
SUBSTITUTE SENATE BILL 5548

State of Washington

67th Legislature

2022 Regular Session

By Senate Law & Justice (originally sponsored by Senators Pedersen, Wagoner, Dhingra, and Mullet; by request of Uniform Law Commission)

READ FIRST TIME 01/21/22.

1 AN ACT Relating to the uniform unregulated child custody transfer
2 act; amending RCW 26.33.400; adding a new chapter to Title 26 RCW;
3 recodifying RCW 26.33.400; repealing RCW 26.33.370; and prescribing
4 penalties.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 **PART I**
7 **GENERAL PROVISIONS**

8 NEW SECTION. **Sec. 101.** SHORT TITLE. This act may be known and
9 cited as the uniform unregulated child custody transfer act.

10 NEW SECTION. **Sec. 102.** DEFINITIONS. The definitions in this
11 section apply throughout this chapter unless the context clearly
12 requires otherwise.

13 (1) "Child" means an unemancipated individual under 18 years of
14 age.

15 (2) "Child-placing agency" means a person with authority under
16 chapter 74.15 RCW to identify or place a child for adoption. "Child-
17 placing agency" does not include a parent of the child.

18 (3) "Custody" has the same meaning as "physical custody" as
19 defined in RCW 26.27.021.

1 (4) "Department" means the department of children, youth, and
2 families.

3 (5) "Guardian" means a person recognized as a legal guardian
4 under RCW 26.33.020 or under chapter 11.130 RCW.

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

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

11 (8) "Parent" has the same meaning as defined in RCW 26.26A.010.

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

15 (10) "Record" means information:

16 (a) Inscribed on a tangible medium; or

17 (b) Stored in an electronic or other medium and retrievable in
18 perceivable form.

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

23 NEW SECTION. **Sec. 103.** LIMITATION ON APPLICABILITY. This act
24 does not apply to custody of an Indian child, as defined in the
25 Indian child welfare act of 1978, 25 U.S.C. Sec. 1903, as amended, to
26 the extent custody is governed by the Indian child welfare act of
27 1978, 25 U.S.C. Secs. 1901 through 1963, as amended.

28 **PART II**

29 **PROHIBITION OF UNREGULATED CUSTODY TRANSFER**

30 NEW SECTION. **Sec. 201.** APPLICABILITY. This section, sections
31 202 and 203 of this act, and RCW 26.33.400 (as recodified by this
32 act) do not apply to a transfer of custody of a child by a parent or
33 guardian of the child to:

34 (1) A parent of the child;

35 (2) A stepparent of the child;

36 (3) An adult who is related to the child by blood or by law;

1 (4) An adult who, at the time of the transfer, had a close
2 relationship with the child or the parent or guardian of the child
3 for a substantial period, and whom the parent or guardian reasonably
4 believes, at the time of the transfer, to be a fit custodian of the
5 child;

6 (5) An Indian custodian, as defined in the Indian child welfare
7 act of 1978, 25 U.S.C. Sec. 1903, as amended, of the child;

8 (6) A member of the child's customary family unit recognized by
9 the child's Indian tribe under chapter 13.38 RCW; or

10 (7) A delegation by a parent pursuant to RCW 11.130.145.

11 NEW SECTION. **Sec. 202.** PROHIBITED CUSTODY TRANSFER. (1) Except
12 as provided in subsection (2) of this section, a parent or guardian
13 of a child or an individual with whom a child has been placed for
14 adoption may not transfer custody of the child to another person with
15 the intent, at the time of the transfer, to abandon the rights and
16 responsibilities concerning the child.

17 (2) A parent or guardian of a child or an individual with whom a
18 child has been placed for adoption may transfer custody of the child
19 to another person with the intent, at the time of the transfer, to
20 abandon the rights and responsibilities concerning the child only
21 through:

22 (a) A judicial award of custody under chapter 11.130 or 13.34 RCW
23 or this title;

24 (b) Placement by or through a child-placing agency;

25 (c) A judicial award of custody or other action in a tribal
26 court; or

27 (d) Transfer of a newborn to a qualified person under RCW
28 13.34.360.

29 (3) A person may not receive custody of a child, or act as an
30 intermediary in a transfer of custody of a child, if the person knows
31 or reasonably should know the transfer violates subsection (1) of
32 this section. This prohibition does not apply if the person, as soon
33 as practicable after the transfer, notifies the department or law
34 enforcement of the transfer or takes appropriate action to establish
35 custody under subsection (2) of this section.

36 (4) Violation of this section is a gross misdemeanor.

37 (5) Violation of subsection (1) of this section is not
38 established solely because a parent or guardian that transfers

1 custody of a child or makes a delegation pursuant to RCW 11.130.145
2 does not regain custody.

3 (6) For purposes of this section, "abandon" has the same meaning
4 as "abandoned" in RCW 13.34.030.

5 NEW SECTION. **Sec. 203.** AUTHORITY AND RESPONSIBILITY OF THE
6 DEPARTMENT. (1) If the department has a reasonable basis to believe
7 that a person has transferred or will transfer custody of a child in
8 violation of section 202(1) of this act, the department must respond
9 in accordance with chapter 74.13 RCW.

10 (2) If the department provides a child protective services
11 response in accordance with chapter 26.44 RCW for a child adopted or
12 placed through an intercountry adoption, the department shall:

13 (a) Prepare a report on the welfare and plan for permanent
14 placement of the child; and

15 (b) Provide a copy of the report to the United States department
16 of state. For the purpose of preventing child abuse or neglect, the
17 department of children, youth, and families may disclose to the
18 United States department of state only those confidential child
19 welfare records that may assist the United States department of state
20 in informing the child's country of origin that the custody of the
21 child has been transferred in an unregulated custody transfer and
22 describing the child's welfare and plan for permanent placement of
23 the child. The records retain their confidentiality subject to RCW
24 13.50.100 and federal law.

25 (3) This act does not prevent the department from taking any
26 appropriate action to protect the welfare of the child.

27 **Sec. 204.** RCW 26.33.400 and 2006 c 248 s 4 are each amended to
28 read as follows:

29 (1) Unless the context clearly requires otherwise,
30 "advertisement" means communication by newspaper, radio, television,
31 handbills, placards or other print, broadcast, or the electronic
32 medium. This definition applies throughout this section.

33 (2) No person or entity shall cause to be published for
34 circulation, or broadcast on a radio or television station, within
35 the geographic borders of this state, an advertisement of a child or
36 children offered or wanted for adoption or other custody transfer, or
37 shall hold himself or herself out through such advertisement as
38 having the ability to place, locate, dispose, or receive a child or

1 children for adoption or other custody transfer unless such person or
2 entity is:

3 (a) A duly authorized agent, contractee, or employee of the
4 department or a children's agency or institution licensed by the
5 department to care for and place children;

6 (b) A person who has a completed preplacement report as set forth
7 in RCW 26.33.190 (1) and (2) or chapter 26.34 RCW with a favorable
8 recommendation as to the fitness of the person to be an adoptive
9 parent, or such person's duly authorized uncompensated agent, or such
10 person's attorney who is licensed to practice in the state.
11 Verification of compliance with the requirements of this section
12 shall consist of a written declaration by the person or entity who
13 prepared the preplacement report.

14 Nothing in this section prohibits an attorney licensed to
15 practice in Washington state from advertising his or her availability
16 to practice or provide services related to the adoption or other
17 custody transfer of children.

18 (3) (a) A violation of subsection (2) of this section is a matter
19 affecting the public interest and constitutes an unfair or deceptive
20 act or practice in trade or commerce for the purpose of applying
21 chapter 19.86 RCW.

22 (b) The attorney general may bring an action in the name of the
23 state against any person violating the provisions of this section in
24 accordance with the provisions of RCW 19.86.080.

25 (c) Nothing in this section applies to any radio or television
26 station or any publisher, printer, or distributor of any newspaper,
27 magazine, billboard, or other advertising medium which accepts
28 advertising in good faith without knowledge of its violation of any
29 provision of this section after an attempt to verify the advertising
30 is in compliance with this section.

31 **PART III**

32 **MISCELLANEOUS PROVISIONS**

33 NEW SECTION. **Sec. 301.** UNIFORMITY OF APPLICATION AND
34 CONSTRUCTION. In applying and construing this uniform act, a court
35 shall consider the promotion of uniformity of the law among
36 jurisdictions that enact it.

1 NEW SECTION. **Sec. 302.** RELATION TO ELECTRONIC SIGNATURES IN
2 GLOBAL AND NATIONAL COMMERCE ACT. This act modifies, limits, or
3 supersedes the electronic signatures in global and national commerce
4 act, 15 U.S.C. Sec. 7001 et seq., as amended, but does not modify,
5 limit, or supersede 15 U.S.C. Sec. 7001(c), or authorize electronic
6 delivery of any of the notices described in 15 U.S.C. Sec. 7003(b).

7 NEW SECTION. **Sec. 303.** TRANSITIONAL PROVISIONS. Sections 201
8 through 203 of this act and RCW 26.33.400 (as recodified by this act)
9 apply to:

- 10 (1) A transfer of custody on or after the effective date of this
11 section; and
12 (2) Soliciting or advertising on or after the effective date of
13 this section.

14 NEW SECTION. **Sec. 304.** SEVERABILITY CLAUSE. If any provision of
15 this act or its application to any person or circumstance is held
16 invalid, the remainder of the act or the application of the provision
17 to other persons or circumstances is not affected.

18 NEW SECTION. **Sec. 305.** CODIFICATION DIRECTIVE. Sections 101
19 through 303 of this act constitute a new chapter in Title 26 RCW.

20 NEW SECTION. **Sec. 306.** RECODIFICATION. RCW 26.33.400 is
21 recodified as a section in the new chapter created in section 305 of
22 this act.

23 NEW SECTION. **Sec. 307.** REPEALER. RCW 26.33.370 (Permanent care
24 and custody of a child—Assumption, relinquishment, or transfer except
25 by court order or statute, when prohibited—Penalty) and 1984 c 155 s
26 36 are each repealed.

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