Ohio Legislative Service Commission

Bill Analysis

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Sub. S.B. 250*

130th General Assembly
(As Reported by H. Health & Aging)

Sens. Jones and LaRose, Beagle, Burke, Lehner, Coley, Kearney, Bacon, Balderson, Eklund, Faber, Gardner, Hite, Hughes, Jordan, Obhof, Peterson, Sawyer, Schaffer, Seitz, Uecker, Widener

BILL SUMMARY

Shortened Putative Father Registry registration period

- Shortens, from 30 to 15 days, the period after a 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.

Shortened expiration period for questioning an adoption decree

- Changes, from one year to six months, the period after which an adoption decree generally cannot be questioned.

Pre-birth notice to a putative father regarding possible adoption

- Permits an agency, attorney representing a person seeking to adopt a child, or attorney representing the birth mother, with the birth mother's written consent, to notify a putative father by actual notice that the birth mother is considering placing the child for adoption (referred to as a pre-birth notice).

- Provides that a child's mother is not obligated to place the child for adoption even if a pre-birth notice is served to a putative father of the child.

- Requires the use of a pre-birth notice in substantially the same form as provided by the bill.

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* This analysis was prepared before the report of the House Health and Aging Committee appeared in the House Journal. Note that the list of co-sponsors and the legislative history may be incomplete.

- Requires an affidavit setting forth the circumstances surrounding the service of a pre-birth notice to be submitted to the court as part of the adoption process.

- Describes the circumstances under which the service of a pre-birth notice to Ohio residents and non-Ohio residents is valid.

- Allows a putative father who receives a pre-birth notice to file an action to determine his parentage of the child.

- Requires the putative father, not later than 30 days after receiving a pre-birth notice, to notify the agency or attorney who served or caused to be served the notice that he has filed the parentage action.

- Provides that if a pre-birth notice is served to a putative father, a court must not accept a certified document from the Ohio Department of Job and Family Services (ODJFS) regarding a putative father's registration status with the Putative Father Registry unless the date on the document is 16 days or more after the date the pre-birth notice was served.

Living expenses

- Specifies that the following are "living expenses" that may be paid to a birth mother on behalf of a petitioner by an attorney or agency arranging a minor's adoption:

    - Rental or mortgage payments;

    - Utility payments;

    - Payments for products or services required for the birth mother's or minor's sustenance or safety including food, household goods, personal care items, and the costs of transportation to work or school.

- 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.

Changes regarding adoption-related activities

- Permits the biological parent of a child to advertise about the availability for placement of the parent's child for adoption to a qualified adoptive parent (QAP).

- Permits a QAP to advertise that the QAP is available for placement of a child into the QAP's care for the purpose of adopting the child.

- Permits a government entity to advertise about its role in the placement of children for adoption or other information that would be relevant to QAPs.

- Prohibits the following, unless otherwise permitted by law:

    - A person from offering money or anything of value in exchange for the placement of a child for adoption;

    - A biological parent from requesting money or anything of value in exchange for placement of the parent's child with a QAP.

Adoption tax credit

- Modifies the tax credit against the state income tax for a taxpayer's legal adoption of a minor child to be the greater of $1,500 or the amount of expenses incurred for the adoption (not exceeding $10,000).

- 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.

CONTENT AND OPERATION

Shortened Putative Father Registry registration period

The bill shortens to not later than 15 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.[1] 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 also provides that a court cannot accept either of the documents unless ODJFS places on

[1] R.C. 3107.062 and 3107.07(B)(1).

them a date that is 16 or more days after the minor's birth. Current law requires the date to be 31 days or more after the birth.[2]

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 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.[3]

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.[4] 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.[5]

Shortened expiration period for questioning an adoption decree

The bill changes, from one year to six months, 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)

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[2] R.C. 3107.063 and 3107.064(A).

[3] R.C. 3107.062.

[4] R.C. 3107.061, not in the bill.

[5] R.C. 3107.01, not in the bill.

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 six-month period described above. Under current law, the period is one year.[6]

Pre-birth adoption notice

The bill creates a new procedure under which a birth mother may notify a putative father of the child, prior to the child's birth, that the mother is considering placing the child for adoption. With the birth mother's written consent, an agency, an attorney representing the person seeking to adopt the child, or an attorney representing the mother may serve or cause to be served actual notice (referred to in this analysis as a pre-birth notice) to a putative father of the possible adoption. Under the bill, "actual notice" means written notice that is actually received by the putative father and includes personal service or certified mail, return receipt requested.[7] The bill provides that a birth mother is not obligated to place the child for adoption even if a pre-birth notice is served to a putative father of the child.[8]

Form of pre-birth notice

The bill provides a form for the pre-birth notice. The form includes the following elements:[9]

(1) The name of the birth mother and putative father/person claiming to be the father;

(2) A recitation that (a) the mother intends to place the child for adoption, (b) the definition of a putative father, and (c) the recipient is the putative father under Ohio law;

(3) A notice that the putative father may file an action to determine his parentage of the child under Ohio law.

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[6] R.C. 3107.16(B).

[7] R.C. 3107.067.

[8] R.C. 3107.068.

[9] R.C. 3107.0611.

Affidavit to court regarding service of pre-birth notice

The bill requires an agency or an attorney of a person seeking to adopt, if the agency or attorney served or caused to be served actual notice to the putative father, to submit to the court, when filing the adoption petition, an affidavit setting forth the circumstances surrounding the service of actual notice to the putative father, including the time, if known, date, and manner in which the actual notice was provided. The bill also requires an agency or attorney of a person seeking to adopt, if the attorney representing the mother served or caused to be served actual notice to the putative father, to submit to the court, when filing the adoption petition, an affidavit prepared by the mother's attorney setting forth the circumstances surrounding the service of actual notice to the putative father, including the time, if known, date, and manner in which the actual notice was provided.[10]

Validity of pre-birth notice service

Under the bill, a pre-birth notice that is served on a putative father who is an Ohio resident is valid regardless of whether the notice is served within or outside Ohio. For service on a putative father who is not an Ohio resident, such service is valid if the child who is the subject of the notice was conceived in Ohio or if the child was conceived outside Ohio, if the laws of the state in which (1) the father is served notice, (2) the father resides, or (3) in which the child was conceived allow a putative father to file an action to determine parentage of the child.[11]

Putative father response to pre-birth notice

The bill provides that a putative father who receives a notice may file an action to determine parentage under Ohio law.[12] Additionally, the bill requires the putative father, not later than 30 days after filing a parentage action, to notify the agency or attorney who served or caused to be served the pre-birth notice that he has filed that action.[13]

ODJFS notice to putative father

The bill provides that if ODJFS provides a certified copy of the putative father's registration in the Putative Father Registry (see "**Shortened Putative Father Registry**

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[10] R.C. 3107.069.

[11] R.C. 3107.0614.

[12] R.C. 3107.062, 3107.0612, and 3107.07(B)(1); R.C. 3111.04, not in the bill.

[13] R.C. 3107.0613.

registration period," above), ODJFS must also provide written notice to the putative father of the following not later than ten business days after providing the certified copy:

- That he may be the father of the minor for which he registered;
- The minor is or may be placed for adoption;
- Of his rights to consent or refuse consent to the adoption under Ohio law.[14]

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 products or services required for the birth mother's or minor's sustenance or safety including food, household goods, personal care items, and the costs of transportation to work or school.[15]

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 arranging the minor's adoption. They must be included in accountings filed with the court.[16]

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.[17]

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[14] R.C. 3107.063.

[15] R.C. 3107.055(A)(2).

[16] R.C. 3107.055(B) and (C)(9).

[17] R.C. 3107.055(E).

Changes regarding adoption-related activities

Under the bill, the biological parent of a child is permitted to advertise the availability for placement of the parent's child for adoption to a qualified adoptive parent (QAP). A "qualified adoptive parent" means a person who is eligible to adopt a child under Ohio law and for whom an adoption assessor has conducted a home study to determine whether the person is suitable to adopt a child, if the law requires a home study. Also, the bill permits a QAP to advertise that the QAP is available for placement of a child into the QAP's care for the purpose of adopting the child. Finally, the bill permits a government entity to advertise about its role in the placement of children for adoption or any other information that would be relevant to QAPs. Under the bill, "advertise" means a method of communication that is electronic, written, visual, or oral and made by means of personal representation, newspaper, magazine, circular, billboard, direct mailing, sign, radio, television, telephone, or otherwise.[18]

The bill prohibits the following, except as otherwise permitted under the Adoption Law:[19]

(1) A person from offering money or anything of value in exchange for placement of a child for adoption;

(2) A biological parent from requesting money or anything of value in exchange for placement of the parent's child with a QAP.

Despite the exceptions described above, the bill continues the current law prohibitions against a person or government entity, other than an ODJFS-certified private child placing agency or private noncustodial agency or a public children services agency, advertising that the person or entity will adopt children or place them in foster homes, holding out inducements to parents to part with their offspring, or 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.

Adoption tax credit

The bill modifies the tax credit applicable against the state income tax for a taxpayer's adoption of a minor child. The amount of the credit for each legally adopted child equals the greater of the following:

(1) $1,500;

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[18] R.C. 5103.17(A) to (E).

[19] R.C. 3107.055 and 5103.17(F).

(2) The amount of expenses incurred by the taxpayer and the taxpayer's spouse to legally adopt the child, not to exceed $10,000. Expenses incurred to legally adopt a child include expenses described in Ohio law governing adoption expense.

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.[20]

The bill requires the taxpayer to provide the Tax Commissioner any receipts or other documentation of the expenses incurred to legally adopt the child upon the Commissioner's request for the purpose of the $10,000 limit.[21]

The adoption tax credit as amended by the bill applies to taxable years ending on or after the effective date of the bill.[22]

HISTORY

ACTION	DATE
Introduced	12-04-13
Reported, S. Civil Justice	12-09-14
Passed Senate (29-1)	12-09-14
Reported, H. Health & Aging	---

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[20] R.C. 3107.055(C), 5747.37, and 5747.98.

[21] R.C. 5747.37.

[22] Section 3.