

BILL ANALYSIS

H.B. 3380
By: Cook
Juvenile Justice & Family Issues
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Stakeholders have requested that the State of Texas require a licensed agency to place a child with adoptive parents unless the placement is with someone who has an existing close relationship with the child or is the child's parent. H.B. 3380 would ban unregulated actors from advertising children for adoption and ensure that agencies placing children with adoptive parents are regulated and licensed.

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

H.B. 3380 amends the Family Code to require the Uniform Unregulated Child Custody Transfer Act to be applied and construed to promote the uniformity of the law among the states that enact the act.

H.B. 3380 establishes that the bill does not apply to the following:

- custody of an Indian child, as defined in the federal Indian Child Welfare Act of 1978, to the extent custody is governed by the Indian Child Welfare Act; or
- the transfer of custody of a child by the child's parent or conservator to the following:
 - a parent of the child;
 - a stepparent of the child;
 - an adult who is related to the child by consanguinity or affinity;
 - an adult who, at the time of the transfer, had a close relationship with the child or the parent or conservator of the child for a substantial period, and whom the parent or conservator reasonably believes, at the time of the transfer, to be a fit custodian of the child;
 - an Indian custodian of the child, as defined by the Indian Child Welfare Act of 1978; or
 - a member of the child's customary family unit recognized by the child's indigenous group under other state law.

H.B. 3380 creates the Class B misdemeanor offense of prohibited custody transfer for the following persons:

- a parent or conservator of a child or an individual with whom a child has been placed for adoption who transfers 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 without using specified legal means to do so; or
- a person who receives custody or acts as an intermediary in a transfer of custody, if the person knows or reasonably should know the transfer is a prohibited transfer.

The prohibition does not apply if the person who receives custody or acts as an intermediary, as soon as practicable after the transfer, notifies the Department of Family and Protective Services (DFPS) of the transfer or takes appropriate action to establish custody legally. The bill enhances the penalty for the offense to a third degree felony if the child who is the subject of the offense has been previously adopted. A violation of the bill's provisions is not established solely because a parent or conservator that transfers custody of a child does not regain custody.

H.B. 3380 establishes that a parent or conservator 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 abandon the rights and responsibilities concerning the child only through the following means:

- adoption or conservatorship;
- judicial award of custody;
- placement by or through a child-placing agency;
- other judicial or tribal action; or
- voluntary delivery of the child to a designated emergency infant care provider.

H.B. 3380 authorizes DFPS if it has a reasonable basis to believe that a person has transferred or will transfer custody of a child in a manner prohibited under the bill's provisions to conduct a home visit as provided by other state law and to take appropriate action to protect the welfare of the child. If DFPS conducts a home visit for a child adopted or placed through an intercountry adoption, DFPS must prepare a report on the welfare and plan for permanent placement of the child and provide a copy to the U.S. Department of State. The bill's provisions do not prevent DFPS from taking appropriate action under another state law and DFPS may investigate a possible violation of the bill's provisions and take legal action as provided by state law.

H.B. 3380 creates a Class A misdemeanor for a person who solicits or advertises to do any of the following in violation of the bill's provisions:

- identify a person to which to make a transfer of custody;
- identify a child for a transfer of custody; or
- function as an intermediary in a transfer of custody.

The bill enhances the penalty for a subsequent conviction of the offense to a third degree felony.

H.B. 3380 requires a court in applying and construing this uniform act to consider the promotion of uniformity of the law among jurisdictions that enact it.

H.B. 3380 modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act but does not modify, limit, or supersede provisions of that act relating to consumer disclosures or authorize electronic delivery of certain notices excepted from certain provisions of that act.

Among other terms, H.B. 3380 defines the following:

- "person" as an individual, estate, business, or nonprofit entity, public corporation, government, or governmental subdivision, agency, or instrumentality, or other legal entity;
- "conservator" as a person recognized as a conservator under other state law; and
- "intermediary" as a person that assists or facilitates a transfer of custody of a child, whether or not for compensation.

H.B. 3380 applies only to a transfer of custody or an act of solicitation or advertising that occurs on or after the bill's effective date.

EFFECTIVE DATE

September 1, 2023.