

Legislative Analysis



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House Bill 5626 as reported by committee
Sponsor: Rep. Thomas B. Hooker

Analysis available at
<http://www.legislature.mi.gov>

House Bill 5628 as reported by committee
Sponsor: Rep. Hank Vaupel

House Bill 5629 reported by committee
Sponsor: Rep. Michael D. McCready

Senate Bill 924 as passed by the Senate
Sponsor: Sen. Rick Jones

(Enacted as Public Acts 481, 482, 483, and 484 of 2016)

House Committee: Judiciary
Senate Committee: Judiciary (SB 924)
Complete to 12-8-16

BRIEF SUMMARY:

House Bill 5626 updates a provision that allows a prospective adoptive parent to solicit biological parents or guardians of potential adoptees for the purposes of adoptions and that allows a biological parent, guardian, the DHHS, or an adoption agency to solicit adoptive parents by also allowing advertising and recruiting. The bill also revises the definition of "solicit."

Senate Bill 924 revises the sentencing guidelines to conform to the changes by House Bill 5626.

House Bill 5628 will prohibit certain conduct regarding the permanent transfer of a child, whether or not for money or other consideration; a violation would be a 20-year felony.

House Bill 5629 prohibits a parent from delegating parental powers for a child to another in violation of the provisions of House Bill 5628.

With the exception of House Bill 5629, the bills take effect 90 days after enactment.

DETAILED SUMMARY:

House Bill 5626 and Senate Bill 924

House Bill 5626 amends the Michigan Adoption Code (MCL 710.55). Under the Code, only a prospective adoptive parent may solicit biological parents or guardians of potential adoptees for the purposes of adoption. The bill will allow a prospective adoptive parent to

also *advertise for* or *recruit*, in addition to solicit, a biological parent or guardian of a potential adoptee for the purposes of a *court-supervised* adoption.

The code also allows only the following to solicit potential adoptive parents for adoption of a child: a biological parent or guardian, the court, Department of Health and Human Services, or a child placing agency with authority to place the child. The bill allows each of these persons or entities to also *advertise* or *recruit* potential adoptive parents *only to fulfill the purposes of a court-supervised* adoption of that child.

Further, the bill specifies that no other person or entity may advertise for, solicit, or recruit prospective parents for the purpose of facilitating the transfer, adoption, or other permanent placement of a child.

The term "advertise for, solicit, or recruit" (instead of "solicit") will mean to communicate in person, in writing, or via any medium, public or private, for the purpose of locating a previously unknown person or entity with whom to temporarily or permanently place a child. (Currently, "solicit" means contact in person, by telephone or telegraph, by letter or other writing, or by other communication directed to a specific recipient. Solicit does not currently include public communication that is not directed to specific individuals.)

Senate Bill 924 amends the Code of Criminal Procedure (MCL777.15f). A second or subsequent violation of MCL 710.55(1), a non-authorized person soliciting for adoption, is a felony with a maximum term of imprisonment of four years. The bill revises the description of MCL 710.55(1) to conform to the changes to Section 55 by House Bill 5526 by including advertising for, soliciting, or recruiting for adoption.

House Bill 5626 and Senate Bill 924 are tie-barred to each other, meaning that both must be enacted in order for either to become law.

House Bills 5628-5629

House Bill 5628 will amend the Michigan Penal Code (MCL 750.136c). Current law makes it a crime to transfer or attempt to transfer legal or physical custody of an individual to another, or to acquire or attempt to acquire the legal or physical custody of another, for money or valuable consideration, except as otherwise permitted by law. A violation is a felony punishable by imprisonment for not more than 20 years and/or a fine of not more than \$100,000.

The bill adds new prohibitions. With some listed exceptions, a person could not do any of the following whether or not he or she received money or other valuable consideration:

- Except by order of a court, transfer or attempt to transfer the legal or physical custody of a child with the intent to permanently divest a parent of parental responsibility.
- Arrange for or assist in the permanent transfer, adoption, adoptive placement, or any other permanent physical placement of a child, except for the performance of adoption activities under Public Act 116 of 1973, which regulates child care organizations (e.g., a child placing agency).

- Assist, aid, abet, or conspire in the commission of an act described above.

A violation would be punishable by the same penalty currently in place for unlawful transfers of legal or physical custody of an individual to another for money or valuable consideration.

Exceptions: The prohibitions described above would not apply to the placement of a child under one or more of the following conditions:

- ❖ With a relative, a child placing agency, or the Department of Health and Human Services (DHHS).
- ❖ By a child placing agency or the DHHS.
- ❖ In accordance with the Interstate Compact on Placement of Children, Public Act 114 of 1984.
- ❖ Instances where the child will be returned in less than 180 days.
- ❖ With the specific intent that the child will be returned, that the placement benefits the child, and that it is based on the temporary needs of the family, including but not limited to, one more of the following:
 - Respite for the child and family.
 - A vacation or school-sponsored activity or function.
 - A temporary inability of the parent or legal guardian to provide care for the child due to incarceration, military service, medical treatment, or other incapacity of the parent or legal guardian.

House Bill 5629 amends a section of the Estates and Protected Individuals Code pertaining to the delegation of powers by a parent or guardian (MCL 700.5103). Under the bill, a parent would be prohibited from knowingly and intentionally delegating powers regarding the care and custody of his or her minor child for longer than 180 days for the purpose of permanently transferring custody of the child in violation of the new provisions proposed by House Bill 5628, to which the bill is tie-barred. (This means that House Bill 5629 cannot become law unless House Bill 5628 is also enacted.)

Further, the act currently allows a parent or guardian of a legally incapacitated individual to delegate to another person any of the parent's or guardian's powers regarding care, custody, or property of the minor child or ward (except the power to consent to marriage or adoption or to release a minor ward to adoption). The duration of the power of attorney is limited to *six months*; the bill instead limits the power of attorney to *180 days*.

BRIEF DISCUSSION OF THE ISSUES:

The bills address the issue regarding unregulated custody transfers across state lines in which no court oversight is provided. Known as "rehoming," parents and guardians advertise children on social media and the Internet. Though prohibited under the Interstate Compact on the Placement of Children (ICPC), a compact by which all 50 states adhere, reportedly, the compact has no teeth to enforce the prohibition on such custody transfers. Sometimes a child is advertised because the parent feels the child is out of control and cannot be managed. Or adoptive parents may feel the adopted child is not a good fit with their family and want out, or feel overwhelmed because the child has behavioral issues. Regardless of the reasons why a parent or guardian may seek to "rehome" a child in his or

her care, the result is that these children often end up in abusive or neglectful environments. Even worse, the child may be transferred or sold to human traffickers and end up in the commercial sex trade or transferred to a child molester.

The bill package addresses the issue by tightening provisions so that more custody transfers will come under court oversight and to provide criminal penalties for violations.

FISCAL IMPACT:

House Bill 5626 would have an indeterminate fiscal impact on the state and on local units of government. The fiscal impact would depend on the number of convictions for violations and whether violations were first-time violations or second and subsequent violations. For first time violations, misdemeanor convictions would increase costs related to county jails and/or local misdemeanor probation supervision. The costs of local incarceration in a county jail and local misdemeanor probation supervision vary by jurisdiction.

For second and subsequent violations, felony convictions would result in increased costs related to state prisons and state probation supervision. The average cost of prison incarceration in a state facility is roughly \$34,900 per prisoner per year, a figure that includes various fixed administrative and operational costs. State costs for parole and felony probation supervision average about \$3,400 per supervised offender per year. The fiscal impact on local court funding units would depend on how the bill affected caseloads and related administrative costs. Any increase in penal fine revenues would increase funding for local libraries, which are the constitutionally-designated recipients of those revenues.

House Bill 5627 amends sentencing guidelines and does not have a direct fiscal impact on the state or on local units of government.

POSITIONS:

Michigan Department of Health and Human Services indicated support for the bills.
(9-20-16)

Michigan Judges Association indicated support for the House Bills 5626, 5628, and 5629.
(12-6-16)

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.