

BILL ANALYSIS

C.S.H.B. 834
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Juvenile Justice & Family Issues
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties have observed that abuse of an adopted child can be prevented when decisions regarding the transfer of permanent physical custody of the child are taken into careful consideration by appropriate officials or the court system. C.S.H.B. 834 seeks to regulate the transfer of the permanent physical custody of an adopted child and to create a criminal offense for unregulated transfers of the permanent physical custody of an adopted child.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill expressly does one or more of the following: creates a criminal offense, increases the punishment for an existing criminal offense or category of offenses, or changes the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 834 amends the Family Code to prohibit a parent, managing conservator, or guardian of an adopted child from transferring permanent physical custody of the child to any person who is not a relative or stepparent of the child or an adult who has a significant and long-standing relationship with the child unless the parent, managing conservator, or guardian files a petition with a court of competent jurisdiction requesting the transfer of custody and the court approves the petition. The bill requires a licensed child-placing agency to provide prospective adoptive parents with information regarding the community services and other resources available to support a parent who adopts a child and the options available to the adoptive parent if the parent is unable to care for the adopted child.

C.S.H.B. 834 amends the Penal Code to create the third degree felony offense of unregulated transfer of an adopted child for a person who knowingly conducts an unregulated custody transfer of an adopted child or facilitates or participates in the unregulated custody transfer of an adopted child, including by transferring, recruiting, harboring, transporting, providing, soliciting, or obtaining an adopted child for that purpose. The bill defines "unregulated custody transfer" as the transfer of the permanent physical custody of an adopted child by the parent, managing conservator, or guardian of the child without receiving the required court approval of the transfer. The bill enhances the penalty to a second degree felony if the actor commits the offense with intent to commit one of the following offenses: trafficking of persons, prostitution, compelling prostitution, sexual performance by a child, employment harmful to children, or possession or promotion of child pornography. The bill excludes the following placements and voluntary deliveries from the application of the offense: the placement of an adopted child with a licensed child-placing agency, the Department of Family and Protective Services (DFPS), or an

adult relative, stepparent, or other adult with a significant and long-standing relationship to the child; the placement of an adopted child by a licensed child-placing agency or DFPS; the temporary placement of an adopted child by the child's parent, managing conservator, or guardian for a designated short-term period with a specified intent and period for return of the child due to temporary circumstances; the placement of an adopted child in another state in accordance with the requirements of the Interstate Compact on the Placement of Children; and the voluntary delivery of an adopted child to a designated emergency infant care provider as provided by law.

C.S.H.B. 834 expands the conduct that constitutes unlawful advertisement for the placement of a child to include advertising in the public media that the actor will place, provide, or obtain a child for any form of permanent physical custody of the child.

EFFECTIVE DATE

September 1, 2017.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 834 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Subchapter A, Chapter 162, Family Code, is amended by adding Section 162.026 to read as follows:

Sec. 162.026. UNAUTHORIZED REHOMING OF ADOPTED CHILD; OFFENSE.

No equivalent provision.

(a) In this section, "rehome" means the placement of an adopted child in the permanent physical custody of a person who is not the child's relative without prior court approval or the termination of the parent-child relationship. (See SECTION 3 at Sec. 25.09(d), Penal Code, below.)

(b) Except as otherwise provided by this section, a person commits an offense if the person knowingly:

- (1) rehomes an adopted child; or
- (2) facilitates or participates in the rehoming of an adopted child, including by transferring, recruiting, harboring, transporting, providing, soliciting, or

HOUSE COMMITTEE SUBSTITUTE

SECTION 3. Chapter 25, Penal Code, is amended by adding Section 25.081 to read as follows:

Sec. 25.081. UNREGULATED CUSTODY TRANSFER OF ADOPTED CHILD. (a) In this section:

(1) "Adopted child" means a person younger than 18 years of age adopted through a governmental entity or a private child placement agency, including a person who is in foster care or from a foreign country at the time of the adoption.

(2) "Unregulated custody transfer" means the transfer of the permanent physical custody of an adopted child by the parent, managing conservator, or guardian of the child without receiving approval of the transfer by a court as required by Section 162.026, Family Code.

(b) Except as otherwise provided by this section, a person commits an offense if the person knowingly:

- (1) conducts an unregulated custody transfer of an adopted child; or
- (2) facilitates or participates in the unregulated custody transfer of an adopted child, including by transferring, recruiting,

obtaining an adopted child for that purpose.

(c) An offense under this section is a felony of the third degree, except that the offense is a felony of the second degree if the actor commits the offense with intent to commit an offense under Section 20A.02, 43.02, 43.05, or 43.25, Penal Code.

(d) This section does not apply to:

(1) the placement of an adopted child with a stepparent, a licensed child-placing agency, or the Department of Family and Protective Services;

(2) the placement of an adopted child by a licensed child-placing agency or the Department of Family and Protective Services;

(3) the temporary placement of an adopted child by the child's parent, managing conservator, or guardian for a designated short-term period with a specified intent and period for return of the child due to temporary circumstances, including:

(A) a vacation;

(B) a school-sponsored function or activity;
or

(C) the incarceration, military service, medical treatment, or incapacity of the parent, managing conservator, or guardian;

(4) the placement of an adopted child in another state in accordance with the requirements of Subchapter B; or

(5) the voluntary delivery of an adopted child under Subchapter D, Chapter 262.

(e) The Department of Family and Protective Services shall collaborate with local law enforcement to monitor and gather information on investigations and prosecutions under this section.

No equivalent provision.

harboring, transporting, providing, soliciting, or obtaining an adopted child for that purpose.

(c) An offense under this section is a felony of the third degree, except that the offense is a felony of the second degree if the actor commits the offense with intent to commit an offense under Section 20A.02, 43.02, 43.05, 43.25, 43.251, or 43.26.

(d) This section does not apply to:

(1) the placement of an adopted child with a licensed child-placing agency, the Department of Family and Protective Services, or an adult relative, stepparent, or other adult with a significant and long-standing relationship to the child;

(2) the placement of an adopted child by a licensed child-placing agency or the Department of Family and Protective Services;

(3) the temporary placement of an adopted child by the child's parent, managing conservator, or guardian for a designated short-term period with a specified intent and period for return of the child due to temporary circumstances, including:

(A) a vacation;

(B) a school-sponsored function or activity;
or

(C) the incarceration, military service, medical treatment, or incapacity of the parent, managing conservator, or guardian;

(4) the placement of an adopted child in another state in accordance with the requirements of Subchapter B, Chapter 162, Family Code; or

(5) the voluntary delivery of an adopted child under Subchapter D, Chapter 262, Family Code.

No equivalent provision.

SECTION 1. Subchapter A, Chapter 162, Family Code, is amended by adding Section 162.026 to read as follows:

Sec. 162.026. REGULATED CUSTODY TRANSFER OF ADOPTED CHILD. A parent, managing conservator, or guardian of an adopted child may not transfer permanent physical custody of the child to any person who is not a relative or

No equivalent provision.

SECTION 2. Section 25.09(a), Penal Code, is amended to read as follows:

(a) A person commits an offense if the person advertises in the public media that the person will:

- (1) place a child for adoption;
- (2) ~~[or will]~~ provide or obtain a child for adoption; or
- (3) rehome an adopted child.

SECTION 3. Section 25.09(d), Penal Code, is amended by adding Subdivision (3) to read as follows:

(3) "Rehome" has the meaning assigned by Section 162.026, Family Code.

SECTION 4. The change in law made by this Act to Section 25.09, Penal Code, applies only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect on the date the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense was committed before that date.

SECTION 5. This Act takes effect

stepparent of the child or an adult who has a significant and long-standing relationship with the child unless the parent, managing conservator, or guardian:

(1) files a petition with a court of competent jurisdiction requesting the transfer of custody; and

(2) the court approves the petition.

SECTION 2. Subchapter G, Chapter 162, Family Code, is amended by adding Section 162.603 to read as follows:

Sec. 162.603. POST-ADOPTION SUPPORT INFORMATION PROVIDED BY LICENSED CHILD-PLACING AGENCIES. A licensed child-placing agency shall provide prospective adoptive parents with information regarding:

(1) the community services and other resources available to support a parent who adopts a child; and

(2) the options available to the adoptive parent if the parent is unable to care for the adopted child.

SECTION 4. Section 25.09(a), Penal Code, is amended to read as follows:

(a) A person commits an offense if the person advertises in the public media that the person will place, ~~[a child for adoption or will]~~ provide, or obtain a child for adoption or any other form of permanent physical custody of the child.

No equivalent provision. *(But see SECTION 3 at Sec. 25.081(a)(2), Penal Code, above.)*

SECTION 5. Same as introduced version.

SECTION 6. Same as introduced version.

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