



127th MAINE LEGISLATURE

FIRST REGULAR SESSION-2015

Legislative Document

No. 1342

H.P. 911

House of Representatives, April 16, 2015

An Act To Prohibit Unauthorized Custody Transfers of Children

Reference to the Committee on Criminal Justice and Public Safety suggested and ordered printed.

A handwritten signature in cursive script that reads "Robert B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative HICKMAN of Winthrop.
Cosponsored by Senator VOLK of Cumberland and
Representatives: BEAVERS of South Berwick, GATTINE of Westbrook, GUERIN of
Glenburn, MAKER of Calais, Senators: BURNS of Washington, DIAMOND of Cumberland,
HAMPER of Oxford, McCORMICK of Kennebec.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 17-A MRSA §553-A** is enacted to read:

3 **§553-A. Unlawful transfer of long-term care and custody of a child**

4 1. A person is guilty of unlawful transfer of long-term care and custody of a child if,
5 being a parent, guardian or other person legally charged with the long-term care and
6 custody of a child under 16 years of age, or a person to whom the long-term care and
7 custody of a child under 16 years of age has been expressly delegated, the person
8 transfers the long-term care and custody of the child to another person who is not a family
9 member without authorization by order of a court with jurisdiction over the child.
10 Violation of this subsection is a Class C crime.

11 2. It is an affirmative defense to prosecution under this section that:

12 A. The long-term care and custody of the child is transferred to another individual by
13 a valid power of attorney under Title 18-A, Article 5, Part 9; and

14 B. At the time the transfer occurred, the individual to whom the long-term care and
15 custody of the child was transferred had a petition pending in Probate Court to be
16 appointed as the child's guardian under Title 18-A, Article 5.

17 **Sec. 2. 18-A MRSA §9-303, sub-§(a)**, as enacted by PL 1995, c. 694, Pt. C, §7
18 and affected by Pt. E, §2, is amended to read:

19 **(a).** A petition for adoption must be sworn to by the petitioner and must include:

20 (1). The full name, age and place of residence of the petitioner and, if married, the
21 place and date of marriage;

22 (2). The date and place of birth of the adoptee, if known;

23 (3). The birth name of the adoptee, any other names by which the adoptee has been
24 known and the adoptee's proposed new name, if any;

25 (4). The residence of the adoptee at the time of the filing of the petition;

26 (5). The petitioner's intention to establish a parent and child relationship between the
27 petitioner and the adoptee and a statement that the petitioner is a fit and proper person
28 able to care and provide for the adoptee's welfare;

29 (6). The names and addresses of all persons or agencies known to the petitioner that
30 affect the custody, visitation or access to the adoptee;

31 (7). The relationship, if any, of the petitioner to the adoptee;

32 (8). The names and addresses of the department and the licensed child-placing
33 agency, if any; ~~and~~

34 (9). The names and addresses of all persons known to the petitioner at the time of
35 filing from whom consent to the adoption is required; and

1 (10). A statement that the petitioner acknowledges that after the adoption is finalized,
2 the transfer of the long-term care and custody of the child without a court order is
3 prohibited under Title 17-A, section 533-A.

4 **Sec. 3. 18-A MRSA §9-304, sub-§(h)** is enacted to read:

5 (h). Before the adoption is decreed, the court shall ensure that the petitioners are
6 informed that the transfer of the long-term care and custody of the child without a court
7 order is prohibited under Title 17-A, section 533-A.

8 **Sec. 4. 18-A MRSA §9-308, sub-§(a)**, as amended by PL 2013, c. 137, §1, is
9 further amended to read:

10 **(a).** The court shall grant a final decree of adoption if the petitioner who filed the
11 petition has been heard or has waived hearing and the court is satisfied from the hearing
12 or record that:

13 (1). All necessary consents, relinquishments or terminations of parental rights have
14 been duly executed and filed with the court;

15 (2). An adoption study, when required by section 9-304, has been filed with the
16 court;

17 (3). A list of all disbursements as required by section 9-306 has been filed with the
18 court;

19 (4). The petitioner is a suitable adopting parent and desires to establish a parent and
20 child relationship with the adoptee;

21 (5). The best interests of the adoptee are served by the adoption; ~~and~~

22 (5-A). The petitioner has acknowledged that the petitioner understands that the
23 transfer of the long-term care and custody of the child without a court order is
24 prohibited under Title 17-A, section 533-A; and

25 (6). All other requirements of this article have been met.

26 **Sec. 5. 18-A MRSA §9-313**, as enacted by PL 1995, c. 694, Pt. C, §7 and affected
27 by Pt. E, §2, is repealed and the following enacted in its place:

28 **§9-313. Advertisement**

29 **1. Definitions.** As used in this section, the following terms have the following
30 meanings.

31 A. "Advertise" means to communicate by any public medium that originates within
32 this State, including by newspaper, periodical, telephone book listing, outdoor
33 advertising sign, radio or television or by any computerized communication system,
34 including by e-mail, website, Internet account or any similar medium of
35 communication provided via the Internet.

36 B. "Internet account" means an account created within a bounded system established
37 by an Internet-based service that requires a user to input or store access information

1 in an electronic device in order to view, create, use or edit the user's account
2 information, profile, display, communications or stored data.

3 **2. Advertising prohibited.** Except as provided in subsection 3, a person may not:

4 A. Advertise for the purpose of finding a child to adopt or to otherwise take into
5 permanent physical custody;

6 B. Advertise that the person will find an adoptive home or any other permanent
7 physical placement for a child or arrange for or assist in the adoption, adoptive
8 placement or any other permanent physical placement of a child;

9 C. Advertise that the person will place a child for adoption or in any other permanent
10 physical placement; or

11 D. Advertise for the purpose of finding a person to adopt a particular child.

12 **3. Publication prohibited; exception.** A person may not publish by means of a
13 public medium an advertisement that violates this section. If the owner, agent or
14 employee of the public medium receives a copy of the license of the person or agency
15 requesting the advertisement that indicates that the person or agency is licensed as a child
16 placing agency, there is a rebuttable presumption that the advertisement does not violate
17 this section.

18 **4. Exceptions.** This section does not prohibit:

19 A. The department or a child placing agency from advertising in accordance with
20 rules adopted by the department; or

21 B. An attorney licensed to practice in this State from advertising the attorney's
22 availability to practice or provide services relating to the adoption of children.

23 **5. Violation.** A person who violates subsection 2 or 3 commits a civil violation for
24 which a fine of not more than \$10,000 may be adjudged.

25 **Sec. 6. 22 MRSA §4011-A, sub-§8** is enacted to read:

26 **8. Required report of residence with nonfamily.** A person required to make a
27 report under subsection 1 shall report to the department if the person knows or has
28 reasonable cause to suspect that a child is not living with the child's family. Although a
29 report may be made at any time, a report must be made immediately if there is reason to
30 suspect that a child has been living with someone other than the child's family for more
31 than 6 months or if there is reason to suspect that a child has been living with someone
32 other than the child's family for more than 12 months pursuant to a power of attorney or
33 other nonjudicial authorization.

34 SUMMARY

35 This bill addresses the practice of rehoming children by creating a new crime
36 prohibiting the transfer of the long-term care and custody of a child without a court order.
37 The new crime is described as a parent, guardian or other person legally charged with the
38 long-term care and custody of a child under 16 years of age, or a person to whom the

1 long-term care and custody of a child under 16 years of age has been expressly delegated,
2 transferring the long-term care and custody of the child to another person who is not a
3 family member without authorization by order of a court that has jurisdiction over the
4 child. This is a Class C crime.