



# Ohio Legislative Service Commission

## Bill Analysis

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### H.B. 307

130th General Assembly  
(As Referred by H. Rules and Reference)

**Reps.** Buchy, Pelanda

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### BILL SUMMARY

- Shortens, from 30 to 7 days, the period after a minor child's birth by which a putative father must register with the Putative Father Registry in order to be able to consent to the minor's adoption and changes the latest date acceptable by the court for documentation from the Registry prior to the court finalizing an adoption.
- Changes, from one year to 60 days, the period after which an adoption decree generally cannot be questioned.
- Requires a birth mother who decides, during the pregnancy, to place the minor up for adoption, or an attorney or representative working on her behalf, to give written notice of the decision to each putative father whom she identifies as the minor's putative father.
- Requires a putative father, within 30 days of receiving a pre-birth notice, to respond in writing by certified mail to the person that sent the notice stating whether he consents or refuses to consent to the adoption.
- Specifies that if a putative father fails to send a timely response to a pre-birth notice, his consent to adoption is not required.
- Specifies that rental or mortgage payments and payments for utilities, food, household goods, personal care items, and costs of transportation to work or school incurred by a birth mother are "living expenses" that may be paid to a birth mother on behalf of a petitioner by an attorney or agency arranging the minor's adoption.
- Requires an attorney or agency paying living expenses incurred by the birth mother to make a reasonable and good faith effort to make the payments directly to the entity providing the service or item.

- Permits a person to advertise that the person will adopt children.
- Increases, from \$1,500 to \$10,000, the tax credit against the state income tax for a taxpayer's legal adoption of the minor child and changes the order in which the credit may be claimed.
- Extends, from the ensuing two taxable years to the ensuing five taxable years, the time period in which excess from the adoption tax credit may be credited against a taxpayer's income tax if, in the taxable year in which the adoption occurred, the adoption tax credit amount is greater than the income tax due.
- Applies the adoption tax credit to taxable years ending on or after the bill's effective date.

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## **CONTENT AND OPERATION**

### **Shortened Putative Father Registry registration period**

The bill shortens to not later than seven days after a minor's birth the time by which a putative father must register with the Putative Father Registry in order to be able to consent to the adoption of the minor. Under current law, he must register not later than 30 days after the birth in order to consent to adoption.<sup>1</sup> Additionally, continuing law requires the following provided by the Department of Job and Family Services (ODJFS) to be submitted to the court prior to a final adoption decree or final interlocutory order of adoption: (1) a certified statement that no man is registered in the putative father registry or (2) if a man is registered, a certified copy of the registration form. The bill provides that a court cannot accept either of the documents unless ODJFS places on them a date that is eight or more days after the minor's birth. Current law requires the date to be 31 days or more after the birth.<sup>2</sup>

#### **Putative Father Registry – background**

Established in ODJFS, the Registry collects, for each putative father who registers, the name of the putative father, the name of the mother of the person he claims as his child, and the address or telephone number at which the putative father wishes to receive notice of any petition that may be filed to adopt a minor he claims as his child. The Registry provides a way for a putative father to preserve his right to

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<sup>1</sup> R.C. 3107.062 and 3107.07(B)(1).

<sup>2</sup> R.C. 3107.063, not in the bill, and 3107.064(A).



consent to the adoption of the child as long as he registers with the Registry within the required time period. A putative father may register at any time, at no charge.<sup>3</sup>

Current law also explicitly states that "a man who has sexual intercourse with a woman is on notice that if a child is born as a result and the man is the putative father, the child may be adopted without his consent" unless the man registers with the Putative Father Registry within the time specified in law.<sup>4</sup> A "putative father" is a man, including a man under 18, who may be a child's father and who:

- Is not married to the child's mother at the time of the child's conception or birth;
- Has not adopted the child;
- Has not been determined, prior to the date that a petition to adopt the child is filed, to have a parent and child relationship with the child by a court proceeding in this or another state, or an administrative agency proceeding in this or in another state; and
- Has not acknowledged paternity of the child.<sup>5</sup>

### **Shortened expiration period for questioning an adoption decree**

The bill changes, from one year to 60 days, the period after which an issued adoption decree cannot be questioned by any person, including the petitioner, in any manner or on any ground. The bill maintains the current law exceptions to the finality of the order, which exceptions include (1) the effect of disposition on appeal, (2) situations in which the petitioner has not taken custody of the minor, (3) fraud in the case of a stepparent adoption, and (4) adult adoptions when the adult had no knowledge of the decree. With respect to the adult adoption, the bill provides that the adult must have had no knowledge of the decree within the 60-day period described above. Under current law, the period is one year.<sup>6</sup>

### **Pre-birth notice of adoption decision**

The bill creates a new procedure under which a putative father may consent to the adoption of a minor prior to the minor's birth. Under the bill, a birth mother who

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<sup>3</sup> R.C. 3107.062.

<sup>4</sup> R.C. 3107.061, not in the bill.

<sup>5</sup> R.C. 3107.01, not in the bill.

<sup>6</sup> R.C. 3107.16(B).

decides, during the pregnancy, to place the minor up for adoption must give written notice of the decision to *each* person whom she identifies as the putative father of the minor. The notice (referred to in this analysis as a pre-birth notice) may be given by an attorney or other representative working on the mother's behalf. A pre-birth notice must be made by certified mail.<sup>7</sup>

Upon receiving a pre-birth notice, a putative father has 30 days from the date he receives the notice to consent or refuse to consent to the adoption of the minor who is subject to the notice. The putative father's response must be made in writing and sent by certified mail to the person that sent the notice (the birth mother or attorney or other representative). The response to the notice must state whether the putative father consents or refuses to consent to the adoption.<sup>8</sup>

### **Failure to respond to pre-birth notice**

If a putative father fails to send a "timely" (within 30 days of receipt) written response to a pre-birth notice, the bill specifies that the putative father's consent to the adoption of the minor is not required. The bill also specifies that, for a putative father who receives a pre-birth notice, the following provisions of the law specifying when a putative father *does not* have a right to consent to an adoption, do not apply:

(1) When the putative father fails to register as the minor's putative father with the Putative Father Registry not later than seven days after the minor's birth (changed by the bill from 30 days); or

(2) When the putative father has willfully abandoned the mother of the minor during her pregnancy and up to the time of her surrender of the minor, or the minor's placement in the home of the petitioner, whichever occurs first.<sup>9</sup>

Under the bill, a putative father who receives a pre-birth notice will not lose his right to consent before the 30-day notice response period has expired under either circumstance described above. However, if, in his response to a pre-birth notice, a putative father refuses to consent to the adoption of the minor who is subject to the notice, his refusal to consent will be irrelevant if, for example, the court determines he is not the father.<sup>10</sup>

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<sup>7</sup> R.C. 3107.067(A).

<sup>8</sup> R.C. 3107.067(B).

<sup>9</sup> R.C. 3107.067(C) and 3107.07(B)(1) and (B)(2)(c).

<sup>10</sup> R.C. 3107.07(B)(2)(a).

## **Allowable living expenses for birth mother**

The bill specifies what qualifies as "living expenses" incurred by a birth mother that may be paid by a petitioner through an agency or attorney arranging the minor's adoption. Under the bill living expenses are:

- Rental or mortgage payments;
- Utility payments; and
- Payments for food, household goods, personal care items, and the costs of transportation to work or school.<sup>11</sup>

Current law permits the disbursement of "living expenses" not exceeding \$3,000 for the birth mother that are incurred during the pregnancy through the sixtieth day after the birth of the minor. The expenses are paid by the petitioner to the birth mother through the attorney or agency or attorney arranging the minor's adoption. They must be included in accountings filed with the court.<sup>12</sup>

### **Payments for living expenses made directly to service provider**

The bill adds the requirement that an attorney or agency that makes payments on behalf of a petitioner for living expenses incurred by a birth mother must make a reasonable and good faith effort to make the payments directly to the entity providing the service or item.<sup>13</sup>

## **Adoption advertising**

The bill removes a prohibition and explicitly permits a person to advertise that the person will adopt children.<sup>14</sup> Continuing law prohibits a government entity, other than a private child placing agency or private noncustodial agency certified by ODJFS or a public children services agency, to advertise that the government entity places children in foster homes.<sup>15</sup>

The bill does not change the current law prohibition against a person or government entity, other than a private child placing agency or private noncustodial

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<sup>11</sup> R.C. 3107.055(A)(2).

<sup>12</sup> R.C. 3107.055(B) and (C)(9).

<sup>13</sup> R.C. 3107.055(E).

<sup>14</sup> R.C. 5103.17(C).

<sup>15</sup> R.C. 5103.17(A)(2).



agency certified by ODJFS or a public children services agency, (1) holding out inducements to parents to part with their children or (2) in any manner knowingly becoming a party to the separation of a child from the child's parents or guardians, except through a juvenile court or probate court commitment.<sup>16</sup>

## Tax credit

The bill increases the tax credit applicable against the state income tax for a taxpayer's adoption of a minor child from \$1,500 to \$10,000 for each legally adopted child. If, after claiming the credit beginning with the year in which the adoption occurred, the adoption tax credit amount is greater than the income tax due for the taxable year, the excess is allowed as a credit in ensuing taxable years. The bill changes the number of years the credit may be claimed from the ensuing two taxable years to the ensuing five taxable years. The bill also changes the order in which the credit may be claimed by a taxpayer with relation to other existing tax credits. The bill sets the credit back in the order.<sup>17</sup>

The adoption tax credit under the bill applies to taxable years ending on or after the effective date of the bill.<sup>18</sup>

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## HISTORY

ACTION	DATE
Introduced	10-22-13
Referred, H. Rules & Reference	10-30-13

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<sup>16</sup> R.C. 5103.17(A)(1).

<sup>17</sup> R.C. 5747.37 and 5747.98.

<sup>18</sup> Section 3.

