

Senate File 433 - Enrolled

Senate File 433

AN ACT

RELATING TO TERMINATION OF PARENTAL RIGHTS AND ADOPTION
PROCEEDINGS, AND PROVIDING PENALTIES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. Section 422.9, subsection 2, paragraph c, Code 2017, is amended to read as follows:

c. Add the amount by which expenses paid or incurred in connection with the adoption of a child by the taxpayer exceed three percent of the net income of the taxpayer, or of the taxpayer and spouse in the case of a joint return. The expenses may include medical and hospital expenses of the biological mother which are incident to the child's birth and are paid by the taxpayer, welfare agency fees, legal fees, and all other fees and costs relating to the adoption of a child if the child is placed by ~~a child-placing agency licensed under chapter 238~~ or by a person making an independent placement an adoption service provider according to the provisions of chapter 600. If the taxpayer claims an adoption tax credit under [section 422.12A](#), the taxpayer shall recompute for purposes of [this subsection](#) the amount of the deduction by excluding the amount of qualified adoption expenses, as defined in [section 422.12A](#), used in computing the adoption tax credit.

Sec. 2. Section 422.12A, subsection 1, paragraph a, Code 2017, is amended to read as follows:

a. "Adoption" means the permanent placement in this state of a child by the department of human services, by a ~~licensed agency under chapter 238~~ an adoption service provider as defined in section 600A.2, or, by an agency that meets the provisions of the interstate compact in section 232.158, ~~or by a person making an independent placement according to the provisions of chapter 600.~~

Sec. 3. Section 600.2, subsection 1, Code 2017, is amended to read as follows:

1. "Child", "parent", "parent-child relationship", "termination of parental rights", "biological parent", "stepparent", "guardian", "custodian", "guardian ad litem", "minor", "adoption service provider", "certified adoption investigator", "adult", "agency", "department", "court", and "juvenile court", ~~"independent placement"~~ mean the same as defined in section 600A.2.

Sec. 4. Section 600.8, subsection 1, paragraph c, subparagraph (1), Code 2017, is amended to read as follows:

(1) A background information investigation of the medical and social history of the biological parents of the minor person to be adopted and a report of the investigation shall be made by the ~~agency, the person making an independent placement~~ adoption service provider, the department, or an a certified adoption investigator prior to the placement of the minor person to be adopted with any prospective adoption petitioner.

Sec. 5. Section 600.8, subsection 2, paragraph a, subparagraph (1), Code 2017, is amended to read as follows:

(1) A preplacement investigation and report of the investigation shall be completed and the prospective adoption petitioner approved for a placement by the person making the investigation prior to any ~~agency or independent~~ adoption service provider or department placement of a minor person in the petitioner's home in anticipation of an ensuing adoption.

Sec. 6. Section 600.8, subsections 3, 4, 8, and 10, Code 2017, are amended to read as follows:

3. The department, an agency, or ~~an~~ a certified adoption investigator shall conduct all investigations and reports

required under [subsection 2](#) of ~~this section~~.

4. A postplacement investigation and the report of the investigation shall be completed and filed with the juvenile court or court prior to the holding of the adoption hearing prescribed in [section 600.12](#). Upon the filing of an adoption petition pursuant to [section 600.5](#), the juvenile court or court shall immediately appoint the department, an agency, or ~~an~~ a certified adoption investigator to conduct and complete the postplacement report. Any person who has gained relevant background information concerning a minor person subject to an adoption petition shall, upon request, fully cooperate with the conducting of the postplacement investigation by disclosing any relevant information requested, whether contained in sealed records or not.

8. Any person designated to make an investigation and report under [this section](#) may request an agency, certified adoption investigator, or state agency, within or outside this state, to conduct a portion of the investigation or the report, as may be appropriate, and to file a supplemental report of such investigation or report with the juvenile court or court. In the case of the adoption of a minor person by a person domiciled or residing in any other jurisdiction of the United States, any investigation or report required under [this section](#) which has been conducted pursuant to the standards of that other jurisdiction shall be recognized in this state.

10. The department, ~~or~~ an agency, or a certified adoption investigator may conduct any investigations required for an interstate or interagency placement. Any interstate investigations or placements shall follow the procedures and regulations under the interstate compact on the placement of children. Such investigations and placements shall be in compliance with the laws of the states involved.

Sec. 7. Section 600.9, Code 2017, is amended to read as follows:

600.9 Report of expenditures — penalty.

1. *a.* A biological parent shall not receive any thing of value as a result of the biological parent's child or former child being placed with and adopted by another person, unless that thing of value is an allowable expense under [subsection 2](#).

b. Any person assisting in any way with the placement or adoption of a minor person shall not charge a fee which is more than usual, necessary, and commensurate with the services rendered.

c. If the biological parent receives any prohibited thing of value, if a person gives a prohibited thing of value, or if a person charges a prohibited fee under [this subsection](#), the person is guilty of a ~~simple~~ serious misdemeanor.

2. a. An adoption petitioner of a minor person shall file with the juvenile court or court, prior to the adoption hearing, a full accounting of all disbursements of any thing of value paid or agreed to be paid by or on behalf of the petitioner in connection with the petitioned adoption. This accounting shall be made by a report prescribed by the juvenile court or court and shall be signed and verified by the petitioner. The report shall be accompanied by documentation of all disbursements made prior to the date of filing of the report. Only expenses incurred in connection with the following and any other expenses approved by the juvenile court or court are allowable:

(1) The birth of the minor person to be adopted.

(2) Placement of the minor person ~~with~~ by the adoption ~~petitioner and legal~~ service provider.

(3) Legal expenses related to the termination of parental rights and adoption processes.

~~(3)~~ (4) Pregnancy-related medical care received by the biological parents or the minor person during the pregnancy or delivery of the minor person and for medically necessary postpartum care for the biological parent and the minor person.

~~(4)~~ (5) Living Ordinary and necessary living expenses of the mother, permitted in an amount not to exceed including but not limited to the cost of room and board or rent and costs of housing, food, utilities, and transportation, for medical purposes only, ~~on a common carrier of persons or an ambulance related to the pregnancy and birth of the child,~~ in an amount not to exceed two thousand dollars and for no longer than thirty days after the birth of the minor person.

~~(5)~~ (6) Costs of the counseling provided to the biological parents prior to the birth of the child, prior to the release

of custody, and any counseling provided to the biological parents for not more than sixty days after the birth of the child.

~~(6)~~ (7) Living expenses or care of the minor person if the minor person is placed in foster care during the pendency of the termination of parental rights proceedings.

b. All payments for allowable expenses shall be made through the adoption service provider. An adoption service provider shall deposit all funds received from prospective adoptive parents as payments for allowable expenses for a designated biological parent into an escrow account established with a financial institution located in this state whose accounts are insured by the federal deposit insurance corporation, the national credit union administration, or the federal savings and loan insurance corporation. Such escrow funds shall not be commingled with other revenues or expense accounts of the adoption service provider and separate accounting shall be maintained for each prospective adoptive parent whose funds are deposited in the escrow account. Any escrow funds not disbursed by the adoption service provider for the benefit of the designated biological parent shall be returned to the prospective adoptive parents with a full accounting of all deposits and disbursements. If the adoption service provider is a licensed attorney, use of the attorney's state-sanctioned trust account shall satisfy the requirements relative to the escrow account under this paragraph.

~~b. c.~~ All Any payments for allowable expenses shall be made to the provider, if applicable, and not directly be made to the a biological parents parent, but instead shall be made directly to the provider of the service, product, or other activity to which the allowable expense is attributable, if applicable.

d. The provisions of this subsection do not apply in a stepparent adoption.

3. The juvenile court or court shall review the report prior to the adoption hearing and shall include findings regarding the allowance or disallowance of any disbursements or projected disbursements in the adoption decree.

Sec. 8. NEW SECTION. 600.9A Prohibited practices — penalties.

1. All of the following are prohibited practices regarding a proceeding under this chapter:

a. The provision of termination of parental rights, child placement, or adoption services to any biological or adoptive parent by any person other than an adoption service provider or the department.

b. The charging of a fee by an adoption service provider that is more than the usual and necessary fee commensurate with the services rendered.

c. The facilitation, encouragement, or advisement of adoptive parents by an adoption service provider to provide any thing of value beyond those expenditures allowed pursuant to section 600.9.

d. The knowing encouragement or solicitation of payment of allowable expenses or provision of anything of value beyond those expenditures allowed pursuant to section 600.9, by a person falsely representing that a child may be available for adoption with the intent to defraud the other person.

2. A person who commits a prohibited practice under this section is guilty of a serious misdemeanor for the first violation and a class "C" felony for any second or subsequent violation.

Sec. 9. Section 600.13, subsection 5, Code 2017, is amended to read as follows:

5. An interlocutory or a final adoption decree shall be entered with the clerk of court. Such decree shall set forth any facts of the adoption petition which have been proven to the satisfaction of the juvenile court or court and any other facts considered to be relevant by the juvenile court or court and shall grant the adoption petition. If so designated in the adoption decree, the name of the adopted person shall be changed by issuance of that decree. The clerk of the court shall, within thirty days of issuance, deliver one certified copy of any adoption decree to the petitioner, one copy of any adoption decree to the department and any ~~agency or person making an independent placement~~ adoption service provider who placed a minor person for adoption, and one certification of adoption as prescribed in [section 144.19](#) to the state registrar of vital statistics at no charge. Upon receipt of

the certification, the state registrar shall prepare a new birth certificate pursuant to [section 144.23](#) and deliver to the parents named in the decree and any adult person adopted by the decree a copy of the new birth certificate. The parents shall pay the fee prescribed in [section 144.46](#). If the person adopted was born outside this state but in the United States, the state registrar shall forward the certification of adoption to the appropriate agency in the state of birth. A copy of any interlocutory adoption decree vacation shall be delivered and another birth certificate shall be prepared in the same manner as a certification of adoption is delivered and the birth certificate was originally prepared.

Sec. 10. Section 600.16, subsection 1, unnumbered paragraph 1, Code 2017, is amended to read as follows:

Any information compiled under [section 600.8, subsection 1, paragraph "c"](#), relating to medical and developmental histories shall be made available at any time by the clerk of court, the department, or any ~~agency which~~ adoption service provider that made the placement to:

Sec. 11. Section 600.16A, subsection 2, paragraph a, Code 2017, is amended to read as follows:

~~a. An agency~~ The department or an adoption service provider involved in placement shall contact the adopting parents or the adult adopted child regarding eligibility of the adopted child for benefits based on entitlement of benefits or inheritance from the terminated biological parents.

Sec. 12. Section 600.16A, subsection 3, paragraph a, unnumbered paragraph 1, Code 2017, is amended to read as follows:

In addition to other procedures by which adoption records may be opened under [this section](#), if both of the following conditions are met, the department, the clerk of court, or the ~~agency which~~ adoption service provider that made the placement shall open the adoption record for inspection and shall reveal the identity of the biological parents to the adult adopted child or the identity of the adult adopted child to the biological parents:

Sec. 13. Section 600.16A, subsection 3, paragraph c, Code 2017, is amended to read as follows:

c. Notwithstanding the provisions of [this subsection](#), if the adult adopted person has a sibling who is a minor and who has also been adopted by the same parents, the department, the clerk of court, or the ~~agency which~~ adoption service provider that made the placement may deny the request of either the adult adopted person or the biological parent to open the adoption records and to reveal the identities of the parties pending determination by the juvenile court or court that there is good cause to open the records pursuant to [subsection 2](#).

Sec. 14. Section 600.20, Code 2017, is amended to read as follows:

600.20 Availability of assistance.

Financial assistance shall be available only if the child to be adopted was under the guardianship of the state, county, or a ~~licensed child-placing~~ an agency immediately prior to adoption. The one-hundred-eighty-day period of residence in the proposed home required in [section 600.10](#) shall not apply to this section.

Sec. 15. Section 600A.2, Code 2017, is amended by adding the following new subsections:

NEW SUBSECTION. 01. "*Adoption service provider*" means an agency or a licensed attorney.

NEW SUBSECTION. 3A. "*Certified adoption investigator*" means a person who is certified and approved by the department of human services, after inspection by the department of inspections and appeals, as being capable of conducting an investigation under section 600.8.

Sec. 16. Section 600A.2, subsection 2, Code 2017, is amended to read as follows:

2. "*Agency*" means a child-placing agency as defined in section 238.1 ~~or the department~~.

Sec. 17. Section 600A.2, subsection 10, Code 2017, is amended by striking the subsection.

Sec. 18. Section 600A.4, subsection 1, Code 2017, is amended to read as follows:

1. A parent shall not permanently alter the parent-child relationship, except as ordered by a juvenile court or court. However, custody of a minor child may be assumed by a stepparent or a relative of that child within the fourth degree

of consanguinity or transferred by an acceptance of a release of custody. A person who assumes custody or an agency adoption service provider which accepts a release of custody under this section becomes, upon assumption or acceptance, the custodian of the minor child.

Sec. 19. Section 600A.4, subsection 2, paragraphs a and d, Code 2017, are amended to read as follows:

~~a. Shall be accepted only by an agency or a person making an independent placement~~ adoption service provider.

~~d. (1) Shall contain written acknowledgment of the biological parents that after the birth of the child three hours of counseling regarding the decision to release custody and the alternatives available have been offered to the biological parents by the agency, the person making an independent placement, an investigator as defined in section 600.2, or other qualified counselor regarding the decision to release custody and the alternatives available to the biological parents~~ department or an adoption service provider. The release of custody shall also contain written acknowledgment of the acceptance or refusal of the counseling by the biological parent.

(2) If accepted, the counseling shall be provided after the birth of the child and prior to the signing of a release of custody or the filing of a petition for termination of parental rights as applicable. Counseling shall be provided only by a person who is qualified under rules adopted by the department of human services which shall include a requirement that the person complete a minimum number of hours of training in the area of adoption-related counseling approved by the department. If counseling is accepted, the counselor shall provide an affidavit, which shall be attached to the release of custody, when practicable, certifying that the counselor has provided the biological parent with the requested counseling and documentation that the person is qualified to provide the requested counseling as prescribed by this paragraph "d". The requirements of this paragraph "d" do not apply to a release of custody which is executed for the purposes of a stepparent adoption.

Sec. 20. Section 600A.4, subsection 2, paragraph f,

subparagraphs (1) and (4), Code 2017, are amended to read as follows:

(1) A biological parent may also provide ongoing information to the adoptive parents, as additional medical or social history information becomes known, by providing information to the clerk of court, the department of ~~human services~~, or the ~~agency which~~ adoption service provider that made the placement, and may provide the current address of the biological parent. The clerk of court, the department of ~~human services~~, or the ~~agency which~~ adoption service provider that made the placement shall transmit the information to the adoptive parents if the address of the adoptive parents is known.

(4) The department shall prescribe forms designed to obtain the family medical and social history and shall provide the forms at no charge to any ~~agency~~ adoption service provider or person who executes a release of custody of the minor child or who files a petition for termination of parental rights. The existence of this report does not limit a person's ability to petition the court for release of records in accordance with other provisions of law.

Sec. 21. Section 600A.4, subsection 3, Code 2017, is amended to read as follows:

3. Notwithstanding the provisions of [subsection 2](#), ~~the department or an agency or a person making an independent placement~~ adoption service provider may assume custody of a minor child upon the signature of the one living parent who has possession of the minor child if the ~~agency or a person making an independent placement~~ department or an adoption service provider immediately petitions the juvenile court designated in [section 600A.5](#) to be appointed custodian and otherwise petitions, either in the same petition or within a reasonable time in a separate petition, for termination of parental rights under [section 600A.5](#). Upon the custody petition, the juvenile court may appoint a guardian as well as a custodian.

Sec. 22. NEW SECTION. 600A.6C Report of expenditures — penalty.

1. *a.* A biological parent shall not receive any thing of value as a result of the biological parent terminating the

parent's parental rights, unless that thing of value is an allowable expense under subsection 2.

b. Any person assisting in any way with the termination of parental rights shall not charge a fee which is more than usual, necessary, and commensurate with the services rendered.

c. If the biological parent receives any prohibited thing of value, if a person gives a prohibited thing of value, or if a person charges a prohibited fee under this subsection, the person is guilty of a serious misdemeanor.

2. a. The petitioner shall file with the juvenile court or court, prior to the termination hearing, a full accounting of all disbursements of any thing of value paid or agreed to be paid by or on behalf of the petitioner or intended adoptive parent in connection with the petitioned termination. This accounting shall be made by a report prescribed by the juvenile court or court and shall be signed and verified by the petitioner. The report shall be accompanied by documentation of all disbursements made prior to the date of filing of the report. Only expenses incurred in connection with the following and any other expenses approved by the juvenile court or court are allowable:

(1) The birth of the minor person to be adopted.

(2) Placement of the minor person by the adoption service provider.

(3) Legal expenses related to the termination of parental rights and adoption processes.

(4) Pregnancy-related medical care received by the biological parents or the minor person during the pregnancy or delivery of the minor person and for medically necessary postpartum care for the biological parent and the minor person.

(5) Ordinary and necessary living expenses of the mother including but not limited to the costs of housing, food, utilities, and transportation for medical purposes related to the pregnancy and birth of the child, in an amount not to exceed two thousand dollars and for no longer than thirty days after the birth of the minor person.

(6) Costs of the counseling provided to the biological parents prior to the birth of the child, prior to the release of custody, and any counseling provided to the biological

parents for not more than sixty days after the birth of the child.

(7) Living expenses or care of the minor person during the pendency of the termination of parental rights proceedings.

b. All payments for allowable expenses shall be made through the adoption service provider. An adoption service provider shall deposit all funds received from prospective adoptive parents as payments for allowable expenses for a designated biological parent into an escrow account established with a financial institution located in this state whose accounts are insured by the federal deposit insurance corporation, the national credit union administration, or the federal savings and loan insurance corporation. Such escrow funds shall not be commingled with other revenues or expense accounts of the adoption service provider and separate accounting shall be maintained for each prospective adoptive parent whose funds are deposited in the escrow account. Any escrow funds not disbursed by the adoption service provider for the benefit of the designated biological parent shall be returned to the prospective adoptive parents with a full accounting of all deposits and disbursements. If the adoption service provider is a licensed attorney, use of the attorney's state-sanctioned trust account shall satisfy the requirements relative to the escrow account under this paragraph.

c. Any payments for allowable expenses shall not be made to a biological parent, but instead shall be made directly to the provider of the service, product, or other activity to which the allowable expense is attributable, if applicable.

d. The provisions of this subsection do not apply in a stepparent adoption.

3. The juvenile court or court shall review the report prior to the termination hearing and shall include findings regarding the allowance or disallowance of any disbursements or projected disbursements in the termination order.

Sec. 23. Section 600A.10, Code 2017, is amended to read as follows:

600A.10 Termination procedures — prohibited practices — penalty for violation.

1. Any biological parent who chooses to identify the

other biological parent and who knowingly and intentionally identifies a person who is not the other biological parent in the written release of custody or in any other document related to the termination of parental rights proceedings is guilty of a ~~simple~~ serious misdemeanor.

2. Any person who signs or accepts a release of custody under section 600A.4 prior to the expiration of the seventy-two-hour period required is guilty of a serious misdemeanor.

3. a. All of the following are prohibited practices regarding a proceeding under this chapter:

(1) The provision of termination of parental rights, child placement, or adoption services to any biological or adoptive parent by any person other than an adoption service provider or the department.

(2) The charging of a fee by an adoption service provider that is more than the usual and necessary fee commensurate with the services rendered.

(3) The facilitation, encouragement, or advisement of adoptive parents by an adoption service provider to provide any thing of value beyond those expenditures allowed pursuant to section 600A.6C.

(4) The knowing encouragement or solicitation of payment of allowable expenses or provision of anything of value beyond those expenditures allowed pursuant to section 600A.6C, by a person falsely representing that a child may be available for adoption with the intent to defraud the other person.

b. A person who commits a prohibited practice under this subsection is guilty of a serious misdemeanor for the first violation and a class "C" felony for any second or subsequent violation.

Sec. 24. Section 714.8, Code 2017, is amended by adding the following new subsection:

NEW SUBSECTION. 21. Knowingly, by deception and with intent to defraud another person, represents that the child expected as the result of that person's pregnancy or the pregnancy of another person may be available for adoption.

Sec. 25. Section 714.11, subsection 1, paragraph b, Code 2017, is amended to read as follows:

b. A fraudulent practice as set forth in section 714.8, subsections 2, 8, and 9, and 21.

JACK WHITVER
President of the Senate

LINDA UPMEYER
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 433, Eighty-seventh General Assembly.

W. CHARLES SMITHSON
Secretary of the Senate

Approved _____, 2017

TERRY E. BRANSTAD
Governor