Ohio Legislative Service Commission

Bill Analysis

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Am. H.B. 212

129th General Assembly
(As Passed by the House)

Reps. Grossman, Murray, Young, Stinziano, Blair, Stebelton, Hayes, Bubp, Letson, Szollosi, Mecklenborg, Huffman, Slaby, McKenney, Baker, Barnes, Blessing, Boose, Brenner, Carey, Carney, Combs, DeGeeter, Fedor, Fende, Garland, Goyal, Hackett, C. Hagan, Hill, Hollington, Luckie, Martin, Milkovich, Newbold, O'Brien, Phillips, Pillich, Ruhl, Yuko, Batchelder

BILL SUMMARY

- Extends to a legal custodian the exemption from certain requirements for adoption placement.

CONTENT AND OPERATION

Exemption from adoption placement requirements

Current law provides that certain adoption placement requirements described below do not apply to an adoption by a stepparent, a grandparent, or a guardian. The bill extends this exemption to a legal custodian (see "**Definitions**," below).[1]

Adoption placement requirements

The following are the requirements under current law, not changed by the bill, regarding the placement of a child for adoption that under the bill do not apply to an adoption by a legal custodian:[2]

--Any agreement or understanding to transfer or surrender the legal rights, powers, or duties of the legal parent or parents and place a child with a person seeking to adopt the child must be construed to contain a promise by the person seeking to

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[1] R.C. 5103.16(E)(1).

[2] R.C. 5103.16(C) and (D).

adopt the child to pay specified expenses under the Adoption Law and, if the person seeking to adopt the child refuses to accept placement of the child, to pay the temporary costs of routine maintenance and medical care for the child for a specified period of time.

--Placement of a child for adoption is prohibited unless it is made by a public children services agency, an institution or association certified by the Department of Job and Family Services to place children for adoption, or custodians in another state or foreign country, or unless all of the following criteria are met: (1) prior to the placement and receiving of the child, the child's parent or parents personally have applied to, and appeared before, the appropriate probate court for approval of the proposed placement and have filed with the court a signed, written statement showing that they are aware of their right to contest the adoption decree subject to the limitations under the Adoption Law, (2) the court ordered an independent home study of the proposed placement to be conducted under the Adoption Law, and after completion of the study, the court determined that the proposed placement is in the child's best interest, and (3) the court has approved the proposed placement.

--In determining whether a custodian has authority to place children for adoption under a foreign country's laws, the probate court must determine whether the child has been released for adoption pursuant to the laws of the country in which the child resides, and if the release is in a form that satisfies federal law's immigration requirements.

--If the parent or parents of the child are deceased or have abandoned the child, the application for approval of the proposed adoptive placement may be brought by the relative seeking to adopt the child, or by the department, board, or organization having legal custody of the child, in the appropriate probate court, with notice of hearing.

--The consent to placement, surrender, or adoption executed by a minor parent before a judge or an authorized deputy or referee of the probate court is as valid as though executed by an adult. A consent given before an employee of a licensed children services agency is equally effective if the consent also is accompanied by an affidavit executed by the witnessing employee that the legal rights of the parents have been fully explained to the parents, prior to the execution of any consent, and that the action was done after the birth of the child.

--If the court approves a placement, the prospective adoptive parent with whom the child is placed has care, custody, and control of the child pending further order of the court.

Legal custody

Under current law, not affected by the bill, an order of legal custody gives the custodian the following rights and duties:[3]

- The right to have physical care and control of the child;
- The right to determine where and with whom the child lives;
- The right and duty to protect, train, and discipline the child; and
- The right and duty to provide the child with food, shelter, education, and medical care.

These rights and duties are subject to any residual parental rights, privileges, and responsibilities that remain with the parent after the transfer of custody, including the privilege of reasonable visitation, consent to adoption, the privilege to determine the child's religious affiliation, and the responsibility for support.[4]

An award of legal custody is intended to be permanent and may be modified only in limited circumstances. A court may not modify or terminate an order of legal custody unless it finds, based on facts that have arisen since the order was issued or that were unknown to the court at the time, that a change has occurred in the circumstances of the child or the person with legal custody, and that modification or termination is necessary to serve the child's best interest.[5]

Definitions

For purposes of the bill's provision exempting a legal custodian from certain adoption placement requirements, the bill defines "legal custodian" as a person who has been granted the legal custody of a child by a court of competent jurisdiction. It defines "legal custody" by reference to existing law's definition of the term as described above in "**Legal custody**" and provides that it has the same meaning as in any other substantially similar statute regarding legal custody.[6]

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[3] R.C. 2151.011(B)(19), not in the bill.

[4] R.C. 2151.011(B)(19) and (46), not in the bill.

[5] R.C. 2151.42, not in the bill.

[6] R.C. 5103.16(E)(2) and R.C. 2151.011, not in the bill.

HISTORY

ACTION	DATE
Introduced	04-26-11
Reported, H. Judiciary & Ethics	06-22-11
Passed House (96-0)	09-21-11

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