

By: Cook

H.B. No. 3380

A BILL TO BE ENTITLED

AN ACT

relating to the Uniform Unregulated Child Custody Transfer Act;
creating criminal offenses.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle B, Title 5, Family Code, is amended by
adding Chapter 163 to read as follows:

CHAPTER 163. UNIFORM UNREGULATED CHILD CUSTODY TRANSFER ACT

SUBCHAPTER A. APPLICATION AND CONSTRUCTION

Sec. 163.001. APPLICATION AND CONSTRUCTION. This chapter shall be applied and construed to promote the uniformity of the law among the states that enact the Uniform Unregulated Child Custody Transfer Act.

Sec. 163.002. CONFLICTS BETWEEN PROVISIONS. If a provision of this chapter conflicts with another provision of this title or another state statute or rule and the conflict cannot be reconciled, this chapter prevails.

SUBCHAPTER B. GENERAL PROVISIONS

Sec. 163.101. SHORT TITLE. This chapter may be cited as the Uniform Unregulated Child Custody Transfer Act.

Sec. 163.102. DEFINITIONS. In this chapter:

(1) "Child" means an individual under 18 years of age who has not been granted by this state or another state a court order removing the disabilities of minority of the individual for general purposes.

1 (2) "Child-placing agency" means a person with
2 authority under other law of this state to identify or place a child
3 for adoption. The term does not include a parent of the child.

4 (3) "Custody" means the exercise of physical care and
5 supervision of a child.

6 (4) "Department" means the Department of Family and
7 Protective Services.

8 (5) "Intercountry adoption" means an adoption or
9 placement for adoption of a child who resides in a foreign country
10 at the time of adoption or placement. The term includes an adoption
11 finalized in the child's country of residence or in a state.

12 (6) "Person" means an individual, estate, business, or
13 nonprofit entity, public corporation, government, or governmental
14 subdivision, agency, or instrumentality, or other legal entity.

15 (7) "Record" means information:
16 (A) inscribed on a tangible medium; or
17 (B) stored in an electronic or other medium and
18 retrievable in perceivable form.

19 (8) "State" means a state of the United States, the
20 District of Columbia, Puerto Rico, the United States Virgin
21 Islands, or any other territory or possession subject to the
22 jurisdiction of the United States. The term includes a federally
23 recognized Indian tribe.

24 Sec. 163.103. LIMITATION ON APPLICABILITY. This chapter
25 does not apply to custody of an Indian child, as defined in the
26 Indian Child Welfare Act of 1978 (25 U.S.C. Section 1901 et seq.),
27 to the extent custody is governed by the Indian Child Welfare Act.

1 SUBCHAPTER C. PROHIBITION OF UNREGULATED CUSTODY TRANSFER

2 Sec. 163.201. DEFINITIONS. In this subchapter:

3 (1) "Conservator" means a person recognized as a
4 conservator under other law of this state.

5 (2) "Intermediary" means a person that assists or
6 facilitates a transfer of custody of a child, whether or not for
7 compensation.

8 Sec. 163.202. APPLICABILITY. This subchapter does not
9 apply to a transfer of custody of a child by a parent or conservator
10 of the child to:

11 (1) a parent of the child;

12 (2) a stepparent of the child;

13 (3) an adult who is related to the child by
14 consanguinity or affinity;

15 (4) an adult who, at the time of the transfer, had a
16 close relationship with the child or the parent or conservator of
17 the child for a substantial period, and whom the parent or
18 conservator reasonably believes, at the time of the transfer, to be
19 a fit custodian of the child;

20 (5) an Indian custodian of the child, as defined by the
21 Indian Child Welfare Act of 1978 (25 U.S.C. Section 1901 et seq.);
22 or

23 (6) a member of the child's customary family unit
24 recognized by the child's indigenous group under other law of this
25 state.

26 Sec. 163.203. PROHIBITED CUSTODY TRANSFER. (a) Except as
27 provided in Subsection (b), a parent or conservator of a child or an

1 individual with whom a child has been placed for adoption may not
2 transfer custody of the child to another person with the intent, at
3 the time of the transfer, to abandon the rights and
4 responsibilities concerning the child.

5 (b) A parent or conservator of a child or an individual with
6 whom a child has been placed for adoption may transfer custody of
7 the child to another person with the intent, at the time of the
8 transfer, to abandon the rights and responsibilities concerning the
9 child only through:

10 (1) adoption or conservatorship;
11 (2) judicial award of custody;
12 (3) placement by or through a child-placing agency;
13 (4) other judicial or tribal action; or
14 (5) voluntary delivery of the child to a designated
15 emergency infant care provider under Section [262.302](#).

16 (c) A person may not receive custody of a child, or act as an
17 intermediary in a transfer of custody of a child, if the person
18 knows or reasonably should know the transfer violates Subsection
19 (a). This prohibition does not apply if the person, as soon as
20 practicable after the transfer, notifies the department of the
21 transfer or takes appropriate action to establish custody under
22 Subsection (b).

23 (d) A person commits an offense if a person violates this
24 section. An offense under this subsection is a Class B misdemeanor,
25 except that the offense is a felony of the third degree if the child
26 who is the subject of the offense has been previously adopted.

27 (e) A violation of Subsection (a) is not established solely

1 because a parent or conservator that transfers custody of a child
2 does not regain custody.

3 Sec. 163.204. AUTHORITY AND RESPONSIBILITY OF DEPARTMENT.

4 (a) If the department has a reasonable basis to believe that a
5 person has transferred or will transfer custody of a child in
6 violation of Section 163.203(a), the department may conduct a home
7 visit as provided by other law of this state and take appropriate
8 action to protect the welfare of the child.

9 (b) If the department conducts a home visit for a child
10 adopted or placed through an intercountry adoption, the department
11 shall:

12 (1) prepare a report on the welfare and plan for
13 permanent placement of the child; and

14 (2) provide a copy to the United States Department of
15 State.

16 (c) This chapter does not prevent the department from taking
17 appropriate action under another law of this state.

18 Sec. 163.205. PROHIBITED SOLICITING OR ADVERTISING. (a) A
19 person may not solicit or advertise to:

20 (1) identify a person to which to make a transfer of
21 custody in violation of Section 163.203(a);

22 (2) identify a child for a transfer of custody in
23 violation of Section 163.203(c); or

24 (3) act as an intermediary in a transfer of custody in
25 violation of Section 163.203(c).

26 (b) A person commits an offense if the person violates this
27 section. An offense under this subsection is a Class A misdemeanor,

1 except that the offense is a felony of the third degree if the actor
2 has been previously convicted of an offense under this section.

3 Sec. 163.206. ENFORCEMENT. The department may investigate
4 a possible violation of this subchapter and take legal action as
5 provided by law of this state.

6 SUBCHAPTER D. MISCELLANEOUS PROVISIONS

7 Sec. 163.301. UNIFORMITY OF APPLICATION AND CONSTRUCTION.
8 In applying and construing this uniform act, a court shall consider
9 the promotion of uniformity of the law among jurisdictions that
10 enact it.

11 Sec. 163.302. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL
12 AND NATIONAL COMMERCE ACT. This chapter modifies, limits, and
13 supersedes the Electronic Signatures in Global and National
14 Commerce Act (15 U.S.C. Section 7001 et seq.), but does not modify,
15 limit, or supersede Section 101(c) of that Act (15 U.S.C. Section
16 7001(c)), or authorize electronic delivery of any of the notices
17 described in Section 103(b) of that Act (15 U.S.C. Section
18 7003(b)).

19 SECTION 2. Chapter 163, Family Code, as added by this Act,
20 applies only to a transfer of custody or an act of solicitation or
21 advertising that occurs on or after the effective date of this Act.
22 A transfer of custody or an act of solicitation or advertising that
23 occurs before the effective date of this Act is governed by the law
24 in effect on the date the transfer of custody or act of solicitation
25 or advertising occurred, and the former law is continued in effect
26 for that purpose.

27 SECTION 3. This Act takes effect September 1, 2023.