

Adoption Protection Act; Amendments to Kansas Adoption and Relinquishment Act; SB 284

SB 284 creates the Adoption Protection Act and amends several provisions of the Kansas Adoption and Relinquishment Act.

Adoption Protection Act

The bill creates the Adoption Protection Act, which states, 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 violates such CPA's sincerely held religious beliefs.

The bill also prohibits 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 participation in any program operated by the Department for Children and Families (DCF) in which CPAs are allowed to participate;
- Denial of reimbursement for performing foster care placement or adoption services on behalf of an entity that has a contract with DCF as a case management contractor; or
- 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 requires the CPA's sincerely held religious beliefs to 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 do not apply to any entity while the entity has a contract with DCF as a case management contractor.

Kansas Adoption and Relinquishment Act Amendments

The bill amends various provisions within the Kansas Adoption and Relinquishment Act (KARA).

Definitions

The bill amends the definition of “residence of a child” and “place where a child resides” to mean the residence of any parent. The previous definition stated the residence of a child was 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 adds a definition of “party in interest,” which means:

- 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 moves the definition of “professional” within the code and clarifies it does not include a person who received solely reimbursement for expenses.

Who May Adopt

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

Consent to Adoption and Relinquishment

The bill clarifies it is the duty of the court to inform the consenting person or relinquishing person of the legal consequences of the consent or relinquishment; previous law stated the court’s duty was to advise the consenting person or relinquishing person of the consequences of consent or relinquishment. The bill also adds 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 provides that a relinquishment will 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 is on the relinquishing party. The bill provides, 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 are not terminated, and full parental rights shall be restored. The bill removes 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 clarifies that 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 requires a copy of any relinquishment to be filed with the petition for adoption.

Foreign and Out-of-State Adoptions

The bill amends 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 is 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 removes 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 is 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 will be guilty of a class C nonperson misdemeanor; previous law provided the penalty was a class C misdemeanor.

Payment for Adoption

The bill removes 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 also removes related references limiting fees and expenses to those that are reasonable in Kansas or are based on fees in the state.

Access to Adoption Records

In the section governing who may access adoption records, the bill replaces "the parties in interest and their attorneys" with "party filing for adoption or termination and that party's attorney." The bill additionally grants access to such records to an adoptee who has reached the age of majority and the Disciplinary Administrator. The bill moves a provision providing access by the Commission on Judicial Performance to such records. The bill removes an exclusion to the definition of "parties in interest" applicable to this section. The bill adds a provision that allows 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 may order that some or all of the files and records be open to inspection and copying by the moving party. The court may 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 contact at the request of various parties are amended to include birth parents. The bill

also clarifies that the legal guardian of the adopted adult may 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 adds 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 also exempts 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 is amended to clarify that venue may 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 provides that jurisdiction over adoption proceedings, including a proceeding to terminate parental rights, shall be governed by the Uniform Child Custody Jurisdiction and Enforcement Act. The bill removes all provisions related to jurisdiction in the KARA. The bill specifies the notice provisions of the KARA shall control in adoption proceedings.

Background Information

The bill removes 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 is clarified. The bill also clarifies that the continuing class C misdemeanor for intentional destruction of certain background information is a nonperson misdemeanor.

Assessments

The bill removes 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 is also removed.

Notice

The bill amends notice for adoption hearings in the following manner:

- **Independent and stepparent adoptions.** The bill requires notice to possible parents, rather than presumed parents, and adds a requirement that the notice be given at least ten calendar days before the hearing. This section is also amended to require notice be given to any person who has physical custody of the child, unless waived by that person, and the bill removes 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 is removed;
- **Agency adoptions.** In addition to the required notice to the consenting agency, the bill requires 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 specifies notice of the hearing shall 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 clarifies if a court enters a final decree of adoption after a hearing, that decree will terminate parental rights if not previously terminated. The bill also amends 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 removes provisions specific to termination of parental rights in stepparent adoptions.

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

Former provisions regarding filing of a petition to terminate parental rights are removed. The bill then specifies 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 will 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 may file a petition to terminate parental rights. The proceeding to terminate parental rights shall 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 adds a requirement that notice be given at least ten calendar days before the hearing, unless waived by the person entitled to notice. The bill requires proof of waiver of

notice be filed with the court before the petition can be heard, as required for proof of notice under continuing law.

References to “man” are 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:

- Clarifies that finding the consent and relinquishment unnecessary may be part of the court’s conclusion;
- Changes references to “next” to “immediately” with regard to timing requirements; and
- Replaces 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 is also amended to add a definition of “support,” which means 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 are amended to state that 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 may be established in any county in Kansas if all parties in interest agree in writing to venue in that county. The bill clarifies a notice and hearing statute applies only to adult adoptions.

Forms

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