

SESSION OF 2018

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2481

As Amended by Senate Committee of the Whole

Brief*

HB 2481, as amended, would create the Adoption Protection Act and amend several provisions of the Kansas Adoption and Relinquishment Act.

Adoption Protection Act

The bill would create the Adoption Protection Act, which would state, notwithstanding any other provision of state law and to the extent allowed by federal law, no child placement agency (CPA), as defined by the bill, shall be required to perform, assist, counsel, recommend, consent to, refer, or otherwise participate in any placement of a child for foster care or adoption when the proposed placement of such child would violate such CPA's sincerely held religious beliefs.

The bill would also prohibit taking the following actions against a CPA, if taken solely because of the CPA's objection to providing any of the services described above on the grounds of such religious beliefs:

- Denial of a license, permit, or other authorization; denial of renewal of the same; or revocation or suspension of the same by any state agency or political subdivision;
- Denial of any grant or contract, or participation in a program by any state agency or political subdivision; or

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

- Imposition of a civil fine or other adverse administrative action or any claim or cause of action under any state or local law.

The bill would require the CPA's sincerely held religious belief be described in the CPA's organizing documents, written policies, or such other written document approved by the governing body of the CPA.

The provisions of the bill would not apply to any entity while the entity has a contract with the Department for Children and Families (DCF) as a case management contractor.

Kansas Adoption and Relinquishment Act Amendments

The bill would amend various provisions within the Kansas Adoption and Relinquishment Act (KARA), as follows.

Definitions

The bill would amend the definition of "residence of a child" and "place where a child resides" to mean the residence of any parent. The current definition states the residence of a child is the residence of the child's mother if the child's parents are not married or if the child's mother has established a separate, legal residence and the child resides with the mother or, alternatively, the residence of the child's father if the child's parents are married or, if not married, if the father has custody.

The bill would add a definition of "party in interest," which would mean:

- A parent whose parental rights have not been terminated;
- A prospective adoptive parent;

- An adoptive parent;
- A legal guardian of a child;
- An agency having authority to consent to the adoption of a child;
- The child sought to be adopted, if over 14 years of age and of sound intellect; or
- An adult adoptee.

The bill would move the definition of “professional” within the code and clarify it does not include a person who received solely reimbursement for expenses.

Who May Adopt

The bill would change the phrase “husband and wife” to “married adult couple” in the statute governing who may adopt.

Consent to Adoption and Relinquishment

The bill would clarify that it is the duty of the court to inform the consenting person or relinquishing person of the legal consequences of the consent or relinquishment; current law states the court’s duty is to advise the consenting person or relinquishing person of the consequences of consent or relinquishment. The bill would also add a provision that states a consent or relinquishment may be given by any father or possible father any time after the birth of a child, or before the birth of the child if he has the advice of independent legal counsel as to the consequences of the consent prior to its execution and such counsel is present at the execution of the consent.

The bill would provide that a relinquishment would be final when executed unless the relinquishing party, prior to the entry of a final order terminating parental rights, alleges and

proves by clear and convincing evidence that the relinquishment was not freely and voluntarily given; the burden of proving the relinquishment was not freely and voluntarily given would be on the relinquishing party. The bill would provide that, if a parent has relinquished a child and the other parent does not relinquish the child, and the other parent's rights have not been terminated, the rights of the parent who relinquished would not be terminated, and full parental rights would be restored. The bill would remove a provision that terminates the right to receive notice in a subsequent adoption proceeding involving the child and a provision that terminates the rights of birth parents to inherit from or through such child upon relinquishment.

The bill would clarify a petition for adoption must include facts relied upon to deem a relinquishment was unnecessary, if the consent or relinquishment of either or both parents is not obtained, and to require a copy of any relinquishment to be filed with the petition for adoption.

Foreign and Out-of-State Adoptions

The bill would amend the section governing foreign and out-of-state adoptions to specify that a document that is the functional equivalent of a Kansas consent or relinquishment would be valid if executed and acknowledged outside of Kansas or in a foreign country in accordance with the laws of Kansas or the laws of the place where executed. The bill would remove the requirement that a consent or relinquishment signed in a foreign country be acknowledged or affirmed in accordance with the law and procedure of the foreign country.

The section governing interstate adoption would be amended to specify that any professional providing services related to the placement of children or adoption who fails to comply with the Interstate Compact on the Placement of Children would be guilty of a class C nonperson misdemeanor; current law provides the penalty is a class C misdemeanor.

Payment for Adoption

The bill would remove the requirement that legal and professional services performed outside the state shall not exceed customary fees for similar services when performed in Kansas. The bill would also remove related references limiting fees and expenses to those that are reasonable in Kansas or are based on fees in the state of Kansas.

Access to Adoption Records

In the section governing who may access adoption records, the bill would replace “the parties in interest and their attorneys” with “party filing for adoption or termination and that party’s attorney.” The bill would additionally grant access to such records to an adoptee who has reached the age of majority and the Disciplinary Administrator. The bill would move a provision providing access by the Commission on Judicial Performance to such records. The bill would remove an exclusion to the definition of “parties in interest” applicable to this section. The bill would add a provision that would allow any party in interest to request access to the files and records in an adoption proceeding prior to the final decree of adoption. After notice and a hearing and upon a written finding of good cause, a court could order that some or all of the files and records be open to inspection and copy by the moving party. The court could permit access to some or all of the files and records for good cause shown after the final decree of adoption. Provisions allowing DCF to make contacts at the request of various parties would be amended to include birth parents. The bill would also clarify that the legal guardian of the adopted adult could grant permission for DCF to share identifying information or request DCF contact the birth or genetic parents in the event of a health or medical need.

Advertising Adoption and Adoption-Related Services

The bill would add any person who advertises that such person will provide adoption-related services to the provision requiring disclosure in any advertisement of whether such person is licensed. The bill would also exempt DCF, an individual seeking to adopt a child, an agency, or an attorney from a prohibition on offering to adopt, find a home for, or otherwise place a child as an inducement to any parent, guardian, or custodian of a child to place such child in such person's home, institution, or establishment.

Venue

The section governing venue in an agency adoption would be amended to clarify that venue could be in the county where the principal place of business for the child placing agency is located, and to provide that, in all adoptions, venue may be established in any county in Kansas if all parties in interest agree in writing.

Jurisdiction

The bill would provide that jurisdiction over adoption proceedings, including a proceeding to terminate parental rights, would be governed by the Uniform Child Custody Jurisdiction and Enforcement Act. The bill would remove all current provisions related to jurisdiction in the KARA. The bill would specify the notice provisions of the KARA would control in adoption proceedings.

Background Information

The bill would remove the requirement of filing with the petition any hospital records pertaining to the child, leaving only the requirement of a properly executed authorization for release of any hospital records pertaining to the child, which would be clarified. The bill would also clarify the continuing class C misdemeanor for intentional destruction of certain background information is a nonperson misdemeanor.

Assessments

The bill would remove the requirement that reports of assessments of the advisability of an adoption in independent or agency adoptions be filed not less than ten days before the hearing on the petition. The ten-day limit for reports filed by nonresident petitioners would also be removed.

Notice

The bill would amend notice for adoption hearings in the following manner:

- **Independent and stepparent adoptions.** The bill would require notice to possible parents, rather than presumed parents, and would add a requirement that the notice be given at least ten calendar days before the hearing. This section would also be amended to require notice be given to any person who has physical custody of the child, unless waived by that person, and would remove the requirement that notice be given to any other persons as the court may direct. The requirement of notice to an individual *in loco parentis* in an independent adoption would be removed;
- **Agency adoptions.** In addition to the required notice to the consenting agency, the bill would

require notice be given to the parents or possible parents, any relinquishing party, and any person who has physical custody of the child at least ten calendar days before the hearing, unless waived by the person entitled to notice; and

- **Service.** The bill would specify notice of the hearing would be by personal service, certified mail return receipt requested, or in any other manner the court may direct.

Hearing

In the statute governing hearings, the bill would clarify that, if a court enters a final decree of adoption after a hearing, that decree would terminate parental rights if not previously terminated. The bill would also amend references in this section to jurisdiction and a party in interest to align the section with other amendments made by the bill.

Termination of Parental Rights in Adoption and Relinquishment Proceedings

In the statute governing termination of parental rights in adoption and relinquishment proceedings, the bill would remove provisions specific to termination of parental rights in stepparent adoptions.

The bill would direct a court to order publication notice of an adoption hearing if a father's whereabouts are unknown.

Existing provisions regarding filing of a petition to terminate parental rights would be removed. The bill would then specify that a petition to terminate parental rights may be filed independently or with a petition for adoption; if such petition is filed independently, the venue for the proceeding would be in the county in which the child or a parent resides or is found.

A parent, a petitioner for adoption, the person or agency having legal custody of the child, or the agency to which the child has been relinquished would be allowed to file a petition to terminate parental rights. The proceeding to terminate parental rights would have precedence over any other proceeding involving custody of the child, absent a court's finding of good cause, until a court enters a final order on the termination issues or until further orders of the court.

The bill would add a requirement that notice given at least ten calendar days before the hearing, unless waived by the person entitled to notice. The bill would require proof of waiver of notice be filed with the court before the petition could be heard, as is proof of notice under current law.

References to "man" would be changed to "person," "paternity" to "parentage," "regard to" to "consideration of," and "asserts" to "claims."

With regard to the court's consideration, order, and findings, the bill would:

- Clarify that finding the consent and relinquishment unnecessary may be part of the court's conclusion;
- Change references to "next" to "immediately" with regard to timing requirements; and
- Replace a provision allowing the court to consider the best interests of the child with a requirement the court consider all of the relevant surrounding circumstances.

This section would also be amended to add a definition of "support," which would mean monetary or non-monetary assistance that is reflected in specific and significant acts and sustained over the applicable period.

Adult Adoptions

The sections governing adoption of adults would be amended to state Kansas courts have jurisdiction over a proceeding for the adoption of an adult if the petitioner or adult adoptee resides in Kansas. In addition to the county in which the petitioner or adult adoptee resides, venue could be established in any county in Kansas if all parties in interest agree in writing to venue in that county. The bill would clarify a notice and hearing statute applies only to adult adoptions.

Forms

The bill would add the waiver of notice of hearing to the list of forms to be provided by the Judicial Council under the KARA.

Technical Amendments

The bill would correct a statutory reference to the definition of “maternity center” and make further technical amendments as requested by the Office of Revisor of Statutes.

Background

HB 2481 was introduced by the House Committee on Judiciary at the request of the Kansas Judicial Council. As introduced and passed by the House, HB 2481 contained the provisions updating the KARA.

In the House Committee hearing, three representatives of the Kansas Judicial Council testified in support of the bill, stating the legislation is the result of the Kansas Judicial Council’s Adoption Law Advisory Committee’s work over the past two years to update the KARA, as it has not been significantly amended since its enactment in 1990. Two attorneys also testified as proponents with proposed

amendments. An attorney provided written-only opponent testimony, stating concerns related to fathers' rights. No neutral testimony was provided.

In the Senate Committee on Judiciary hearing, Representative Humphries and a representative of the Kansas Judicial Council testified in support of the bill. Additional representatives of the Kansas Judicial Council submitted written-only testimony supporting the bill. A representative of Catholic Charities of Southwest Kansas and an attorney provided written-only opponent testimony. No other testimony was provided.

The Senate Committee of the Whole amended the bill with provisions modified from SB 401, creating the Adoption Protection Act. Further background regarding SB 401 is provided below.

According to the fiscal note prepared by the Division of the Budget on HB 2481, as introduced, the Office of Judicial Administration and DCF indicate enactment of HB 2481 would have no fiscal effect.

SB 401 (Adoption Protection Act)

SB 401 was introduced by the Senate Committee on Federal and State Affairs. In the Senate Committee hearing, Senator Masterson testified in support of the bill on behalf of the Kansas Truth Caucus. Also testifying in support of the bill were Senator Baumgardner; Representative Humphries; representatives of Bethany Christian Services, Catholic Charities of Southwest Kansas, and Circle of Love; an attorney; and private citizens. Written-only proponent testimony was submitted by the Secretary for Children and Families, a citizen, various pastors, and representatives of American Family Action of Kansas and Missouri, Catholic Charities Diocese of Springfield in Illinois, Catholic Charities of Northeast Kansas, Catholic Charities of Northern Kansas, Christian Family Services, Concerned Women for America of

Kansas, Family Policy Alliance of Kansas, Kansas Catholic Conference, Lifeline Children's Services, St. Joseph Adoption Ministry, and St. Nick Adoptions.

Testifying as opponents of the bill were representatives of the American Civil Liberties Union of Kansas and Equality Kansas, a Wyandotte County district court judge, and three private citizens. Written-only testimony opposing the bill was submitted by adoptive parents and representatives of the Children's Alliance of Kansas, Child Welfare League of America, Kansas Bar Association, Kansas CASA Association, and a coalition consisting of FosterAdopt Connect, Kansas African American Foster/Adoption Coalition, Kansas Applesseed Center for Law and Justice, Kansas Association of Community Action Programs, a retired social services administrator, and former foster care youth.

In adding the language of SB 401 to HB 2481, the Senate Committee of the Whole changed the phrase "entity that has an existing contract" to "entity while such entity has a contract" with DCF.

According to the fiscal note prepared by the Division of the Budget on SB 401, DCF indicates enactment of the bill could have a fiscal effect on agency operations, but the number of CPAs that would deny placement based on sincerely held religious beliefs cannot be estimated, making it impossible to estimate the fiscal effect. Any fiscal effect associated with enactment of the bill is not reflected in *The FY 2019 Governor's Budget Report*.