

SENATE No. 2029

The Commonwealth of Massachusetts

In the One Hundred and Eighty-Ninth General Court
(2015-2016)

SENATE, Tuesday, October 13, 2015

The committee on Ways and Means, to whom was referred the Senate Bill relative to the re-homing of children (Senate, No. 75),-- reports, recommending that the same ought to pass with an amendment substituting a new draft with the same title (Senate, No. 2029).

[Estimated cost: \$200,000]

For the committee,
Karen E. Spilka

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In the One Hundred and Eighty-Ninth General Court
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An Act relative to the re-homing of children.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section 1A of chapter 15D of the General Laws, as appearing in the 2014
2 Official Edition, is hereby amended by inserting after the definition of “department” the
3 following 2 definitions:-

4 “Disruption”, an adoption process that ends after the child is placed in an adoptive home
5 and before the adoption is legally finalized.

6 “Dissolution”, an adoption in which the legal relationship between the adoptive parent
7 and adoptive child is severed, either voluntarily or involuntarily, after the adoption is legally
8 finalized.

9 SECTION 2. Section 6 of said chapter 15D, as so appearing, is hereby amended by
10 striking out, in lines 44 and 45, the words “in a newspaper distributed in the commonwealth”.

11 SECTION 3. Said section 6 of said chapter 15D, as so appearing, is hereby further
12 amended by striking out, in lines 45 and 46, the words “on a radio or television station”.

SECTION 4. Said section 6 of said chapter 15D, as so appearing, is hereby further amended by adding the following 5 subsections:-

(f) A placement agency shall provide a prospective adoptive parent with all relevant information about a child to enable the prospective adoptive parent to knowledgeably determine whether to accept the child for adoption. Relevant information shall include, but not be limited to, all mental, emotional, behavioral or physical health issues of the child and the child's birth family and any other information which would be relevant to the growth and development of the child.

(g) A placement agency shall make available, either directly or by referral, post-adoption services to adoptive parents and adopted children to avoid disruption or dissolution of the adoption. The services shall include, but not be limited to:

- (i) factual information pertaining to adoption services provided at the placement agency;
- (ii) counseling concerning adoption related issues such as identity, roles and relationships;
- (iii) counseling and other services which support placements;
- (iv) assistance in joining or developing support groups;
- (v) information regarding health care coverage for the child through the state; and
- (vi) general information regarding current adoption issues, practices and laws.

If the services are being offered by referral, the placement agency shall provide a list of agencies that provide such services to adoptive parents.

(h) In the event of a disruption or dissolution of an adoption, the adoptive parent shall contact the placement agency that facilitated the adoption if the adoptive parent can no longer adequately care for the child.

(i) The department of early education and care shall create a uniform orientation curriculum for adoptive parent applicants. All placement agencies shall provide this orientation for adoptive parent applicants and all adoptive parent applicants shall participate. The curriculum shall include a minimum number of hours to be completed as part of the orientation and shall include, at a minimum, specific information for adoptive parent applicants seeking to adopt international children.

SECTION 5. Said chapter 15D is hereby further amended by striking out section 15, as so appearing, and inserting in place thereof the following section:-

Section 15. (a) Any person or entity, other than a duly authorized agent or employee of the department of children and families or a licensed placement agency, who causes to be published or to be broadcast in the commonwealth, an advertisement or notice for the placement or reception of a child under 16 years of age, or in any way offers to place or locate children offered or wanted for adoption or any other permanent physical placement, or who holds themselves out in any way as being able to place or locate children for adoption or any other permanent physical placement in violation of subsections (c) or (e) of section 6 shall be punished by a fine of not less than \$5,000 nor more than \$25,000. Any such person who shall accept payment in the form of money or other consideration in return for placing a child for adoption or any other permanent physical placement shall be punished by a fine of not less than \$5,000 nor

54 more than \$30,000, or by imprisonment in a jail or house of correction for not more than 2 ½
55 years or in the state prison for not more than 5 years, or by both such fine and imprisonment.

56 (b) Any person who violates subsection (e) of section 6 by causing to be published or to
57 be broadcast in the commonwealth, an advertisement or notice for the placement or reception of
58 a child under 16 years of age for family child care, large family child care, child care center care,
59 school-aged child care program, group residential care or temporary shelter care shall be
60 punished for each violation by a fine of up to \$5,000 or by imprisonment in a jail or house of
61 correction for not more than 2 ½ years, or by both such fine and imprisonment.

62 (c) Any person who violates subsections (a), (b) or (d) of section 6 shall punished for
63 each violation by a fine of up to \$5,000 or by imprisonment in a jail or house of correction for
64 not more than 2 ½ years, or by both such fine and imprisonment.

65 (d) Upon petition of the department, the superior court shall have jurisdiction to enjoin
66 any violation of section 6 or to take other action that equity and justice may require.

67 SECTION 6. Article V of chapter 190B of the General Laws is hereby amended by
68 striking out section 5-103, as so appearing, and inserting in place thereof the following section:-

69 Section 5-103. (a) A parent of a minor, other than a parent whose parental rights have
70 been terminated or a parent who has signed a voluntary surrender, or a guardian of a minor or
71 incapacitated person may appoint a temporary agent for a period not exceeding 60 days, and may
72 delegate to that agent any power that the parent or guardian has regarding the care, custody or
73 property of the minor child, ward or incapacitated person, except the power to consent to
74 marriage or adoption of a minor; provided, however, that a parent or guardian shall not appoint a

temporary agent if a court has ordered that the minor child be placed in the custody of a person other than that parent or guardian.

(b) Any delegation under this section, regardless of the time period of the delegation, shall be in writing signed by, or at the direction of, the parent or guardian and attested by at least 2 witnesses 18 years of age or older, neither of whom is the temporary agent, together with the written acceptance of the temporary agent.

(c) A parent or guardian shall not appoint a temporary agent of a minor if the minor has another living parent whose whereabouts are known and who is willing and able to provide care and custody for the minor unless the non-appointing parent consents to the appointment in writing. A parent shall not appoint a temporary agent if the appointing parent's parental rights have been terminated or the appointing parent signed a voluntary surrender.

(d) Any delegation under this section may be revoked or amended by the appointing parent or guardian and delivered to all interested persons. The court may limit or alter the authority of the temporary agent.

(e) A delegation of the care and custody of a minor child under this section shall not exceed 60 days unless the court approves the delegation. A parent who has appointed a temporary agent for the care and custody of a minor child in accordance with this section and wishes for the appointment to exceed 60 days, shall file a petition with the court requesting the court's approval of that delegation. The petitioner shall attach a copy of the writing required by subsection (b) and shall state in the petition:

(i) the name, address and date of birth of the child who is the subject of the delegation of powers;

(ii) the names and addresses of the parents of the child;

(iii) the name and address of the person nominated as agent and the relationship of the agent to the child;

(iv) whether the parent wishes to delegate to the agent full parental power regarding the care and custody of the child or partial parental power regarding the care and custody of the child and, if the parent wishes to delegate partial parental power, the specific powers that the parent wishes to delegate and any limitations on those powers;

(v) the proposed term of the delegation of powers, the reasons for the delegation of powers and whether the parent proposes to provide any support to the agent during that term and the amount of any such support; and

(vi) the facts and circumstances showing that the delegation of powers would be in the best interest of the child and that the person nominated as agent is fit, willing and able to exercise those powers.

(f) The court shall hold a hearing on a petition filed under subsection (e) within 45 days after the petition is filed. The petitioner shall cause the petition and notice of the time and place of the hearing to be served at least 10 days before the time of the hearing on: the child, if 12 years of age or older; the child's guardian ad litem and counsel, if any; the parents of the child; the person nominated as agent; any guardian, legal custodian and physical custodian of the child; and any organization that is facilitating the delegation of power. Notice shall be served in person or by first class mail. Notice shall be considered to be given by proof of personal service, by proof that the notice was mailed to the last-known address of the recipient or, if the recipient is an adult, by the written admission of service of the person served.

(g) At the hearing, the court shall first determine whether any party wishes to contest the petition. If the petition is not contested, the court shall immediately proceed to a fact-finding and dispositional hearing, unless an adjournment is requested. If the petition is contested or if an adjournment is requested, the court shall set a date for a fact-finding and dispositional hearing that allows reasonable time for the parties to prepare but is not more than 30 days after the initial hearing. At the fact-finding and dispositional hearing, any party may present evidence and argument relating to the allegations in the petition.

(h) In determining the appropriate disposition of a petition filed under subsection (e), the best interests of the child shall be the prevailing factor to be considered by the court. The court shall also consider whether the person nominated as agent would be fit, willing and able to exercise the powers to be delegated, the reasons for the delegation of powers and the amount of support that the parent is willing and able to provide to the agent during the term of the delegation of powers.

(i) At the conclusion of the fact-finding and dispositional hearing, the court shall grant 1 of the following dispositions, unless the court adjourns the hearing subject to subsection (j):

(1) a disposition dismissing the petition if the court finds that the petitioner has not proved the allegations in the petition by clear and convincing evidence or determines that approval of the proposed delegation of powers is not in the best interest of the child; or

(2) a disposition approving the proposed delegation of powers, if the court finds that the petition has proved the allegations in the petition by clear and convincing evidence and determines that the proposed delegation of powers is in the best interest of the child.

A disposition approving the proposed delegation of powers may also designate an amount of support to be paid by the child's parent to the agent. If the court approves the proposed delegation of powers, the parent and the person nominated as agent may execute a power of attorney delegating those powers as approved by the court.

(j) If at the conclusion of the fact-finding and dispositional hearing the court finds that the petitioner has proved the allegations in the petition by clear and convincing evidence, but that the person nominated as agent is not fit, willing and able to serve as agent or that appointment of that person as agent would not be in the best interest of the child, the court may, in lieu of granting a disposition dismissing the petition under subsection (i), adjourn the hearing for not more than 30 days and request the petitioner or any other party to nominate a different person as agent.

(k) Any person who delegates powers regarding the care and custody of a child for longer than 60 days without first obtaining the approval of the court, as provided in this section, shall be subject to a fine not to exceed \$10,000 or imprisonment not to exceed 9 months, or by both such fine and imprisonment.

(l) A family care plan, including appropriate attachments, as required by the United States Department of Defense, shall meet the requirements of this section for the purposes of active deployment.

SECTION 7. Chapter 210 of the General Laws is hereby amended by striking out section 11A, as so appearing, and inserting in place thereof the following section:-

Section 11A. (a) As used in this section, the term "published" shall include, but not be limited to, any computerized communication system including by electronic mail, internet site, internet profile or any similar medium of communication provided via the internet.

(b) Any person or entity other than a duly authorized agent or employee of the department of children and families or a placement agency licensed under chapter 15D, who causes to be published in the commonwealth, an advertisement or notice of children offered or wanted for adoption or any other permanent physical placement, or in any way offers to place or locate children offered or wanted for adoption or any other permanent physical placement, or who holds themselves out in any way as being able to place or locate children for adoption or any other permanent physical placement shall be punished by a fine of not less than \$5,000 nor more than \$25,000. Any such person who shall accept payment in the form of money or other consideration in return for placing a child for adoption or any other permanent physical placement shall be punished by a fine of not less than \$5,000 and not more than \$30,000, or by imprisonment in jail or house of correction for not more than 2 ½ years or in the state prison for not more than 5 years, or by both such fine and imprisonment.

(c) No person unrelated to a child by blood or marriage, and no organization other than a licensed or approved placement agency, shall receive a child for adoption or any other permanent physical placement following an advertisement in violation of subsection (b). Whoever receives a child to be adopted or placed in any other permanent physical placement in violation of this section, shall be punished by a fine of not less than \$10,000 and not more than \$40,000, or by imprisonment in jail or house of correction for not more than 2 ½ years or in the state prison for not more than 5 years, or by both such fine and imprisonment.

(d) A parent or legal guardian who causes a child to be adopted or placed in any other permanent physical placement, in violation of this section, shall be punished by imprisonment in the state prison for not more than 20 years and by a fine of not more than \$25,000.

184 SECTION 8. (a) There shall be a task force to examine the feasibility of establishing a
185 registry for the filing of writings documenting the appointment of a temporary agent regarding
186 the care, custody or property of a minor child, ward or incapacitated person, for periods of less
187 than 60 days under subsections (a) and (b) of section 5-103 of chapter 190B of the General Laws.
188 The task force shall consist of the following members or their designees: the chief justice of the
189 probate and family court department, who shall serve as chair; the commissioner of early
190 education and care; the commissioner of children and families; the child advocate; the chair of
191 the Children's League of Massachusetts, Inc.; and 2 appointees of the governor, who shall have
192 expertise in child welfare.

193 (b) The task force shall submit a report on the feasibility of establishing a filing system
194 for documenting the appointment of a temporary agent regarding the care, custody or property of
195 a minor child, ward or incapacitated person, for periods of less than 60 days, taking into
196 consideration: (i) the costs associated with establishing the filing system; (ii) methods to protect
197 the privacy of children, parents and guardians; (iii) potential penalties for failure to file the
198 writing; and (iv) enforcement mechanisms. The task force shall submit its report, together with
199 any recommended legislation, to the clerks of the house and senate, the chairs of the joint
200 committee on children, families and persons with disabilities and the house and senate
201 committees on ways and means not later than June 30, 2016.