHILD;

(b) A STEPPARENT OF THE CHILD;

(c) AN ADULT WHO IS RELATED TO THE CHILD BY BLOOD, MARRIAGE, ADOPTION, OR OTHER RELATIONSHIP RECOGNIZED BY OTHER LAW OF THIS STATE;

(d) AN ADULT WHO, AT THE TIME OF THE TRANSFER, HAD A MEANINGFUL AND SAFE RELATIONSHIP WITH THE CHILD FOR A PERIOD OF AT LEAST SIX MONTHS PRIOR TO THE TRANSFER, AND WHOM THE PARENT, GUARDIAN, OR CUSTODIAN REASONABLY BELIEVES, AT THE TIME OF THE TRANSFER, TO BE A FIT CUSTODIAN OF THE CHILD; OR

(e) AN INDIAN CUSTODIAN, AS DEFINED IN THE FEDERAL "INDIAN CHILD WELFARE ACT OF 1978", 25 U.S.C. SEC. 1903(6), AS AMENDED, OF THE CHILD.

19-5.5-203. Prohibited custody transfer. (1) EXCEPT AS PROVIDED IN SUBSECTION (2) OF THIS SECTION, A PARENT, GUARDIAN, OR CUSTODIAN OF A CHILD OR AN INDIVIDUAL WITH WHOM A CHILD HAS BEEN PLACED FOR ADOPTION MAY NOT TRANSFER CUSTODY OF THE CHILD TO ANOTHER PERSON WITH THE INTENT, AT THE TIME OF THE TRANSFER, TO ABANDON THE RIGHTS AND RESPONSIBILITIES CONCERNING THE CHILD.

(2) A PARENT, GUARDIAN, OR CUSTODIAN OF A CHILD, OR AN INDIVIDUAL WITH WHOM A CHILD HAS BEEN PLACED FOR ADOPTION, MAY TRANSFER CUSTODY OF THE CHILD TO ANOTHER PERSON WITH THE INTENT, AT THE TIME OF THE TRANSFER, TO PERMANENTLY ABANDON THE RIGHTS AND RESPONSIBILITIES CONCERNING THE CHILD ONLY THROUGH:

(a) A LEGAL ADOPTION OR GUARDIANSHIP PROCEEDING;

(b) JUDICIAL AWARD OF CUSTODY;

(c) OTHER JUDICIAL OR TRIBAL ACTION; OR

(d) COLORADO'S SAFE HAVEN LAW AS DESCRIBED IN SECTION 19-3-304.5.

(3) A PERSON MAY NOT RECEIVE PERMANENT CUSTODY OF A CHILD, OR ACT AS AN INTERMEDIARY IF PERMITTED UNDER OTHER LAW OF THIS

STATE, IN A TRANSFER OF CUSTODY OF A CHILD IF THE PERSON KNOWS OR REASONABLY SHOULD KNOW THE TRANSFER VIOLATES SUBSECTION (1) OF THIS SECTION. THIS PROHIBITION DOES NOT APPLY IF THE PERSON, AS SOON AS PRACTICABLE AFTER THE TRANSFER, NOTIFIES THE STATE DEPARTMENT OF THE TRANSFER OR TAKES APPROPRIATE ACTION TO ESTABLISH CUSTODY UNDER SUBSECTION (2) OF THIS SECTION.

(4) VIOLATION OF THIS SECTION IS A CLASS 2 MISDEMEANOR.

(5) VIOLATION OF SUBSECTION (1) OF THIS SECTION IS NOT ESTABLISHED SOLELY BECAUSE A PARENT, GUARDIAN, OR CUSTODIAN WHO TRANSFERS CUSTODY OF A CHILD DOES NOT REGAIN CUSTODY.

19-5.5-204. Authority and responsibility of a county department of human or social services. (1) IF A COUNTY DEPARTMENT RECEIVES A REPORT THAT A PERSON HAS TRANSFERRED OR INTENDS TO TRANSFER CUSTODY OF A CHILD IN VIOLATION OF SECTION 19-5.5-203 (1), THE COUNTY DEPARTMENT MAY CONDUCT AN ASSESSMENT, AND, AS PROVIDED BY OTHER LAWS OF THIS STATE, TAKE APPROPRIATE ACTION TO PROTECT THE WELFARE OF THE CHILD.

(2) IF A COUNTY CONDUCTS AN ASSESSMENT FOR A CHILD ADOPTED OR PLACED THROUGH AN INTERCOUNTRY ADOPTION, AND DETERMINES THAT A PERSON HAS TRANSFERRED OR INTENDS TO TRANSFER CUSTODY OF A CHILD IN VIOLATION OF SECTION 19-5.5-203, THE COUNTY DEPARTMENT SHALL FORWARD THE ASSESSMENT TO THE STATE DEPARTMENT. UPON RECEIVING THE ASSESSMENT, THE STATE DEPARTMENT SHALL:

(a) PREPARE A REPORT ON THE WELFARE AND PLAN FOR PERMANENT PLACEMENT OF THE CHILD; AND

(b) PROVIDE A COPY OF THE REPORT TO THE UNITED STATES DEPARTMENT OF STATE, BUREAU OF CONSULAR AFFAIRS, OFFICE OF CHILDREN'S ISSUES.

(3) THIS ARTICLE 5.5 DOES NOT PREVENT A COUNTY DEPARTMENT FROM TAKING APPROPRIATE ACTION UNDER OTHER LAW OF THIS STATE.

19-5.5-205. Prohibited soliciting or advertising. (1) EXCEPT AS PROVIDED IN SECTION 19-5-213.5, A PERSON MAY NOT SOLICIT OR ADVERTISE

TO:

(a) IDENTIFY A PERSON TO WHOM TO MAKE A TRANSFER OF CUSTODY IN VIOLATION OF SECTION 19-5.5-203 (1);

(b) IDENTIFY A CHILD FOR A TRANSFER OF CUSTODY IN VIOLATION OF SECTION 19-5.5-203 (3); OR

(c) ACT AS AN INTERMEDIARY OR FACILITATOR, IF PERMITTED UNDER OTHER LAW OF THIS STATE, IN A TRANSFER OF CUSTODY IN VIOLATION OF SECTION 19-5.5-203 (3).

(2) A VIOLATION OF THIS SECTION IS A CLASS 6 FELONY.

(3) NOTHING IN THIS SECTION PROHIBITS THE APPLICATION OF SECTION 19-5-213.5.

19-5.5-206. Enforcement. THE STATE DEPARTMENT MAY INVESTIGATE A POSSIBLE VIOLATION OF THIS PART 2 AND TAKE LEGAL ACTION AS PROVIDED BY OTHER LAW OF THIS STATE.

PART 3 INFORMATION AND GUIDANCE

19-5.5-301. Definitions. IN THIS PART 3, "PROSPECTIVE ADOPTIVE PARENT" MEANS AN INDIVIDUAL WHO HAS BEEN APPROVED OR PERMITTED UNDER OTHER LAW OF THIS STATE TO ADOPT A CHILD.

19-5.5-302. Scope. (1) THIS PART 3 APPLIES TO PLACEMENT FOR ADOPTION OF A CHILD WHO:

(a) HAS BEEN OR IS IN FOSTER CARE OR INSTITUTIONAL CARE;

(b) PREVIOUSLY HAS BEEN ADOPTED IN A STATE;

(c) HAS BEEN OR IS BEING ADOPTED UNDER THE LAW OF A FOREIGN COUNTRY; OR

(d) HAS COME OR IS COMING TO A STATE FROM A FOREIGN COUNTRY TO BE ADOPTED.

19-5.5-303. General adoption information. (1) WITHIN A REASONABLE TIME BEFORE A CHILD PLACEMENT AGENCY PLACES A CHILD FOR ADOPTION WITH A PROSPECTIVE ADOPTIVE PARENT, THE CHILD PLACEMENT AGENCY MUST PROVIDE OR CAUSE TO BE PROVIDED TO THE PROSPECTIVE ADOPTIVE PARENT GENERAL ADOPTION INFORMATION. THE INFORMATION MUST ADDRESS:

(a) POSSIBLE PHYSICAL, MENTAL, EMOTIONAL, AND BEHAVIORAL ISSUES CONCERNING:

(I) IDENTITY, LOSS, AND TRAUMA THAT A CHILD MAY EXPERIENCE BEFORE, DURING, OR AFTER ADOPTION; AND

(II) A CHILD LEAVING FAMILIAR TIES AND SURROUNDINGS;

(b) THE EFFECT THAT THE ACCESS TO RESOURCES, INCLUDING HEALTH INSURANCE, MAY HAVE ON THE ABILITY OF AN ADOPTIVE PARENT TO MEET THE NEEDS OF A CHILD;

(c) CAUSES OF DISRUPTION OF AN ADOPTIVE PLACEMENT OR DISSOLUTION OF AN ADOPTION AND RESOURCES AVAILABLE TO HELP AVOID DISRUPTION OR DISSOLUTION; AND

(d) PROHIBITIONS UNDER SECTIONS 19-5.5-203 AND 19-5.5-205.

19-5.5-304. Information about child. (1) EXCEPT AS PROHIBITED BY OTHER LAW OF THIS STATE, WITHIN A REASONABLE TIME BEFORE A CHILD PLACEMENT AGENCY PLACES A CHILD FOR ADOPTION WITH A PROSPECTIVE ADOPTIVE PARENT, THE CHILD PLACEMENT AGENCY MUST PROVIDE OR CAUSE TO BE PROVIDED TO THE PROSPECTIVE ADOPTIVE PARENT INFORMATION SPECIFIC TO THE CHILD THAT IS KNOWN TO THE CHILD PLACEMENT AGENCY AND MATERIAL TO THE PROSPECTIVE ADOPTIVE PARENT'S INFORMED DECISION TO ADOPT THE CHILD. THE INFORMATION MUST INCLUDE:

(a) THE CHILD'S FAMILY, CULTURAL, RACIAL, RELIGIOUS, ETHNIC, LINGUISTIC, AND EDUCATIONAL BACKGROUND;

(b) THE CHILD'S PHYSICAL, MENTAL, EMOTIONAL, AND BEHAVIORAL HEALTH;

(c) THE CHILD'S MEDICAL HISTORY, INCLUDING IMMUNIZATIONS;

(d) THE MEDICAL HISTORY OF THE CHILD'S GENETIC PARENTS AND SIBLINGS;

(e) THE HISTORY OF AN ADOPTIVE OR OUT-OF-HOME PLACEMENT OF THE CHILD AND THE REASON THE ADOPTION OR PLACEMENT ENDED;

(f) THE CHILD'S UNITED STATES IMMIGRATION STATUS;

(g) MEDICAL, THERAPEUTIC, AND EDUCATIONAL RESOURCES, INCLUDING LANGUAGE-ACQUISITION TRAINING, AVAILABLE TO THE ADOPTIVE PARENT AND CHILD AFTER PLACEMENT FOR ADOPTION OR ADOPTION TO ASSIST IN RESPONDING EFFECTIVELY TO PHYSICAL, MENTAL, EMOTIONAL, OR BEHAVIORAL HEALTH ISSUES; AND

(h) AVAILABLE RECORDS RELEVANT TO THE INFORMATION IN SUBSECTIONS (1)(a) TO (1)(g) OF THIS SECTION.

(2) IF, BEFORE AN ADOPTION IS FINALIZED, ADDITIONAL INFORMATION UNDER SUBSECTION (1) OF THIS SECTION THAT IS MATERIAL TO A PROSPECTIVE ADOPTIVE PARENT'S INFORMED DECISION TO ADOPT THE CHILD BECOMES KNOWN TO OR REASONABLY OBTAINABLE BY A CHILD PLACEMENT AGENCY, THE CHILD PLACEMENT AGENCY MUST PROVIDE THE INFORMATION TO THE PROSPECTIVE ADOPTIVE PARENT.

(3) IF, AFTER AN ADOPTION IS FINALIZED, ADDITIONAL INFORMATION UNDER SUBSECTION (1) OF THIS SECTION BECOMES KNOWN TO OR REASONABLY OBTAINABLE BY A CHILD PLACEMENT AGENCY, THE CHILD PLACEMENT AGENCY MUST MAKE A REASONABLE EFFORT TO PROVIDE THE INFORMATION TO THE ADOPTIVE PARENT.

19-5.5-305. Guidance and instruction. (1) A CHILD PLACEMENT AGENCY MUST PROVIDE OR CAUSE TO BE PROVIDED TO THE PROSPECTIVE ADOPTIVE PARENT GUIDANCE AND INSTRUCTION SPECIFIC TO THE CHILD TO HELP PREPARE THE PARENT TO RESPOND EFFECTIVELY TO THE NEEDS OF THE CHILD THAT ARE KNOWN TO OR REASONABLY ASCERTAINABLE BY THE CHILD PLACEMENT AGENCY.

(2) THE GUIDANCE AND INSTRUCTION UNDER SUBSECTION (1) OF THIS

SECTION MUST ADDRESS, IF APPLICABLE:

(a) THE POTENTIAL EFFECT ON THE CHILD OF:

(I) A PREVIOUS ADOPTION OR OUT-OF-HOME PLACEMENT;

(II) MULTIPLE PREVIOUS ADOPTIONS OR OUT-OF-HOME PLACEMENTS;

(III) TRAUMA, INSECURE ATTACHMENT, FETAL ALCOHOL EXPOSURE, OR MALNUTRITION;

(IV) NEGLECT, ABUSE, DRUG EXPOSURE, OR SIMILAR ADVERSITY;

(V) SEPARATION FROM A SIBLING OR SIGNIFICANT CAREGIVER; AND

(VI) A DIFFERENCE IN ETHNICITY, RACE, OR CULTURAL IDENTITY BETWEEN THE CHILD AND THE PROSPECTIVE ADOPTIVE PARENT OR OTHER CHILD OF THE PARENT;

(b) INFORMATION AVAILABLE FROM THE FEDERAL GOVERNMENT ON THE PROCESS FOR THE CHILD TO ACQUIRE UNITED STATES CITIZENSHIP; AND

(c) ANY OTHER MATTER A CHILD PLACEMENT AGENCY CONSIDERS MATERIAL TO THE ADOPTION.

(3) THE GUIDANCE AND INSTRUCTION UNDER SUBSECTION (1) OF THIS SECTION MUST BE PROVIDED:

(a) FOR ADOPTION OF A CHILD RESIDING IN THE UNITED STATES A REASONABLE TIME BEFORE THE ADOPTION IS FINALIZED; OR

(b) FOR AN INTERCOUNTRY ADOPTION, IN ACCORDANCE WITH THE FEDERAL LAW.

19-5.5-306. Information about adoption assistance and resources. (1) ON REQUEST OF A CHILD WHO WAS PLACED FOR ADOPTION OR THE CHILD'S ADOPTIVE PARENT, THE CHILD PLACEMENT AGENCY OR THE COUNTY DEPARTMENT SHALL PROVIDE INFORMATION ABOUT HOW TO OBTAIN ADOPTION ASSISTANCE AND RESOURCES:

(a) TO ASSIST THE CHILD OR PARENT TO RESPOND EFFECTIVELY TO ADJUSTMENT, BEHAVIORAL HEALTH, AND OTHER CHALLENGES; AND

(b) TO HELP PRESERVE THE PLACEMENT OR ADOPTION.

19-5.5-307. Child placement agency compliance. (1) THE STATE DEPARTMENT SHALL INVESTIGATE AN ALLEGATION THAT A CHILD PLACEMENT AGENCY HAS FAILED TO COMPLY WITH THIS PART 3 AND COMMENCE AN ACTION FOR INJUNCTIVE OR OTHER RELIEF OR INITIATE AN ADMINISTRATIVE PROCEEDING AGAINST THE CHILD PLACEMENT AGENCY TO ENFORCE THIS PART 3.

(2) THE STATE DEPARTMENT MAY INITIATE A PROCEEDING TO DETERMINE WHETHER A CHILD PLACEMENT AGENCY HAS FAILED TO COMPLY WITH THIS PART 3. IF THE STATE DEPARTMENT FINDS THAT THE CHILD PLACEMENT AGENCY HAS FAILED TO COMPLY, THE STATE DEPARTMENT MAY SUSPEND OR REVOKE A CHILD PLACEMENT AGENCY'S LICENSE OR TAKE OTHER ACTION PERMITTED BY LAW OF THIS STATE.

19-5.5-308. Rulemaking authority. THE STATE BOARD OF HUMAN SERVICES MAY ADOPT RULES TO IMPLEMENT SECTIONS 19-5.5-303 TO 19-5.5-306.

PART 4 MISCELLANEOUS PROVISIONS

19-5.5-401. Uniformity of application and construction. IN APPLYING AND CONSTRUING THIS UNIFORM ACT, A COURT MUST CONSIDER THE PROMOTION OF UNIFORMITY OF THE LAW AMONG JURISDICTIONS THAT ENACT IT.

19-5.5-402. Relation to electronic signatures in global and national commerce act. THIS ARTICLE 5.5 MODIFIES, LIMITS, OR SUPERSEDES THE FEDERAL "ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT", 15 U.S.C. SEC. 7001 ET SEQ., AS AMENDED, BUT DOES NOT MODIFY, LIMIT, OR SUPERSEDE 15 U.S.C. SEC. 7001(c), OR AUTHORIZE ELECTRONIC DELIVERY OF ANY OF THE NOTICES DESCRIBED IN 15 U.S.C. SEC. 7003(b).

19-5.5-403. Transitional provisions. (1) PART 2 OF THIS ARTICLE

5.5 APPLIES TO:

(a) A TRANSFER OF CUSTODY ON OR AFTER THE EFFECTIVE DATE OF THIS ARTICLE 5.5; AND

(b) SOLICITING OR ADVERTISING ON OR AFTER THE EFFECTIVE DATE OF THIS ARTICLE 5.5.

(2) PART 3 OF THIS ARTICLE 5.5 APPLIES TO PLACEMENT OF A CHILD FOR ADOPTION MORE THAN SIXTY DAYS AFTER THE EFFECTIVE DATE OF THIS ARTICLE 5.5.

SECTION 2. Safety clause. The general assembly hereby finds,

determines, and declares that this act is necessary for the immediate preservation of the public peace, health, or safety.

Julie McCluskie
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Steve Fenberg
PRESIDENT OF
THE SENATE

Robin Jones
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

Cindi L. Markwell
SECRETARY OF
THE SENATE

APPROVED _____
(Date and Time)

Jared S. Polis
GOVERNOR OF THE STATE OF COLORADO