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MEMORANDUM

To: Senate Committee on Judiciary
From: Natalie Scott, Assistant Revisor of Statutes
Date: March 15, 2018
Subject: Bill Brief on HB 2481

HB 2481 makes updates to the Kansas adoption and relinquishment act.

Section 1 amends K.S.A. 59-2112 to change the definition of “residence of a child” and adds definitions of “party in interest” and “professional”.

Section 2 amends K.S.A. 59-2113 to change husband and wife to married adult couple.

Section 3 amends K.S.A. 59-2114 to change the duty of the court from advising the consenting person of consequences of consent to informing the consenting person of legal consequences of consent.

Section 4 amends K.S.A. 59-2116 to provide that a consent or relinquishment may be given by a father or possible father any time after the birth of the child, but in order to give a consent before the birth of the child the father or possible father must first obtain the advice of independent legal counsel as to the consequences of the consent. The attorney giving independent legal advice must be present at the execution of the consent.

Section 5 amends K.S.A. 59-2117 to allow a document that is the functional equivalent of a Kansas consent or relinquishment to be valid. It also allows these documents that are executed and acknowledged in a foreign country to be valid if properly executed according to Kansas law or the law where the document was executed.

Section 6 amends K.S.A. 59-2120 to remove the definition of professional because it was added to the definition section.

Section 7 amends K.S.A. 59-2121 to remove the requirement that legal and professional fees for services performed outside the state shall not exceed the customary fee for similar services when performed in the state.

Section 8 amends K.S.A. 59-2122 to make changes to the list of persons able to obtain files and records of the court in adoption proceedings. It also provides for access to records prior to the final decree of adoption by a party in interest upon a written finding of good cause, and access to records after the final decree of adoption by any person for good cause shown.

Section 9 amends K.S.A. 59-2123 to require those advertising to provide adoption-related services to state in the advertisement whether or not such person is licensed. It also exempts the department for children and families, an individual seeking to adopt, an agency or an attorney from the prohibition on people offering to adopt, find a home or otherwise place a child as an inducement to a party to place such child in the person's home, institution or establishment.

Section 10 amends K.S.A. 59-2124 to provide that a relinquishment shall be final when executed unless the relinquishing party alleges and proves by clear and convincing evidence that the relinquishment was not freely and voluntarily given. The burden of proof shall be on the relinquishing party. It also provides that if a parent relinquishes a child and the other parent does not relinquish the child and their rights are not terminated, the rights of the parent who relinquished the child shall not be terminated and shall be restored.

Section 11 amends K.S.A. 59-2126 to provide that in all adoptions, venue may be established in any county in Kansas if all parties in interest agree in writing to venue in that county.

Section 12 amends K.S.A. 59-2127 to provide that jurisdiction over proceedings under the act is governed by the uniform child custody jurisdiction and enforcement act, except that in adoption proceedings the notice provisions in K.S.A. 59-2133 and 59-2136 will control.

Section 13 amends K.S.A. 59-2128 to make technical changes for uniformity throughout the act.

Section 14 amends K.S.A. 59-2130 to provide that a properly executed authorization for release of hospital records pertaining to a child shall be filed with the petition in an independent or agency adoption. It also clarifies that employees or agents of the department, a child-placing agency or a district court who intentionally destroy information will be guilty of a class C misdemeanor that is clarified to be a nonperson misdemeanor.

Section 15 amends K.S.A. 59-2132 to remove the requirement to file reports 10 or more days before a hearing on the petition.

Section 16 amends K.S.A. 59-2133 to require notice to parents, possible parents and those with physical custody of the child at least 10 calendar days before a hearing unless waived. It also requires notice to be by personal service, certified mail or in any other manner the court may direct.

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Section 17 amends K.S.A. 59-2134 to provide that a court entry of a final decree of adoption terminates parental rights if not previously terminated.

Section 18 amends K.S.A. 59-2136 to remove the provisions about stepparent adoptions. It also provides that a petition to terminate parental rights may be filed as part of a petition for adoption or as an independent action. The petition may be filed by a parent, the petitioner for adoption, the person or agency having legal custody of the child, or the agency to which the child has been relinquished. Absent good cause shown, a proceeding to terminate parental rights shall have precedence over any other proceeding involving custody of the child. A definition of “support” for purposes of subsection (h) is also added.

Section 19 amends K.S.A. 59-2138 to provide that a court of this state has jurisdiction over a proceeding for the adoption of an adult if the petitioner or the adult resides in this state. It also provides that venue may be established in any county in Kansas if agreed to in writing by all parties in interest.

Section 20 amends K.S.A. 59-2141 to clarify that the statute governs adult adoptions.

Section 21 amends K.S.A. 59-2143 to require the judicial council to provide forms to be used for waiver of notice of hearing under the act, in addition to forms for consent and relinquishment already required.