

HOUSE BILL No. 1513

DIGEST OF INTRODUCED BILL

Citations Affected: IC 35-46-1.

Synopsis: Crimes involving adoption. Amends the criminal provision concerning unauthorized adoption advertising. Increases, from \$3,000 to \$4,000, the allowable payment for certain costs and expenses with respect to an adoption. Makes the following crimes a Level 6 felony (instead of a Class A misdemeanor): (1) Adoption deception. (2) Unauthorized adoption advertising. (3) Unauthorized adoption facilitation.

Effective: July 1, 2017.

Olthoff, Schaibley

January 18, 2017, read first time and referred to Committee on Courts and Criminal Code.



First Regular Session of the 120th General Assembly (2017)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2016 Regular Session of the General Assembly.

HOUSE BILL No. 1513

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 35-46-1-9, AS AMENDED BY P.L.46-2016,
2 SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2017]: Sec. 9. (a) Except as provided in subsection (b), a
4 person who, with respect to an adoption, transfers or receives any
5 property in connection with the waiver of parental rights, the
6 termination of parental rights, the consent to adoption, or the petition
7 for adoption commits profiting from an adoption, a Level 6 felony.
8 (b) This section does not apply to the transfer or receipt of:
9 (1) reasonable attorney's fees;
10 (2) hospital and medical expenses concerning childbirth and
11 pregnancy incurred by the adopted person's birth mother;
12 (3) reasonable charges and fees levied by a child placing agency
13 licensed under IC 31-27 or the department of child services;
14 (4) reasonable expenses for psychological counseling relating to
15 adoption incurred by the adopted person's birth parents;
16 (5) reasonable costs of housing, utilities, and phone service for the
17 adopted person's birth mother during the second or third trimester



1 of pregnancy and not more than six (6) weeks after childbirth;
 2 (6) reasonable costs of maternity clothing for the adopted person's
 3 birth mother;

4 (7) reasonable travel expenses incurred by the adopted person's
 5 birth mother that relate to the pregnancy or adoption;

6 (8) any additional itemized necessary living expenses for the
 7 adopted person's birth mother during the second or third trimester
 8 of pregnancy and not more than six (6) weeks after childbirth, not
 9 listed in subdivisions (5) through (7) in an amount not to exceed
 10 one thousand dollars (\$1,000); or

11 (9) other charges and fees approved by the court supervising the
 12 adoption, including reimbursement of not more than actual wages
 13 lost as a result of the inability of the adopted person's birth mother
 14 to work at her regular, existing employment due to a medical
 15 condition, excluding a psychological condition, if:

16 (A) the attending physician of the adopted person's birth
 17 mother has ordered or recommended that the adopted person's
 18 birth mother discontinue her employment; and

19 (B) the medical condition and its direct relationship to the
 20 pregnancy of the adopted person's birth mother are
 21 documented by her attending physician.

22 In determining the amount of reimbursable lost wages, if any, that are
 23 reasonably payable to the adopted person's birth mother under
 24 subdivision (9), the court shall offset against the reimbursable lost
 25 wages any amounts paid to the adopted person's birth mother under
 26 subdivisions (5) and (8) and any unemployment compensation received
 27 by or owed to the adopted person's birth mother.

28 (c) Except as provided in this subsection, payments made under
 29 subsection (b)(5) through (b)(9) may not exceed ~~three~~ **four** thousand
 30 dollars (~~\$3,000~~) (**\$4,000**) and must be disclosed to the court
 31 supervising the adoption. The amounts paid under subsection (b)(5)
 32 through (b)(9) may exceed ~~three~~ **four** thousand dollars (~~\$3,000~~)
 33 (**\$4,000**) to the extent that a court with jurisdiction over the child who
 34 is the subject of the adoption approves the expenses after determining
 35 that:

36 (1) the expenses are not being offered as an inducement to
 37 proceed with an adoption; and

38 (2) failure to make the payments may seriously jeopardize the
 39 health of either the child or the mother of the child and the direct
 40 relationship is documented by a licensed social worker or the
 41 attending physician.

42 (d) The payment limitation under subsection (c) applies to the total



1 amount paid under subsection (b)(5) through (b)(9) in connection with
 2 an adoption from all prospective adoptive parents, attorneys, and
 3 licensed child placing agencies.

4 (e) An attorney or licensed child placing agency shall inform a birth
 5 mother of the penalties for committing adoption deception under
 6 section 9.5 of this chapter before the attorney or agency transfers a
 7 payment for adoption related expenses under subsection (b) in relation
 8 to the birth mother.

9 (f) The limitations in this section apply regardless of the state or
 10 country in which the adoption is finalized.

11 SECTION 2. IC 35-46-1-9.5, AS AMENDED BY P.L.146-2007,
 12 SECTION 19, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 13 JULY 1, 2017]: Sec. 9.5. A person who is a birth mother, or a woman
 14 who holds herself out to be a birth mother, and who knowingly or
 15 intentionally benefits from adoption related expenses paid:

16 (1) when the person knows or should have known that the person
 17 is not pregnant;

18 (2) by or on behalf of a prospective adoptive parent who is
 19 unaware that at the same time another prospective adoptive parent
 20 is also paying adoption related expenses described under section
 21 9(b) of this chapter in an effort to adopt the same child; or

22 (3) when the person does not intend to make an adoptive
 23 placement;

24 commits adoption deception, a ~~Class A misdemeanor~~ **Level 6 felony**.
 25 In addition to any other penalty imposed under this section, a court may
 26 order the person who commits adoption deception to make restitution
 27 to a prospective adoptive parent, attorney, or licensed child placing
 28 agency that incurs an expense as a result of the offense.

29 SECTION 3. IC 35-46-1-21, AS AMENDED BY P.L.21-2010,
 30 SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 31 JULY 1, 2017]: Sec. 21. **(a) As used in this section, "advertisement"**
 32 **means any communication by any medium within the borders of**
 33 **Indiana, including print advertisements, digital advertisements,**
 34 **radio, television, and outdoor advertising signs.**

35 ~~(a)~~ **(b)** Only a person that is an attorney licensed to practice law in
 36 **Indiana** or a child placing agency licensed under the laws of Indiana
 37 may place ~~a paid an advertisement or paid listing of the person's~~
 38 ~~telephone number; on the person's own behalf; in a telephone directory~~
 39 that:

40 (1) a child is offered or wanted for adoption; or

41 (2) the person is able to place, locate, or receive a child for
 42 adoption.



1 ~~(b)~~ (c) A person described in subsection (b) that publishes a
 2 telephone directory that is distributed places an advertisement in
 3 Indiana

4 ~~(1)~~ shall include, at the beginning of any classified heading for
 5 adoption and adoption services, a statement that informs directory
 6 users that only attorneys licensed to practice law and licensed
 7 child placing agencies may legally provide adoption services
 8 under Indiana law; and

9 ~~(2)~~ may publish an advertisement described in subsection (a) in
 10 the telephone directory only if the advertisement contains the
 11 following: **shall include the following in the advertisement:**

12 ~~(A)~~ (1) For an attorney licensed to practice law in Indiana, the
 13 person's attorney number.

14 ~~(B)~~ (2) For a child placing agency licensed under the laws of
 15 Indiana, the number on the person's child placing agency
 16 license.

17 ~~(c)~~ (d) A person who knowingly or intentionally violates subsection
 18 ~~(a)~~ (b) commits unauthorized adoption advertising, a ~~Class A~~
 19 ~~misdemeanor~~. **Level 6 felony.**

20 SECTION 4. IC 35-46-1-22, AS AMENDED BY P.L.31-2011,
 21 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 22 JULY 1, 2017]: Sec. 22. (a) As used in this section, "adoption services"
 23 means at least one (1) of the following services that is provided for
 24 compensation, an item of value, or reimbursement, either directly or
 25 indirectly, and provided either before or after the services are rendered:

26 (1) Arranging for the placement of a child.

27 (2) Identifying a child for adoption.

28 (3) Matching adoptive parents with biological parents.

29 (4) Arranging or facilitating an adoption.

30 (5) Taking or acknowledging consents or surrenders for
 31 termination of parental rights for adoption purposes.

32 (6) Performing background studies on:

33 (A) a child who is going to be adopted; or

34 (B) adoptive parents.

35 (7) Making determinations concerning the best interests of a child
 36 and the appropriateness in placing the child for adoption.

37 (8) Postplacement monitoring of a child before the child is
 38 adopted.

39 (b) As used in this section, the term "adoption services" does not
 40 include the following:

41 (1) Legal services provided by an attorney licensed in Indiana.

42 (2) Adoption related services provided by a governmental entity



- 1 or a person appointed to perform an investigation by the court.
 2 (3) General education and training on adoption issues.
 3 (4) Postadoption services, including supportive services to
 4 families to promote the well-being of members of adoptive
 5 families or birth families.
 6 (c) Subsection (d) does not apply to the following persons:
 7 (1) The department of child services, an agency or person
 8 authorized to act on behalf of the department of child services, or
 9 a similar agency or county office with similar responsibilities in
 10 another state.
 11 (2) The division of family resources, an agency or person
 12 authorized to act on behalf of the division of family resources, or
 13 a similar agency or county office with similar responsibilities in
 14 another state.
 15 (3) A child placing agency licensed under the laws of Indiana.
 16 (4) An attorney licensed to practice law in Indiana.
 17 (5) A prospective biological parent or adoptive parent acting on
 18 the individual's own behalf.
 19 (d) A person who knowingly or intentionally provides, engages in,
 20 or facilitates adoption services to a birth parent who lives in Indiana
 21 commits unauthorized adoption facilitation, a ~~Class A misdemeanor~~
 22 **Level 6 felony**.
 23 (e) Subsection (f) does not apply to the following persons:
 24 (1) The department of child services, an agency or person
 25 authorized to act on behalf of the department of child services, or
 26 a similar agency or county office with similar responsibilities in
 27 another state.
 28 (2) The division of family resources, an agency or person
 29 authorized to act on behalf of the division of family resources, or
 30 a similar agency or county office with similar responsibilities in
 31 another state.
 32 (3) A child placing agency licensed under the laws of Indiana or
 33 another state.
 34 (4) An attorney licensed to practice law in Indiana or another
 35 state.
 36 (5) A prospective biological parent or adoptive parent acting on
 37 the individual's own behalf.
 38 (f) A person who knowingly or intentionally provides, engages in,
 39 or facilitates adoption services to a prospective adoptive parent who
 40 lives in Indiana commits unauthorized adoption facilitation, a ~~Class A~~
 41 ~~misdemeanor~~ **Level 6 felony**.

