

House Bill 434

By: Representatives Ballinger of the 23rd, Camp of the 135th, Rice of the 139th, O'Steen of the 169th, Mathiak of the 82nd, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 1 of Chapter 12 of Title 16 of the Official Code of Georgia Annotated,
2 relating to general provisions relative to offenses against public health and morals, so as to
3 provide for the offense of selling a child for financial gain; to provide for a definition; to
4 provide for a penalty; to provide for limitations; to provide for a cause of action; to amend
5 Article 1 of Chapter 8 of Title 19 of the Official Code of Georgia Annotated, relating to
6 general provisions relative to adoption, so as to provide for conforming cross references; to
7 provide for related matters; to repeal conflicting laws; and for other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 **SECTION 1.**

10 Article 1 of Chapter 12 of Title 16 of the Official Code of Georgia Annotated, relating to
11 general provisions relative to offenses against public health and morals, is amended by
12 adding a new Code section to read as follows:

13 "16-12-6.

14 (a)(1) It shall be unlawful for any person, organization, corporation, hospital, facilitator,
15 or association of any kind whatsoever which is not a child-placing agency, a prospective
16 adoptive parent who has a valid, approved preplacement home study report, or an

17 attorney who is a member of the State Bar of Georgia representing a prospective adoptive
18 parent who has a valid, approved preplacement home study report to advertise, whether
19 in a periodical, by television, radio, or any other public medium or by any private means,
20 including, but not limited to, letters, circulars, handbills, internet postings including social
21 media, and oral statements, that the person, organization, corporation, hospital, facilitator,
22 or association of any kind whatsoever will adopt children or will arrange for or cause
23 children to be adopted or placed for adoption.

24 (2)(A) Any person, organization, corporation, hospital, facilitator, or association of any
25 kind whatsoever which is not a child-placing agency that places an advertisement
26 concerning adoption or prospective adoption shall include in such advertisement its
27 license number issued by the department.

28 (B) Any attorney representing a prospective adoptive parent who has a valid, approved
29 preplacement home study report who places an advertisement concerning adoption or
30 prospective adoption shall include in such advertisement his or her State Bar of Georgia
31 license number.

32 (C) Any individual who places an advertisement concerning being an adoptive parent
33 shall include in such advertisement that he or she has a valid, approved preplacement
34 home study report.

35 (b) It shall be unlawful for any person, organization, corporation, hospital, facilitator, or
36 association of any kind whatsoever to sell, offer to sell, or conspire with another to sell or
37 offer to sell a child for money or anything of value, except as otherwise provided in this
38 article.

39 (c)(1) As used in this subsection, the term 'inducements' means any financial assistance,
40 either direct or indirect, from whatever source, but shall expressly not include:

41 (A) The payment or reimbursement of the medical expenses directly related to the
42 biological mother's pregnancy and hospitalization for the birth of the child and medical
43 care for such child if paid by a licensed child-placing agency or an attorney;

44 (B) The payment or reimbursement of expenses for counseling services or legal
45 services for a biological parent that are directly related to the placement by such parent
46 of her or his child for adoption if paid by a licensed child-placing agency or an attorney;

47 (C) The payment or reimbursement of reasonable living expenses for the biological
48 mother if paid by a licensed child-placing agency; or

49 (D) The payment or reimbursement of reasonable expenses for rent, utilities, food,
50 maternity garments, and maternity accessories for the biological mother if paid from
51 the trust account of an attorney who is a member of the State Bar of Georgia in good
52 standing.

53 (2) It shall be unlawful for any person, organization, corporation, hospital, facilitator, or
54 association of any kind whatsoever to directly or indirectly hold out inducements to any
55 biological parent to part with his or her child.

56 (3) It shall be unlawful for any person, organization, corporation, hospital, facilitator, or
57 association of any kind whatsoever to conspire with another to offer or provide
58 inducements to a biological parent to part with his or her child.

59 (4) It shall be unlawful for an individual to knowingly make false representations in
60 order to obtain inducements.

61 (5) The report and affidavit filed pursuant to subsections (c) and (d) of Code
62 Section 19-8-13 shall include an itemized accounting of all expenses paid or reimbursed
63 pursuant to this subsection.

64 (d)(1) It shall be unlawful for an individual to knowingly accept expenses as set forth in
65 subparagraph (c)(1)(C) or (c)(1)(D) of this Code section for the adoption of her child or
66 unborn child if she knows or should have known that she is not pregnant or is not a legal
67 mother.

68 (2) It shall be unlawful for an individual to knowingly accept expenses as set forth in
69 subparagraph (c)(1)(C) or (c)(1)(D) of this Code section from an adoption agency or an
70 attorney without disclosing that he or she is receiving such expenses from another

71 adoption agency or attorney in an effort to allow for the adoption of the same child or
72 unborn child.

73 (3) It shall be unlawful for an individual to knowingly make false representations in
74 order to obtain expenses as set forth in subparagraph (c)(1)(C) or (c)(1)(D) of this Code
75 section.

76 (4) It shall be unlawful for an individual to make false representations as to the existence
77 of a pregnancy or the intention to place a child for adoption when such individual knows
78 or should have known that the person purported to be pregnant is not pregnant or that the
79 person purported to be offering the child for adoption has no intention of placing the child
80 for adoption, and such representations cause another to expend financial resources or take
81 other specific steps, including, but not limited to, travel or retaining the services of an
82 attorney, agency, or social worker, toward adoption of a child in reasonable reliance on
83 such representations.

84 (e) Any person who violates this Code section shall be guilty of a felony and, upon
85 conviction thereof, shall be punished by a fine not to exceed \$10,000.00, imprisonment for
86 not less than one nor more than ten years, or both, and shall further be subject to a court
87 order requiring such person to make restitution to a victim harmed by such person's
88 violation.

89 (f)(1) Subsection (a) of this Code section shall not apply to communication by private
90 means, including written or oral statements, by an individual seeking to:

91 (A) Adopt a child or children; or

92 (B) Place such individual's child or children for adoption,

93 whether the communication occurs before or after the birth of such child or children.

94 (2) Subsection (a) of this Code section shall not apply to any communication described
95 in paragraph (1) of this subsection which contains the name of an attorney who is a
96 member of the State Bar of Georgia, his or her address, his or her telephone number, or
97 any combination of such information and which requests that the attorney named in such

98 communication be contacted to facilitate the carrying out of the purpose, as described in
99 subparagraph (A) or (B) of paragraph (1) of this subsection, of the individual making
100 such personal communication.

101 (g)(1) Any child-placing agency or individual who is seeking to adopt or seeking to place
102 a child for adoption who is damaged by a violation of this Code section may file a civil
103 action to recover damages, treble damages, reasonable attorney's fees, and expenses of
104 litigation.

105 (2) Any individual who is seeking to adopt or seeking to place a child for adoption who
106 is damaged by a violation of this Code section may file a civil action in tort, provided that
107 such individual would have an existing tort claim under Georgia law."

108 **SECTION 2.**

109 Article 1 of Chapter 8 of Title 19 of the Official Code of Georgia Annotated, relating to
110 general provisions relative to adoption, is amended by revising paragraph (4) of
111 subsection (c) of Code Section 19-8-13, relating to petition, filing and contents, financial
112 disclosures, attorney's affidavit, and redaction of certain information unnecessary, as follows:

113 "(4) Reasonable expenses for the biological mother as set forth in subparagraph (c)(1)(C)
114 or (c)(1)(D) of Code Section 16-12-6 or 19-8-24;"

115 **SECTION 3.**

116 Said article is further amended by revising paragraph (3) of subsection (a) of Code
117 Section 19-8-18, relating to hearing, district attorney to be directed to review inducement
118 violations, decree of adoption, factors considered in determining best interests of child, and
119 disposition of child on denial of petition, as follows:

120 "(3) If the adoption petition is filed pursuant to Code Section 19-8-5, the court shall
121 examine the financial disclosures required under subsections (c) and (d) of Code
122 Section 19-8-13 and make such further examination of each petitioner and his or her

123 attorney as the court deems appropriate in order to make a determination as to whether
124 there is cause to believe that Code Section 16-12-6 or 19-8-24 has been violated with
125 regard to the inducement, as such term is defined in Code Section 16-12-6 and 19-8-24,
126 of the placement of the child for adoption. Should the court determine that further
127 inquiry is in order, the court shall direct the district attorney for the county to review the
128 matter further and to take such appropriate action as the district attorney in his or her
129 discretion deems appropriate."

130 **SECTION 4.**

131 All laws and parts of laws in conflict with this Act are repealed.