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FISCAL IMPACT STATEMENT

LS 7255
BILL NUMBER: SB 534

NOTE PREPARED: Mar 21, 2007
BILL AMENDED: Mar 20, 2007

SUBJECT: Various Family Law Matters.

FIRST AUTHOR: Sen. Lubbers
FIRST SPONSOR: Rep. Kuzman

BILL STATUS: CR Adopted - 2nd House

FUNDS AFFECTED: **GENERAL**
 DEDICATED
 FEDERAL

IMPACT: State & Local

Summary of Legislation: (Amended) This bill provides that: (1) proceedings for voluntary termination of parent-child relationships and adoptions are not governed by the uniform child custody jurisdiction law; (2) certain adoption notices are valid regardless of whether the notice is served within or outside Indiana; (3) adoption notices served on a putative father who is not a resident of Indiana are valid if certain conditions are met; (4) a parent who has given valid consent to the termination of the parent-child relationship may waive certain notice requirements; (5) certain notices of adoption proceedings shall be served by publication in the same manner that a summons is served by publication; and (6) if a prospective adoptive parent suffers a pecuniary loss as a result of a violation of adoption deception, the prospective parent may bring a civil action against the person who benefits from the adoption-related expenses.

The bill allows a petition for adoption to be amended to substitute another petitioner under certain circumstances. The bill also requires that if a parent has given written consent, been advised concerning a voluntary termination of the parent-child relationship, and appears in court, the court may consider only whether the consent for the termination of the parent-child relationship was voluntary. It changes the period within which a putative father may register with the putative father registry to be entitled to notice of an adoption.

The bill makes it a Class A misdemeanor to publish an advertisement in a telephone directory: (1) that a child is offered or wanted for adoption; or (2) to place or locate a child for adoption; unless the advertisement is placed by an attorney or a licensed child placing agency and certain other requirements are met.

Effective Date: July 1, 2007.

Explanation of State Expenditures: *Summary* - This bill makes changes to adoption law and would minimally decrease administrative expenditures for the DCS, court fee revenues, and fees charged to access information contained in the Putative Father Registry. The bill also minimally decreases the workload of the courts.

Details of the Bill's Provisions -

Same Action Adoption Petitions: This bill allows an individual who files a petition for adoption of a child, and decides not to adopt the child, or is unable to adopt the child, to amend the original adoption petition, or file a second petition, in the same action to substitute another individual who intends to adopt the child as the petitioner for adoption.

Court Fees: The bill is silent as to whether fees would be charged should a second petition be filed. If fees are not charged when a second petition is filed, court fee revenue would decrease (See *Court Fee Revenue*). The number of cases in which a second petition would be filed are likely few; actual decreases would be minimal.

Notices: As proposed, the DCS would no longer be required to send notices in certain circumstances. Under current law, the DCS is required to send notice when an adoption petition is filed, when an initial hearing or continuance hearing for adoption is held, and when the adoption is finalized.

Statute requires a notice be sent to: (1) each living parent of a child born in wedlock; (2) the mother of a child born out of wedlock and the father of a child whose paternity has been established by: (a) a court proceeding other than the adoption proceeding, except in certain circumstances; or (b) a paternity affidavit; unless the putative father gives implied consent to the adoption; (3) each person, agency, or county office of family and children having lawful custody of the child whose adoption is being sought; (4) the court having jurisdiction of the custody of the child if the legal guardian or custodian of the person of the child is not empowered to consent to the adoption; (5) the child to be adopted if the child is more than 14 years of age; (6) the spouse of the child to be adopted if the child is married; and a putative father. If the parent-child relationship has been terminated, notice of the pendency of the adoption proceedings is required to be given to a licensed child placing agency or county office of Family and Children that is the ward of the child.

Under the bill, the DCS would potentially experience a decrease in expenditures. Actual decreases would depend on the number of notices no longer required to be sent by the DCS and the method by which each individual notice was sent; however, any decrease would likely be minimal. Current law requires notices be sent under Rule 4.1 of the Indiana Trial Court Rules of Procedure (see *Background Information*).

The provision would not affect notices required to be sent for adoptions which are not conducted by the DCS. In said cases, persons filing for adoption would be responsible for costs associated with notices which are sent.

Court Time: Under the bill, the workload for the courts could be reduced as a result of fewer hearings which would otherwise be required to be held under current law when a prospective adoptive parent files an adoption petition in place of an initial prospective parent. Actual reduction in court time would depend on the number of cases in which an adoption petition is amended or a second petition is filed, however, is likely minimal.

Putative Father Registry Check: Under current law, the Putative Father Registry must be checked

prior to an adoption hearing. The fee to do so is \$50. Revenue from the fee is deposited into the Adoption History Fund. The Indiana State Department of Health (ISDH) reports that multiple searches can be conducted under the same adoption petition. As proposed, a person amending an adoption petition or filing a second petition would be able to search the Putative Father Registry under the fee paid for the initial adoption petition. Potentially, revenue to the Adoption History Fund could be decreased under the bill. Actual decreases would depend on the number of adoptions in which an adoption petition is amended or a second petition is filed; however, any decreases are likely to be minimal.

Putative Father Notices: Under current law, a putative father must register with the Putative Father Registry not later than: (1) 30 days after the child's birth; or (2) the date of the filing of a petition for the child's adoptions; whichever occurs later. The bill modifies (2) and requires a putative father to register under (2) on the earlier of the date of the filing of a petition for the child's adoption or termination of the parent-child relationship between a child and a child's mother.

The provision would affect adoptions conducted by the Department of Child Services (DCS). The courts report that termination of parental rights for a child who is not adopted through the DCS occurs when an adoption petition is finalized. Thus, an adoption petition would be filed prior to the termination of parental rights, and a putative father would receive notice in the same fashion that they would under current statute.

When an adoption is conducted by the DCS, termination of parental rights typically occurs prior to an adoption petition being filed. Should a putative father fail to register prior to termination occurring, he would no longer be eligible to receive a notice of adoption. As proposed, the number of notices sent to putative fathers might be reduced. The number of notices which would no longer need to be sent is not known and would depend on the number of putative fathers currently registering with the Putative Father Registry prior to the date of an adoption petition being filed, and the number of those individuals who would not register prior to the termination of parental rights. Under the bill, expenditures of the DCS could decrease minimally. Actual decrease in expenditures would be dependent on the number of notices no longer sent and the method in which the notice was sent. Current law requires notices be sent under Rule 4.1 of the Indiana Trial Court Rules of Procedure (see *Background Information*).

Termination of Parental Rights Notice Waive: The bill allows a parent who has made a valid consent to the termination of parental rights to waive the voluntary hearing notice if the waiver: (1) is in writing either: (a) in the parent's consent to terminate the parent-child relationship; or (b) is a separate document; (2) is signed by the parent in the presence of a notary public; and (3) contains an acknowledgment that: (a) the waiver is irrevocable; and (b) the parent will not receive notice of: (i) the adoption; or (ii) termination of parent-child relationship proceedings.

Under current law, the court is required to notify the parents of a voluntary termination of parental rights hearing. As proposed, the DCS would no longer be required to send notice of a termination or adoption hearing to parents who waived their right to a notice under the bill. The provision could potentially decrease expenditures for the DCS. Actual decreases would be dependent on the number of notices no longer sent. Current law requires notices be sent under Rule 4.1 of the Indiana Trial Court Rules of Procedure (see *Background Information*).

Background Information: Rule 4.1 of the Indiana Trial Court Rules of Procedure requires notification to be sent through: (1) registered or certified mail or other public means by which a written acknowledgment or receipt may be requested and obtained to his residence or place of business or employment with return receipt requested and returned showing receipt of the letter; (2) delivering a copy of the summons to the

person personally; (3) leaving a copy of the summons and complaint at the person's dwelling house or usual place of abode; or (4) serving his agent as provided by rule, statute, or valid agreement. If the notice is sent under (3) or (4), the DCS is required to send by first class mail a copy of the notice to the last known address of the person being served. In addition, if the action is to terminate a parent-child relationship and the parent cannot be served in accordance with Rule 4.1 of the Indiana Rules of Trial Procedure, service must be made by publication. The cost to send a letter first class mail is currently \$0.39; it is \$2.79 to send through certified mail.

Requirement for Courts to only Consider Voluntary Termination of Parental Rights Consent: The bill disallows a court that finds that: (1) a parent gave their consent in writing before a person authorized by law to take acknowledgments, (2) the parent was advised of certain statutory requirements, and (3) advised that if they choose to appear in open court, the only issue before the court is whether their consent was voluntary; from considering anything other than the issue of whether the parent's consent was voluntary when conducting a voluntary termination hearing. As proposed, court time could be reduced. Actual reductions would depend on the number of parents who would no longer be allowed to present information to the court pertaining to a termination.

Explanation of State Revenues: (Revised) The bill allows a prospective adoptive parent to bring a civil action against a person who commits unauthorized adoption facilitation, even if the person has not been prosecuted or convicted of the offense. A prospective adoptive parent may also bring civil action against a person who benefits from adoption-related expenses in violation of IC 35-46-1-9.5 (adoption deception), even if the person has not been prosecuted or convicted of the offense if the prospective adoptive parent has suffered pecuniary loss as a result of the violation (see *Court Fee Revenue*).

Court Fee Revenue: If additional civil actions occur and court fees are collected, revenue to the state General Fund may increase. A civil filing fee of \$100 would be assessed when a civil case is filed, 70% of which would be deposited in the state General Fund if the case is filed in a court of record or 55% if the case is filed in a city or town court. In addition, some or all of the judicial salaries fee (\$15), the public defense administration fee (\$3), the court administration fee (\$2), and the judicial insurance adjustment fee (\$1) are deposited into the state General Fund.

Penalty Provision: The bill makes unauthorized adoption advertising a Class A misdemeanor. Unauthorized adoption advertising includes a person knowingly or intentionally publishing in a newspaper, magazine, or telephone directory that is distributed in Indiana an advertisement that: (1) a child is offered or wanted for adoption, or (2) a person is able to place, locate, or receive a child for adoption. The bill makes unauthorized adoption facilitation a Class A misdemeanor. Unauthorized adoption facilitation includes a person who knowingly or intentionally provides, engages in, or facilitates adoption services to a birth parent or prospective adoptive parent who resides in Indiana.

If additional court cases occur and fines are collected, revenue to both the Common School Fund (from fines) and the state General Fund (from court fees) would increase. The maximum fine for a Class A misdemeanor is \$5,000. However, any additional revenue would likely be small.

See also *Explanation of State Expenditures, Same Action Adoption Petitions*.

Explanation of Local Expenditures: *Penalty Provision:* A Class A misdemeanor is punishable by up to one year in jail.

Explanation of Local Revenues: *Court Fee Revenue:* If additional civil actions occur, local governments would receive revenue from the following sources. The county general fund would receive 27% of the \$100 filing fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If the case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund. Additional fees may be collected at the discretion of the judge and depending upon the particular type of case.

Penalty Provision: If additional court actions occur and a guilty verdict is entered, local governments would receive revenue from court fees. However, any change in revenue would likely be small.

State Agencies Affected: Department of Child Services; Indiana State Department of Health.

Local Agencies Affected: Courts; Local law enforcement agencies.

Information Sources: Jeff Bercovitz, Indiana Judicial Center; Cassandra Porter, Department of Child Services; Judge Charles Deiter, Marion County Superior Court; Steve Kirsch, Attorney; *Indiana Handbook of Taxes, Revenues, and Appropriations, 2006*; Indiana State Department of Health.

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