

Chapter 26.38 RCW
UNIFORM UNREGULATED CHILD CUSTODY TRANSFER ACT

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PART I
GENERAL PROVISIONS

RCW 26.38.005 Short title—2022 c 88. Chapter 88, Laws of 2022 may be known and cited as the uniform unregulated child custody transfer act. [2022 c 88 § 101.]

RCW 26.38.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Child" means an unemancipated individual under 18 years of age.

(2) "Child-placing agency" means a person with authority under chapter 74.15 RCW to identify or place a child for adoption. "Child-placing agency" does not include a parent of the child.

(3) "Custody" has the same meaning as "physical custody" as defined in RCW 26.27.021.

(4) "Department" means the department of children, youth, and families.

(5) "Guardian" means a person recognized as a legal guardian under RCW 26.33.020 or under chapter 11.130 RCW.

(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. "Intercountry adoption" 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 RCW 26.26A.010.

(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. "State" includes a federally recognized Indian tribe. [2022 c 88 § 102.]

RCW 26.38.020 Limitation on applicability—2022 c 88. Chapter 88, Laws of 2022 does not apply to custody of an Indian child, as defined in the Indian child welfare act of 1978, 25 U.S.C. Sec. 1903, as amended, to the extent custody is governed by the Indian child welfare act of 1978, 25 U.S.C. Secs. 1901 through 1963, as amended. [2022 c 88 § 103.]

PART II PROHIBITION OF UNREGULATED CUSTODY TRANSFER

RCW 26.38.100 Applicability. This section, RCW 26.38.110, 26.38.120, and 26.38.130 do 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 or by law;

(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;

(5) An Indian custodian, as defined in the Indian child welfare act of 1978, 25 U.S.C. Sec. 1903, as amended, of the child;

(6) A member of the child's customary family unit recognized by the child's Indian tribe under chapter 13.38 RCW; or

(7) A delegation by a parent pursuant to RCW 11.130.145. [2022 c 88 § 201.]

RCW 26.38.110 Prohibited custody transfer. (1) Except as provided in subsection (2) of this section, 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.

(2) 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:

(a) A judicial award of custody under chapter 11.130 or 13.34 RCW or this title;

(b) Placement by or through a child-placing agency;

(c) A judicial award of custody or other action in a tribal court; or

(d) Transfer of a newborn to a qualified person under RCW 13.34.360.

(3) 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 (1) of this section. 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 (2) of this section.

(4) Violation of this section is a gross misdemeanor.

(5) Violation of subsection (1) of this section is not established solely because a parent or guardian that transfers custody of a child or makes a delegation pursuant to RCW 11.130.145 does not regain custody.

(6) For purposes of this section, "abandon" has the same meaning as "abandoned" in RCW 13.34.030. [2022 c 88 § 202.]

RCW 26.38.120 Authority and responsibility of the department.

(1) If the department has a reasonable basis to believe that a person has transferred or will transfer custody of a child in violation of RCW 26.38.110(1), the department must respond in accordance with chapter 74.13 RCW.

(2) If the department provides a child protective services response in accordance with chapter 26.44 RCW for a child adopted or placed through an intercountry adoption, the department shall:

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

(b) Provide a copy of the report to the United States department of state. For the purpose of preventing child abuse or neglect, the department of children, youth, and families may disclose to the United States department of state only those confidential child welfare records that may assist the United States department of state in informing the child's country of origin that the custody of the child has been transferred in an unregulated custody transfer and describing the child's welfare and plan for permanent placement of the child. The records retain their confidentiality subject to RCW 13.50.100 and federal law.

(3) Chapter 88, Laws of 2022 does not prevent the department from taking any appropriate action to protect the welfare of the child. [2022 c 88 § 203.]

RCW 26.38.130 Advertisements—Prohibitions—Exceptions—Application of consumer protection act.

(1) Unless the context clearly requires otherwise, "advertisement" means communication by newspaper, radio, television, handbills, placards or other print, broadcast, or the electronic medium. This definition applies throughout this section.

(2) No person or entity shall cause to be published for circulation, or broadcast on a radio or television station, within the geographic borders of this state, an advertisement of a child or children offered or wanted for adoption or other custody transfer, or shall hold himself or herself out through such advertisement as having the ability to place, locate, dispose, or receive a child or children for adoption or other custody transfer unless such person or entity is:

(a) A duly authorized agent, contractee, or employee of the department or a children's agency or institution licensed by the department to care for and place children;

(b) A person who has a completed preplacement report as set forth in RCW 26.33.190 (1) and (2) or chapter 26.34 RCW with a favorable recommendation as to the fitness of the person to be an adoptive parent, or such person's duly authorized uncompensated agent, or such person's attorney who is licensed to practice in the state. Verification of compliance with the requirements of this section shall consist of a written declaration by the person or entity who prepared the preplacement report.

Nothing in this section prohibits an attorney licensed to practice in Washington state from advertising his or her availability to practice or provide services related to the adoption or other custody transfer of children.

(3) (a) A violation of subsection (2) of this section is a matter affecting the public interest and constitutes an unfair or deceptive act or practice in trade or commerce for the purpose of applying chapter 19.86 RCW.

(b) The attorney general may bring an action in the name of the state against any person violating the provisions of this section in accordance with the provisions of RCW 19.86.080.

(c) Nothing in this section applies to any radio or television station or any publisher, printer, or distributor of any newspaper, magazine, billboard, or other advertising medium which accepts advertising in good faith without knowledge of its violation of any provision of this section after an attempt to verify the advertising is in compliance with this section. [2022 c 88 § 204; 2006 c 248 § 4; 1991 c 136 § 6; 1989 c 255 § 1. Formerly RCW 26.33.400.]

PART III MISCELLANEOUS PROVISIONS

RCW 26.38.200 Uniformity of application and construction. In applying and construing this uniform act, a court shall consider the promotion of uniformity of the law among jurisdictions that enact it. [2022 c 88 § 301.]

RCW 26.38.210 Relation to electronic signatures in global and national commerce—2022 c 88. Chapter 88, Laws of 2022 modifies, limits, or supersedes the electronic signatures in global and national commerce act, 15 U.S.C. Sec. 7001 et seq., as amended, but does not modify, limit, or supersede 15 U.S.C. Sec. 7001(c), or authorize electronic delivery of any of the notices described in 15 U.S.C. Sec. 7003(b). [2022 c 88 § 302.]

RCW 26.38.220 Transitional provisions. RCW 26.38.100 through 26.38.120 and 26.38.130 apply to:

- (1) A transfer of custody on or after June 9, 2022; and
- (2) Soliciting or advertising on or after June 9, 2022. [2022 c 88 § 303.]