**South Carolina General Assembly**

125th Session, 2023-2024

**H. 3217**

**STATUS INFORMATION**

General Bill

Sponsors: Reps. W. Newton, Carter, Mitchell and Caskey

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Introduced in the House on January 10, 2023

Introduced in the Senate on April 27, 2023

Currently residing in the Senate Committee on **Judiciary**

Summary: Uniform Unregulated Child Custody Transfer Act

**HISTORY OF LEGISLATIVE ACTIONS**

 Date Body Action Description with journal page number

 12/8/2022 House Prefiled

 12/8/2022 House Referred to Committee on **Judiciary**

 1/10/2023 House Introduced and read first time (House Journal‑page 96)

 1/10/2023 House Referred to Committee on **Judiciary** (House Journal‑page 96)

 4/19/2023 House Committee report: Favorable **Judiciary** (House Journal‑page 22)

 4/25/2023 House Member(s) request name added as sponsor: Caskey

 4/25/2023 House Read second time (House Journal‑page 12)

 4/25/2023 House Roll call Yeas-105 Nays-1 (House Journal‑page 13)

 4/26/2023 House Read third time and sent to Senate (House Journal‑page 23)

 4/27/2023 Senate Introduced and read first time (Senate Journal‑page 4)

 4/27/2023 Senate Referred to Committee on **Judiciary** (Senate Journal‑page 4)

View the latest  [legislative information](https://www.scstatehouse.gov/billsearch.php?billnumbers=3217&session=125&summary=B)  at the website

**VERSIONS OF THIS BILL**

[12/08/2022](https://www.scstatehouse.gov/sess125_2023-2024/prever/3217_20221208.docx)

[04/19/2023](https://www.scstatehouse.gov/sess125_2023-2024/prever/3217_20230419.docx)

Committee Report

April 19, 2023

H. 3217

Introduced by Reps. W. Newton, Carter and Mitchell

S. Printed 04/19/23--H.

Read the first time January 10, 2023

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The committee on House Judiciary

To who was referred a Bill (H. 3217) to amend the South Carolina Code of Laws by enacting the “Uniform Unregulated Child Custody Transfer Act”; by adding Subarticle 12 to Chapter 9, Title 63 so as to, etc., respectfully

Report:

That they have duly and carefully considered the same, and recommend that the same do pass:

WESTON NEWTON for Committee.

statement of estimated fiscal impact

Explanation of Fiscal Impact

State Expenditure

This bill prohibits a parent, a guardian of a child, or an individual with whom a child has been placed for adoption from transferring custody of the child to another person with the intent, at the time of the transfer, to abandon the rights and responsibilities concerning the child. This does not apply if the transfer of custody is to a parent, stepparent, adult relative, or an adult who has a close relationship with the child or parent. Further, a person that violates this section is guilty of a misdemeanor and, upon conviction, may be imprisoned for not more than one year, fined $5,000, or both. Lastly, if DSS has probable cause to believe that a person has or will transfer custody of a child in violation of this bill, DSS may investigate and take appropriate action to protect the welfare of the child.

According to DSS, a child who is left in the care of a willing adult by a parent, guardian or adopted parent is typically not reported currently. This bill may result in an increase in reporting of the transfer of custody of the child, regardless of the adequacy of the arrangements made for the care of the child. However, DSS anticipates that even with this bill instances where child custody is transferred to a willing adult is likely to remain highly unknown.

Department of Social Services. This bill may increase the number of cases that DSS must investigate and increase the number of children in DSS custody. According to DSS, in 2022 there were 193 cases of substantiated parental abandonment. However, this number does not include instances where a parent or guardian makes adequate arrangements to place their child with another willing adult as these instances are often not reported to DSS. The only way DSS is likely to receive notice of these instances is if a mandated reporter like a doctor, school personnel, or law enforcement alerts them. DSS does not anticipate there will be a significant increase in reporting of these types of placements due to this bill. DSS anticipates that this bill will have a more prominent impact on cases involving the transfer or custody of a recently adopted child, known as adoptive rehoming. For reference, according to the Adoption Network approximately 7 percent of the population is adopted in the United States. Also, in FY 2021-22, family court filings included 1,683 domestic adoptions and 19 foreign adoptions. The potential number of adoptive rehomings that may occur relative to the total number of adoptions is unknown. Additionally, the number of adoptive rehomings that will come to the attention of DSS is also unknown. DSS provided the following estimate of the cost of care for one child in DSS custody.

YEAR STATE FUNDS FEDERAL FUNDS TOTAL FUNDS

1 $34,996 $5,658 $40,654

2 $21,794 $0 $21,794

3 through 13.5 $9,660 $0 $9,660

(11.5 years total) (per year) (per year)

This estimate also includes case management staff time for intake, investigation, various hearings and attorney costs for these hearings, adoption home studies completed by a certified investigator, and $1,500 in attorney fee reimbursement paid to the adoptive family. However, as the potential increase in children that may enter into DSS custody due to this bill is unknown, the potential increase in expenditures for DSS is undetermined.

Judicial. This bill may increase caseload in family court. However, we anticipate Judicial can manage any increase in caseload due to this bill within existing appropriations.

Commission on Indigent Defense. This bill may increase the workload for CPC. However, we anticipate the agency can manage any increase in workload due to this bill within existing appropriations.

Commission on Prosecution Coordination. This bill may increase the workload for CPC. However, we anticipate the agency can manage any increase in workload due to this bill within existing appropriations.

State Revenue

This bill adds a misdemeanor that, upon conviction, may result in a $5,000 fine. This may result in an increase in the fines and fees collected in court. Court fines and fees are distributed to the General Fund, Other Funds, and local funds. Therefore, we anticipate this bill may result in an undetermined increase to General Fund revenue and Other Funds revenue due to the increase in fines and fees collections in court.

Local Expenditure

This bill adds a misdemeanor that, upon conviction, may result in imprisonment for not more than one year. This bill may result in an increase in the number of inmates housed by local facilities. However, no data are available to estimate the increase in the number of inmates that may be housed. We anticipate any increase to local facilities will be managed within existing expenditures. Therefore, there will be no local expenditure impact.

Frank A. Rainwater, Executive Director

Revenue and Fiscal Affairs Office

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A bill

to amend the South Carolina Code of Laws by enacting the “uniform unregulated child custody transfer act”; by adding subarticle 12 to chapter 9, title 63 so as to prohibit unregulated child custody transfers of children placed for adoption; to create criminal penalties for making a prohibited transfer of child custody, receiving custody of a child who is the subject of a prohibited transfer, serving as an intermediary for a prohibited transfer of custody, or advertising or soliciting a prohibited transfer of custody; to require the department of social services to investigate violations and take other regulatory actions; and for other purposes; by adding Section 63-9-85 so as to require child placing agencies to provide certain information to prospective adoptive parents, including general adoption information, information about the child, and information about financial assistance and other support services; and by repealing Section 63-9-80 relating to certain information provided to prospective adoptive parents.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. This act may be cited as the “Uniform Unregulated Child Custody Transfer Act”.

SECTION 2. Article 1, Chapter 9, Title 63 of the S.C. Code is amended by adding:

 Subarticle 12

Uniform Unregulated Child Custody Transfer Act

 Section 63‑9‑1205. For purposes of this subarticle:

 (1) “Child” means an unemancipated individual under eighteen years of age.

 (2) “Child placing agency” has the same meaning as defined in Section 63‑9‑30.

 (3) “Custody” means the exercise of physical care and supervision of a child.

 (4) “Department” means the Department of Social Services.

 (5) “Guardian” has the same meaning as defined in Section 63‑1‑40.

 (6) “Intercountry adoption” means an adoption or placement for adoption of a child who resides in a foreign country at the time of adoption or placement. The term includes an adoption finalized in the child’s country of residence or in a state.

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

 (8) “Parent” has the same meaning as defined in Section 63‑1‑40.

 (9) “Person” means an individual, estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency, or instrumentality, or other legal entity.

 (10) “Record” means information:

 (a) inscribed on a tangible medium; or

 (b) stored in an electronic or other medium and retrievable in perceivable form.

 (11) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any other territory or possession subject to the jurisdiction of the United States. The term includes a federally recognized Indian tribe.

 Section 63‑9‑1210. This subarticle does not apply to custody of an Indian child, as defined in Section 4(4) of the Indian Child Welfare Act of 1978, 25 U.S.C. Section 1903(4), as amended, to the extent custody is governed by the Indian Child Welfare Act of 1978, 25 U.S.C Sections 1901 through 1963, as amended.

 Section 63‑9‑1215. This subarticle does not apply to a transfer of custody of a child by a parent or guardian of the child to:

 (1) a parent of the child;

 (2) a stepparent of the child;

 (3) an adult who is related to the child by blood, marriage, or adoption, or who has legal custody or guardianship of the child;

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

 (5) an Indian custodian, as defined in Section 4(6) of the Indian Child Welfare Act of 1978, 25 U.S.C. Section 1903(6), as amended, of the child.

 Section 63‑9‑1220. (A) Except as provided in subsection (B) a parent or guardian of a child or an individual with whom a child has been placed for adoption may not transfer custody of the child to another person with the intent, at the time of the transfer, to abandon the rights and responsibilities concerning the child.

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

 (1) adoption or guardianship;

 (2) judicial award of custody;

 (3) placement by or through a child placing agency;

 (4) other judicial or tribal action; or

 (5) placement pursuant to Section 63‑7‑40.

 (C) A person may not receive custody of a child, or act as an intermediary in a transfer of custody of a child, if the person knows or reasonably should know the transfer violates subsection (A). This prohibition does not apply if the person, as soon as practicable after the transfer, notifies the department or law enforcement of the transfer or takes appropriate action to establish custody under subsection (B).

 (D) A person that violates this section is guilty of a misdemeanor and, upon conviction, may be imprisoned not more than one year or fined five thousand dollars, or both.

 (E) Violation of subsection (A) is not established solely because a parent or guardian that transfers custody of a child does not regain custody.

 Section 63‑9‑1225. (A) If the department has probable cause to believe that a person has transferred or will transfer custody of a child in violation of Section 63‑9‑1220(A), the department may conduct an investigation as provided by Section 63‑9‑520 and take appropriate action to protect the welfare of the child.

 (B) If the department conducts an investigation for a child adopted or placed through an intercountry adoption, the department shall:

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

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

 (C) This subarticle does not prevent the department from taking appropriate action under other applicable law of this State.

 Section 63‑9‑1230. (A) A person may not solicit or advertise to:

 (1) identify a person to which to make a transfer of custody in violation of Section 63‑9‑1220(A);

 (2) identify a child for a transfer of custody in violation of Section 63‑9‑1220(C); or

 (3) act as an intermediary in a transfer of custody in violation of Section 63‑9‑1220(C).

 (B) A person that violates subsection (A) is guilty of a misdemeanor and, upon conviction, may be imprisoned not more than thirty days or fined not more than five hundred dollars, or both.

 Section 63‑9‑1235. Law enforcement may investigate a possible violation of this subarticle and take legal action as provided by applicable laws of this State.

 Section 63‑9‑1240. In applying and construing this uniform act, a court shall consider the promotion of uniformity of the law among jurisdictions that enact it.

 Section 63‑9‑1245. This uniform act modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001, et seq., as amended, but does not modify, limit, or supersede 15 U.S.C. 7001(c), or authorize electronic delivery of any of the notices described in 15 U.S.C. Section 7003(b).

SECTION 3.A. Subarticle 1, Article 1, Chapter 9, Title 63 of the S.C. Code is amended by adding:

 Section 63‑9‑85. (A) For purposes of this section “prospective adoptive parent” means an individual who has been approved or permitted under other law of this State to adopt a child.

 (B) This section applies to placement for adoption of a child who:

 (1) has been or is in foster or institutional care;

 (2) previously has been adopted in a state;

 (3) has been or is being adopted under the law of a foreign country;

 (4) has come or is coming to a state from a foreign country to be adopted; or

 (5) is not a citizen of the United States.

 (C) Within reasonable time before a child placing agency places for adoption with a prospective adoptive parent, the agency shall provide or cause to be provided to the prospective adoptive parent general adoption information. The information must address:

 (1) possible physical, mental, emotional, and behavioral issues concerning:

 (a) identity, loss and trauma that a child might experience before, during, or after adoption; and

 (b) a child leaving familiar ties and surroundings;

 (2) the effect that access to resources, including health insurance, may have on the ability of an adoptive parent to meet the needs of a child;

 (3) causes of disruption of an adoptive placement or dissolution of an adoption and resources available to help avoid disruption or dissolution; and

 (4) prohibitions under Sections 63‑9‑1220 and 63‑9‑70.

 (D)(1) Except as prohibited by other law of this State, within a reasonable time before a child placing agency places a child for adoption with a prospective adoptive parent, the agency shall provide or cause to be provided to the prospective adoptive parent information specific to the child that is known to or reasonably obtainable by the agency and material to the prospective adoptive parent’s informed decision to adopt the child. The information must include:

 (a) the child’s family, cultural, racial, religious, ethnic, linguistic, and educational background;

 (b) the child’s physical, mental, and behavioral health;

 (c) circumstances that might adversely affect the child’s physical, mental, emotional, or behavioral health;

 (d) the child’s medical history, including immunizations;

 (e) the medical history of the child’s genetic parents and siblings;

 (f) the history of an adoptive or out‑of‑home placement of the child and the reason the adoption or placement ended;

 (g) the child’s United States immigration status;

 (h) medical, therapeutic, and educational resources, including language‑acquisition training, available to the adoptive parent and child after placement for adoption or adoption to assist in responding effectively to physical, mental, emotional, or behavioral health issues; and

 (i) available records relevant to the information in subitems (a)‑(h).

 (2) If, before an adoption is finalized, additional information under item (1) that is material to a prospective adoptive parent’s informed decision to adopt the child becomes known to or reasonably obtainable by the child placing agency, the agency shall provide the information to the prospective adoptive parent.

 (3) If, after an adoption is finalized, additional information under item (1) becomes known to the child placing agency, the agency shall make a reasonable effort to provide the information to the adoptive parent.

 (E)(1) A child placing agency placing a child for adoption shall provide or cause to be provided to the prospective adoptive parent guidance and instruction specific to the child to help prepare the parent to respond effectively to needs of the child that are known to or reasonably ascertainable by the agency.

 (2) The guidance and instruction under item (1) must address, if applicable:

 (a) the potential effect on the child of:

 (i) a previous adoption or out‑of‑home placement;

 (ii) multiple previous adoptions or out‑of‑home placements;

 (iii) trauma, insecure attachment, fetal alcohol exposure, or malnutrition;

 (iv) neglect, abuse, drug exposure, or similar adversity;

 (v) separation from a sibling or significant caregiver; and

 (vi) a difference in ethnicity, race, or cultural identity between child and the prospective adoptive parent or other child of the parent;

 (b) information available from the federal government on the process for the child to acquire United States citizenship; and

 (c) any other matter the child placing agency considers material to the adoption.

 (3) The guidance and instruction under item (1) must be provided:

 (a) for a child residing in the United States, a reasonable time before the adoption is finalized; or

 (b) for an intercountry adoption, in accordance with federal law.

 (F) On request of a child who was placed for adoption or the child’s adoptive parent, the child placing agency placing the child or the department shall provide information about how to obtain financial assistance or support services:

 (1) to assist the child or parent to respond effectively to adjustment, behavioral health, and other challenges; and

 (2) to help preserve the placement or adoption.

 (G)(1) Law enforcement may investigate an allegation that a child placing agency has failed to comply with this section and commence an action for injunctive or other relief or initiate an administrative proceeding against the child placing agency to enforce this section.

 (2) The department may initiate a proceeding to determine whether a child placing agency has failed to comply with this section. If the department finds that the child placing agency has failed to comply, the department may suspend or revoke the agency’s license or take other action permitted by applicable law of this State.

 (H) The department may promulgate regulations pursuant to Chapter 23, Title 1 to implement the provisions of this section.

B. Section 63‑9‑80 of the S.C. Code is repealed.

SECTION 4.A. SECTION 2 applies to:

 (1) a transfer of custody on or after the effective date of this act; and

 (2) soliciting or advertising on or after the effective date of this act.

B. SECTION 3 applies to placement of a child for adoption not more than sixty days after the effective date of this act.

SECTION 5. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

SECTION 6. This act takes effect upon approval by the Governor.

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