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March 9, 2018

Representative Taylor Barras
Speaker of the House of Representatives
P.O. Box 94062
Baton Rouge, Louisiana 70804

Senator John A. Alario, Jr.
President of the Senate
P.O. Box 94183
Baton Rouge, Louisiana 70804

RE: HOUSE CONCURRENT RESOLUTION NO. 79 OF THE 2016 REGULAR SESSION

Dear Mr. Speaker and Mr. President:

The Louisiana State Law Institute respectfully submits herewith its report to the legislature relative to abuse of incentives in adoptions.

Sincerely,


William E. Crawford
Director

WEC/puc

Enclosure

cc: Representative Rick Edmonds
Representative Beryl Amedée
Representative Tony Bacala
Representative Larry Bagley
Representative John Bagneris
Representative Jean-Paul P. Coussan

Representative Julie Emerson
Representative Reid Falconer
Representative Lance Harris
Representative Frank Hoffman
Representative Dodie Horton
Representative Katrina Jackson
Representative H. Bernard Lebas
Representative Walt Leger, III
Representative Rodney Lyons
Representative Kevin Pearson
Representative Steve Pylant
Senator Barrow Peacock

email cc: David R. Poynter Legislative Research Library
drplibrary@legis.la.us
Secretary of State, Mr. Tom Schedler
admin@sos.louisiana.gov

**LOUISIANA STATE LAW INSTITUTE
CHILDREN'S CODE COMMITTEE**

**REPORT TO THE LEGISLATURE
IN RESPONSE TO HCR NO. 79 OF THE 2016 REGULAR SESSION**

Relative to abuse of incentives in adoptions

Prepared for the
Louisiana Legislature on

March 9, 2018

Baton Rouge, Louisiana

**LOUISIANA STATE LAW INSTITUTE
CHILDREN'S CODE COMMITTEE**

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Isabel Wingerter, Baton Rouge

* * * * *

Kären Hallstrom, Reporter

Jessica G. Braun, Staff Attorney

2016 Regular Session

HOUSE CONCURRENT RESOLUTION NO. 79

BY REPRESENTATIVES EDMONDS, ADAMS, AMEDEE, BACALA, BAGLEY, BAGNERIS, COUSSAN, EMERSON, FALCONER, LANCE HARRIS, HOFFMANN, HORTON, JACKSON, MIKE JOHNSON, LEBAS, LEGER, LYONS, PEARSON, AND PYLANT AND SENATOR PEACOCK

A CONCURRENT RESOLUTION

To urge and request the Louisiana State Law Institute to study the laws regarding adoptions and adoption incentives in Louisiana and to submit a written report of its findings with recommendations relative to establishing consistent and specific procedures and laws for all types of adoption to address abuse of incentives in the adoption process in Louisiana.

WHEREAS, Louisiana has many children who are available for adoption; and

WHEREAS, the Children's Code provides for various types of adoption in Louisiana;

and

WHEREAS, Louisiana law provides procedures for private adoption and agency or intrafamily adoptions and differences in the laws regarding private adoptions and agency adoptions may create certain advantages for some parties in the adoption process; and

WHEREAS, while other states have specific laws addressing "Adoption Incentives" and laws that set limits on the incentives provided to birth mothers, Louisiana does not; and

WHEREAS, without these laws in Louisiana, the potential for monetary gain and exploitation exists in the adoption process and the emotional impact of wrongful adoptions on families is significant; and

WHEREAS, the prevention of exploitation and wrongful adoptions in the adoption process should be of the utmost importance to the people of Louisiana.

THEREFORE, BE IT RESOLVED that the Legislature of Louisiana does hereby urge and request the Louisiana State Law Institute to compile data relative to the rules and procedures for the adoption of children in Louisiana, to study the laws regarding adoptions and adoption incentives, and to make recommendations relative to establishing consistent

HCR NO. 79

ENROLLED

and specific procedures and laws for all types of adoption and for addressing the abuse of incentives in the adoption process.

BE IT FURTHER RESOLVED that a written report of its findings and recommendations be submitted to the House Committee on Civil Law and Procedure and the Senate Committee on Judiciary A no later than sixty days prior to the 2018 Regular Session of the Legislature of Louisiana.

BE IT FURTHER RESOLVED that a suitable copy of this Resolution be transmitted to the director of the Louisiana State Law Institute.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

March 9, 2018

To: Representative Taylor Barras
Speaker of the House of Representatives
P.O. Box 94062
Baton Rouge, Louisiana 70804

Senator John A. Alario, Jr.
President of the Senate
P.O. Box 94183
Baton Rouge, Louisiana 70804

**REPORT TO THE LEGISLATURE
IN RESPONSE TO HCR NO. 79 OF THE 2016 REGULAR SESSION**

House Concurrent Resolution No. 79 of the 2016 Regular Session urged and requested the Louisiana State Law Institute to compile data relative to the rules and procedures for the adoption of children in Louisiana, to study the laws regarding adoptions and adoption incentives, and to make recommendations relative to establishing consistent and specific procedures and laws for all types of adoption and for addressing the abuse of incentives in the adoption process.

The Law Institute assigned this project to the Children's Code Committee, which is led by Kären Hallstrom as Reporter and is comprised of practitioners, judges, law professors, social workers, and mental health experts with expertise in this area.

With respect to establishing consistent procedures for all types of adoptions, the Committee has been reviewing the relevant articles and has identified several areas in need of revision. However, the work is not yet complete. The Committee will continue drafting proposals this year and, upon approval by the Law Institute's Council, will submit legislation for the 2019 Regular Session.

With respect to the abuse of incentives in adoptions, the Committee researched other states' laws relative to allowable living expenses, reviewed parallel surrogacy restrictions on expenses, and discussed the unique relationship between the birth mother and the prospective adoptive parents. The Committee's work culminated in the attached legislation, House Bill No. 643 of the 2018 Regular Session, which proposes to limit allowable expenses, clarify criminal penalties, involve the court at an earlier point in the process, and require the payment of expenses to be made through the Department of Children and Family Services, an agency, or an adoption attorney.

2018 Regular Session

HOUSE BILL NO. 643

BY REPRESENTATIVES EDMONDS AND FOIL

(On Recommendation of the Louisiana State Law Institute)

ADOPTION: Provides for the regulation of the adoption of children

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AN ACT

To amend and reenact Children's Code Articles 1131(A), 1200, 1201, 1223, and 1223.1 and R.S. 14:286, relative to adoption; to provide for the adoption of children; to provide for the crime of the sale of minor children; to provide for the filing of adoption fees and charges; to provide for the reimbursement of expenses; to provide a limit on living expenses; to provide a cause of action for prospective adoptive parents; to provide for the inclusion of expenses and receipts with the adoption disclosure affidavit; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Children's Code Articles 1131(A), 1200, 1201, 1223, and 1223.1 are hereby amended and reenacted to read as follows:

Art. 1131. Filing of surrender; institution of records check

A. Within three days after the surrender becomes irrevocable under Article 1123, exclusive of legal holidays, the agency or attorney for the prospective adoptive parents shall file the authentic act of voluntary surrender, together with a preliminary estimate and accounting of fees and charges in accordance with Article 1201 or 1223.1 and any certification for adoption or court order approving the adoptive placement required by Chapter 2 of Title XII in a court of proper venue as authorized by Article 1180.

* * *

1 Art. 1200. Fee disclosure; permissible reimbursement of expenses; court review;
2 report

3 A. The petitioner shall file with the petition a preliminary current estimate
4 and accounting of fees and charges in accordance with Article 1201. The petitioner
5 also shall file a final ~~Adoption Disclosure Affidavit~~ adoption disclosure affidavit
6 with the court not later than ten days prior to the date scheduled for the final hearing
7 on the adoption.

8 B. ~~Payments made by or on behalf of the adoptive parents or their~~
9 ~~representative to the department or to a child-placing agency or its agent or any~~
10 ~~broker for reimbursement of the following expenses~~ Only the following payments
11 made through the Department of Children and Family Services, a licensed adoption
12 agency, or an adoption attorney are permissible and not a violation of R.S. 14:286:

13 (1) ~~Reasonable~~ Actual medical expenses, including hospital, testing, nursing,
14 pharmaceutical, travel, or other similar expenses, incurred by the biological mother
15 for prenatal care and those medical expenses incurred by the biological mother and
16 child incident to birth.

17 (2) ~~Reasonable~~ Actual medical expenses, including hospital, testing, nursing,
18 pharmaceutical, travel, or other similar expenses, and foster care expenses incurred
19 on behalf of the child prior to the decree of adoption.

20 (3) ~~Reasonable~~ Actual expenses incurred by the department or the agency
21 for adjustment counseling and training services provided to the adoptive parents and
22 for home studies or investigations.

23 (4) ~~Reasonable~~ Actual and reasonable administrative expenses incurred by
24 the department or the agency, including overhead, court costs, travel costs, and
25 attorney fees connected with an adoption. In approving a reasonable fee for
26 overhead, the court shall consider and include additional expenses incurred by the
27 department or the agency not specifically allocated to the adoption before the court
28 including the cost of failed adoptions, where those expenses or fees represent actual

1 costs of the department's or agency's adoption services permitted by the provisions
2 of this Article.

3 (5) Reasonable Actual expenses incurred for ~~mental-health~~ counseling
4 services provided to a biological parent or a child for a reasonable time before and
5 after the child's placement for adoption.

6 (6) Reasonable Actual expenses incurred in ascertaining the information
7 required by Articles 1124 and 1125.

8 (7) Reasonable Actual and reasonable living expenses incurred ~~by a mother~~
9 needed to maintain an adequate standard of living that the mother is unable to
10 maintain otherwise due to lost wages for a period when she is unable to work.

11 (a) Living expenses in accordance with this Subparagraph may be paid for
12 a reasonable time before the birth of her child and for no more than forty-five days
13 after the birth and may include the following:

14 (i) Temporary housing expenses, such as rent or mortgage payments.

15 (ii) Utilities, such as electricity, gas, water, or telephone.

16 (iii) Food for the mother and any minor children residing in her home.

17 (iv) Transportation costs related to the pregnancy or adoption.

18 (v) Maternity clothing for the mother.

19 (b) Actual living expenses shall not include vehicles, salary or wages,
20 recreation or leisure activities, permanent housing, gifts, or other payments for the
21 monetary gain of the mother.

22 (c) The total payment of living expenses shall not exceed seven thousand
23 five hundred dollars, except as otherwise specifically authorized in accordance with
24 Subparagraph (9) of this Paragraph.

25 (8) Reasonable Actual and reasonable attorney fees, court costs, travel, or
26 other expenses incurred on behalf of a parent who surrenders a child for adoption or
27 otherwise consents to the child's adoption.

1 (9) Any ~~other specific service or fee~~ additional expense authorized by order
2 of the court ~~finds~~ prior to payment upon a specific finding that the expense is
3 reasonable and necessary.

4 C. The payment of expenses permitted by Paragraph B of this Article may
5 not be made contingent on the placement of a child for adoption, relinquishment of
6 the child, or consent to the adoption, and the prospective adoptive parent shall have
7 no right to seek reimbursement of any payments solely on the basis of the mother's
8 decision not to place the child for adoption. However, the prospective adoptive
9 parent may seek reimbursement of payments made pursuant to Paragraph B of this
10 Article from a mother or any other person, agency, or attorney who accepts such
11 payments if the person accepting payment knows that the mother on whose behalf
12 payment is accepted is not pregnant at the time of the receipt of payments or that the
13 mother is accepting payments concurrently from more than one prospective adoptive
14 parent without the knowledge of the prospective adoptive parent who is seeking
15 reimbursement.

16 D. Adoptive parents shall pay to the department any of the expenses listed
17 in Paragraph B of this Article which may be imposed by the department. Such
18 payments shall be imposed solely at the discretion of the department. The department
19 shall not include payment of the expenses listed in Paragraph B of this Article as a
20 requirement for adoption.

21 E. If a court determines from an accounting that an amount that is going to
22 be or has been disbursed for expenses ~~permitted by~~ listed in Paragraph B of this
23 Article is unreasonable, it may order a reduction in the amount to be disbursed and
24 order the person who received the disbursement to refund that portion.

25 F. If a court determines from an accounting that an amount is going to be or
26 has been disbursed for expenses not permitted by Paragraph B of this Article, it may:

27 (1) Issue an injunction prohibiting the disbursement or order the person who
28 received the disbursement to refund it.

1 (2) Refer the case to the district attorney for the consideration of criminal
2 charges pursuant to R.S. 14:286.

3 (3) Refuse to approve the adoption, if in the best interest of the child.

4 G. The court shall not issue a final decree of adoption until it has reviewed
5 and approved the final accounting.

6 H. A copy of the ~~Adoption Disclosure Affidavit~~ adoption disclosure affidavit
7 and all orders of the court pursuant to this Article shall be mailed to the office of
8 children and family services, Louisiana Department of Children and Family Services.

9 Comments - 2018

10 (a) The payment of expenses is intentionally limited by this Article to
11 regulate the expense of adoption and curtail the potential for abuse. In the event of
12 extraordinary circumstances that may justify reasonable and necessary expenses not
13 otherwise specifically authorized or excluded by this Article, Subparagraph (B)(9)
14 allows the court to authorize the payment of such expenses. For example,
15 extraordinary circumstances may include hurricanes or severe flooding that impact
16 the needs of the mother or raise the cost of housing beyond the statutory limit.

17 (b) Paragraph C of this Article is not intended to limit a prospective adoptive
18 parent's cause of action for damages against an adoption agency or attorney for
19 breach of contract, fraud, or other alleged misconduct in connection with an
20 adoption. Rather, it addresses the prospective adoptive parents' right to
21 reimbursement of expenses, which is permitted only in cases in which the mother is
22 not pregnant or in which duplicative expenses are collected from multiple
23 prospective adoptive parents. Reimbursement is not permitted when a mother has
24 exercised her right not to place her child for adoption.

25 Art. 1201. Adoption disclosure affidavit of fees and charges; form

26 A. Each petition for an agency adoption shall be accompanied by an affidavit
27 executed by the petitioner and petitioner's attorney containing an accounting of all
28 fees and charges paid or agreed to be paid by or on behalf of the petitioner in
29 connection with the adoption. The affidavit shall include the date and amount of
30 each payment made, the name and address of the recipient, and the purpose of each
31 payment. Receipts for each expense shall be attached to the affidavit.

32 B. The affidavit shall not include any identifying information as to the
33 biological parents, their families, or the child's birth name.

34 C. The form for the affidavit shall be as follows:

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"ADOPTION DISCLOSURE AFFIDAVIT

BEFORE ME, the undersigned authority, personally came and appeared
_____ (petitioner) and _____ (attorney for petitioner), who being first
duly sworn, did depose and state:

In the matter of the adoption by _____ (petitioner's name):

1. We report the following fees and charges or other things of value given
in connection with this adoption:

Actual Estimated Due or paid to
\$ _____ \$

Itemization of Expenses Recipient Purpose Estimate Actual Date Paid

A. Agency administrative expenses:

- 1. Attorney fees
- 2. Court costs
- 3. Travel costs
- 4. Overhead
- 5. Other (Specify)

B. Agency ~~Mental Health Counseling~~ counseling expenses:

- 1. Counseling for adopting parents
- 2. Home study evaluations
- 3. Counseling for biological parents
- 4. Counseling for the child
- 5. Statement of Family History information
- 6. Other (Specify)

C. Medical expenses for biological mother:

- 1. Medical
- 2. Travel
- 3. Other (Specify)

D. Medical/foster care expenses for child:

- 1. Medical
- 2. Travel
- 3. Other (Specify)

E. Living expenses of the biological mother:

- 1. Room and board Housing
- 2. ~~Other (Specify)~~ Utilities
 - (a) Electricity
 - (b) Gas
 - (c) Water
 - (d) Telephone
- 3. Food

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- 4. Transportation
- 5. Maternity clothing

F. Other expenses (Specify):

Actual	Estimated
total	total
\$	\$
<u>Total Estimated</u>	<u>Total Paid</u>

2. We certify that no other fees, charges, or things of value other than court costs have been given or shall be given by anyone in connection with this adoption.

3. We declare that this disclosure statement has been examined by each of us and that its contents are true to the best of our information, knowledge, and belief.

4. We understand that each of us has a continuing obligation to supplement and amend this affidavit as necessary.

5. We understand that this information will be transmitted to the office of children and family services, Louisiana Department of Children and Family Services. We further understand that it may be released by written authorization of the court for purposes of a grand jury investigation pursuant to R.S. 14:286 or for an ethical investigation by the Committee on Professional Responsibility of the Louisiana State Bar Association. We further certify that we understand that in accordance with R.S. 14:286, making a false statement in any adoption disclosure affidavit with the intent to deceive and with knowledge that the statement is false is punishable by a fine not to exceed fifty thousand dollars or imprisonment with or without hard labor for more than ten years, or both.

Signature of Petitioner

Signature of Attorney

Address

Address

SWORN TO AND SUBSCRIBED BEFORE ME ON THIS ____ DAY OF _____, ____.

(NOTARY PUBLIC)"

D. The adoption disclosure affidavit shall not be included as an exhibit for service with a copy of the petition under Article 1202.

1 E. Confidentiality of the information contained in the adoption disclosure
2 affidavit shall be maintained as provided in Chapter 5 of this Title, and shall be
3 released only in accordance with this Article or on written authorization of the court
4 for the purposes of a grand jury investigation of a violation of R.S. 14:286 or an
5 ethical investigation by the Committee on Professional Responsibility of the
6 Louisiana State Bar Association.

7 * * *

8 Art. 1223. Fee disclosure; permissible reimbursement of expenses; court review;
9 report

10 A. The petitioner shall file with the petition a preliminary current estimate
11 and accounting of fees and charges in accordance with Article ~~1201~~ 1223.1. The
12 petitioner also shall file a final ~~Adoption Disclosure Affidavit~~ adoption disclosure
13 affidavit with the court not later than ten days prior to the date scheduled for the final
14 hearing on the adoption.

15 B. ~~Payments made by or on behalf of the adoptive parents or their~~
16 ~~representative to a biological parent or his agent or representative or to an attorney,~~
17 ~~broker, or other intermediary for reimbursement of the following expenses~~ Only the
18 following payments made through the Department of Children and Family Services,
19 a licensed adoption agency, or an adoption attorney are permissible and not a
20 violation of R.S. 14:286:

21 (1) ~~Reasonable~~ Actual medical expenses, including hospital, testing, nursing,
22 pharmaceutical, travel, or other similar expenses, incurred by the biological mother
23 for prenatal care and those medical expenses incurred by the biological mother and
24 child incident to birth.

25 (2) ~~Reasonable~~ Actual medical expenses, including hospital, testing, nursing,
26 pharmaceutical, travel, or other similar expenses, and foster care expenses incurred
27 on behalf of the child prior to the decree of adoption.

1 (3) Reasonable Actual expenses incurred for adjustment counseling and
2 training services provided to the adoptive parents and for home studies or
3 investigations.

4 (4) Reasonable Actual and reasonable court costs, travel costs, and attorney
5 fees incurred by the adoptive parents for their own representation in this adoption.

6 (5) Reasonable Actual expenses incurred for mental-health counseling
7 services provided to a biological parent or a child for a reasonable time before and
8 after the child's placement for adoption.

9 (6) Reasonable Actual expenses incurred in ascertaining the information
10 required by Articles 1124 and 1125.

11 (7) Reasonable Actual and reasonable living expenses incurred by a mother
12 needed to maintain an adequate standard of living that the mother is unable to
13 maintain otherwise due to lost wages for a period when she is unable to work.

14 (a) Living expenses in accordance with this Subparagraph may be paid for
15 a reasonable time before the birth of her child and for no more than forty-five days
16 after the birth and may include the following:

17 (i) Temporary housing expenses, such as rent or mortgage payments.

18 (ii) Utilities, such as electricity, gas, water, or telephone.

19 (iii) Food for the mother and any minor children residing in her home.

20 (iv) Transportation costs related to the pregnancy or adoption.

21 (v) Maternity clothing for the mother.

22 (b) Actual living expenses shall not include vehicles, salary or wages,
23 recreation or leisure activities, permanent housing, or other payments for the
24 monetary gain of the mother.

25 (c) The total payment of living expenses shall not exceed seven thousand
26 five hundred dollars, except as otherwise specifically authorized in accordance with
27 Subparagraph (9) of this Paragraph.

1 (8) ~~Reasonable~~ Actual and reasonable attorney fees, court costs, travel, or
2 other expenses incurred on behalf of a parent who surrenders a child for adoption or
3 otherwise consents to the child's adoption.

4 (9) Any ~~other specific service or fee~~ additional expense authorized by order
5 of the court finds prior to payment upon a specific finding that the expense is
6 reasonable and necessary.

7 C. The payment of expenses permitted by Paragraph B of this Article may
8 not be made contingent on the placement of a child for adoption, relinquishment of
9 the child, or consent to the adoption, and the prospective adoptive parent shall have
10 no right to seek reimbursement of any payments solely on the basis of the mother's
11 decision not to place the child for adoption. However, the prospective adoptive
12 parent may seek reimbursement of payments made pursuant to Paragraph B of this
13 Article from a mother or any other person, agency, or attorney who accepts such
14 payments if the person accepting payment knows that the mother on whose behalf
15 payment is accepted is not pregnant at the time of the receipt of payments or that the
16 mother is accepting payments concurrently from more than one prospective adoptive
17 parent without the knowledge of the prospective adoptive parent who is seeking
18 reimbursement.

19 D. Adoptive parents shall pay to the department any of the expenses listed
20 in Paragraph B of this Article which may be imposed by the department. Such
21 payments shall be imposed solely at the discretion of the department. The department
22 shall not include payment of the expenses listed in Paragraph B of this Article as a
23 requirement for adoption.

24 E. If a court determines from an accounting that an amount that is going to
25 be or has been disbursed for expenses permitted by listed in Paragraph B of this
26 Article is unreasonable, it may order a reduction in the amount to be disbursed and
27 order the person who received the disbursement to refund that portion.

28 F. If a court determines from an accounting that an amount is going to be or
29 has been disbursed for expenses not permitted by Paragraph B of this Article, it may:

1 (1) Issue an injunction prohibiting the disbursement or order the person who
2 received the disbursement to refund it.

3 (2) Refer the case to the district attorney for the consideration of criminal
4 charges pursuant to R.S. 14:286.

5 (3) Refuse to approve the adoption, if in the best interest of the child.

6 G. The court shall not issue a final decree of adoption until it has reviewed
7 and approved the final accounting.

8 H. A copy of the ~~Adoption Disclosure Affidavit~~ adoption disclosure affidavit
9 and all orders of the court pursuant to this Article shall be mailed to the office of
10 adoption services, Louisiana Department of Children and Family Services.

11 Comments - 2018

12 (a) The payment of expenses is intentionally limited by this Article to
13 regulate the expense of adoption and curtail the potential for abuse. In the event of
14 extraordinary circumstances that may justify reasonable and necessary expenses not
15 otherwise specifically authorized or excluded by this Article, Subparagraph (B)(9)
16 allows the court to authorize the payment of such expenses. For example,
17 extraordinary circumstances may include hurricanes or severe flooding that impact
18 the needs of the mother or raise the cost of housing beyond the statutory limit.

19 (b) Paragraph C of this Article is not intended to limit a prospective adoptive
20 parent's cause of action for damages against an adoption agency or attorney for
21 breach of contract, fraud, or other alleged misconduct in connection with an
22 adoption. Rather, it addresses the prospective adoptive parents' right to
23 reimbursement of expenses, which is permitted only in cases in which the mother is
24 not pregnant or in which duplicative expenses are collected from multiple
25 prospective adoptive parents. Reimbursement is not permitted when a mother has
26 exercised her right not to place her child for adoption.

27 Art. 1223.1. Adoption disclosure affidavit of fees and charges; form

28 A. Each petition for private adoption shall be accompanied by an affidavit
29 executed by petitioner and petitioner's attorney containing an accounting of all fees
30 and charges paid or agreed to be paid by or on behalf of the petitioner in connection
31 with the adoption. The affidavit shall include the date and amount of each payment
32 made, the name and address of the recipient, and the purpose of each payment.
33 Receipts for each expense shall be attached to the affidavit.

34 B. The affidavit shall not include any identifying information as to the
35 biological parents, their families, or the child's birth name.

36 C. The form for the affidavit shall be as follows:

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"ADOPTION DISCLOSURE AFFIDAVIT

BEFORE ME, the undersigned authority, personally came and appeared
_____ (petitioner) and _____ (attorney for petitioner), who being first
duly sworn, did depose and state:

In the matter of the adoption by _____ (petitioner's name):

1. We report the following fees and charges or other things of value given
in connection with this adoption:

~~Actual Estimated~~ — ~~Due or paid to~~
\$ _____ \$

Itemization of Expenses Recipient Purpose Estimate Actual Date Paid

- A. Legal expenses:
 - 1. Attorney fees for biological parent
 - 2. Attorney fees for adopting parent
 - 3. Court costs
 - 4. Travel costs
 - 5. Other (Specify)
- B. ~~Mental Health~~ Counseling expenses:
 - 1. Counseling for adopting parents
 - 2. Home study evaluations
 - 3. Counseling for biological parents
 - 4. Counseling for the child
 - 5. Statement of Family History information
 - 6. Other (Specify)
- C. Medical expenses for biological mother:
 - 1. Medical
 - 2. Travel
 - 3. Other (Specify)
- D. Medical/foster care expenses for child:
 - 1. Medical
 - 2. Travel
 - 3. Other (Specify)
- E. Living expenses of the biological mother:
 - 1. ~~Room and board~~ Housing
 - 2. ~~Other (Specify)~~ Utilities
 - (a) Electricity
 - (b) Gas
 - (c) Water
 - (d) Telephone
 - 3. Food
 - 4. Transportation

1 5. Maternity clothing

2 F. Other expenses (Specify):

3		Actual	Estimated	—	Due or paid to
4		\$	\$		\$

5 2. We certify that no other fees, charges, or things of value other than court
6 costs have been given or shall be given by anyone in connection with this adoption.

7 3. We declare that this disclosure statement has been examined by both of
8 us and that its contents are true to the best of our information, knowledge, and belief.

9 4. We understand that each of us has a continuing obligation to supplement
10 and amend this affidavit as necessary.

11 5. We understand that this information will be transmitted to the office of
12 children and family services, Louisiana Department of Children and Family Services.
13 We further understand that it may be released by written authorization of the court
14 for purposes of a grand jury investigation pursuant to R.S. 14:286 or for an ethical
15 investigation by the Committee on Professional Responsibility of the Louisiana State
16 Bar Association. We further certify that we understand that in accordance with R.S.
17 14:286, making a false statement in any adoption disclosure affidavit with the intent
18 to deceive and with knowledge that the statement is false is punishable by a fine not
19 to exceed fifty thousand dollars or imprisonment with or without hard labor for more
20 than ten years, or both.

21	_____	_____
22	Signature of Petitioner	Signature of Attorney
23	_____	_____
24	Address	Address

25 SWORN TO AND SUBSCRIBED BEFORE ME ON THIS ____ DAY OF
26 _____, ____.

27 _____
28 (NOTARY PUBLIC)"

29 D. The adoption disclosure affidavit shall not be included as an exhibit for
30 service with a copy of the petition under Article 1224.

31 E. Confidentiality of the information contained in the adoption disclosure
32 affidavit shall be maintained as provided in Chapter 5 of this Title, and shall be

CODING: Words in ~~struck-through~~ type are deletions from existing law; words underscored are additions.

1 released only in accordance with this Article or on written authorization of the court
2 for the purposes of a grand jury investigation of a violation of R.S. 14:286 or an
3 ethical investigation by the Committee on Professional Responsibility of the
4 Louisiana State Bar Association.

5 Section 2. R.S. 14:286 is hereby amended and reenacted to read as follows:

6 §286. Sale of minor children and other prohibited activities; penalties

7 A.(1) ~~Except as provided by Subsection C, it~~ It shall be unlawful for any
8 person to sell or surrender a minor child to another person for money or anything of
9 value, or to receive a minor child for such payment of money or anything of value,
10 except as specifically provided in Children's Code Articles 1200 and 1223.

11 B.(2) ~~Except as provided in Subsection C, the payment or receipt of~~ It shall
12 be unlawful for any person to pay or receive anything of value for the procurement,
13 attempted procurement, or assistance in the procurement of a party to an act of
14 voluntary surrender of a child for adoption ~~is strictly prohibited~~ except as specifically
15 provided in Children's Code Articles 1200 and 1223.

16 C.(3) ~~Unless approved by the juvenile court pursuant to Children's Code~~
17 ~~Article 1200, no~~ It shall be unlawful for any petitioner, person acting on a petitioner's
18 behalf, agency or attorney or other intermediary ~~shall to~~ make or agree to make any
19 disbursements in connection with the adoptive placement, surrender, or adoption of
20 a child ~~other than for the following:~~ except as specifically provided in Children's
21 Code Articles 1200 and 1223.

22 (4) It shall be unlawful to make a false statement in any adoption disclosure
23 affidavit with the intent to deceive and with knowledge that the statement is false.

24 ~~(1) Reasonable medical expenses, including hospital, testing, nursing,~~
25 ~~pharmaceutical, travel, or other similar expenses, incurred by the biological mother~~
26 ~~for prenatal care, and those medical and hospital expenses incurred on behalf of the~~
27 ~~biological mother and child incident to birth.~~

1 ~~(2) Reasonable medical expenses, including hospital, testing, nursing,~~
2 ~~pharmaceutical, travel, or other similar expenses, and foster care expenses incurred~~
3 ~~on behalf of the child prior to the decree of adoption.~~

4 ~~(3) Reasonable expenses incurred by the department or the agency for~~
5 ~~adjustment counseling and training services provided to the adoptive parents and for~~
6 ~~home studies or investigations.~~

7 ~~(4) Reasonable administrative expenses incurred by the department or the~~
8 ~~agency, including overhead, court costs, travel costs, and attorney fees connected~~
9 ~~with an adoption. In approving a reasonable fee for overhead, the court shall consider~~
10 ~~and include additional expenses incurred by the department or the agency not~~
11 ~~specifically allocated to the adoption before the court, including the cost of failed~~
12 ~~adoptions, where those expenses or fees represent actual costs of the department's or~~
13 ~~agency's adoption services permitted by the provisions of this Article.~~

14 ~~(5) Reasonable expenses incurred for counseling services provided to a~~
15 ~~biological parent or a child for a reasonable time before and after the child's~~
16 ~~placement for adoption.~~

17 ~~(6) Reasonable expenses incurred in ascertaining the information required~~
18 ~~by Children's Code Articles 1124 and 1125.~~

19 ~~(7) Reasonable living expenses incurred by a mother for a reasonable time~~
20 ~~before the birth of her child and for no more than forty-five days after the birth.~~

21 ~~(8) Reasonable attorney fees, court costs, travel, or other expenses incurred~~
22 ~~on behalf of a parent who surrenders a child for adoption or otherwise consents to~~
23 ~~the child's adoption.~~

24 Ð:Ð.(1) It shall be unlawful for any person to enter into, induce, arrange,
25 procure, knowingly advertise for, or otherwise assist in a gestational carrier contract,
26 whether written or unwritten, that is not in compliance with the requirements
27 provided for in R.S. 9:2718 et seq.

1 (2) No person who is a party to, or acting on behalf of the parties to a
2 gestational carrier contract shall make or agree to make any disbursements in
3 connection with the gestational carrier contract other than the following:

4 (a) Payment of actual medical expenses, including hospital, testing, nursing,
5 midwifery, pharmaceutical, travel, or other similar expenses, incurred by the
6 gestational carrier for prenatal care and those medical and hospital expenses incurred
7 incident to birth.

8 (b) Payment of actual expenses incurred for mental health counseling
9 services provided to the gestational carrier prior to the birth and up to six months
10 after birth.

11 (c) Payment of actual lost wages of the gestational carrier, not covered under
12 a disability insurance policy, when bed rest has been prescribed for the gestational
13 carrier for some maternal or fetal complication of pregnancy and the gestational
14 carrier, who is employed, is unable to work during the prescribed period of bed rest.

15 (d) Payment of actual travel costs related to the pregnancy and delivery,
16 court costs, and attorney fees incurred by the gestational carrier.

17 (3) It shall be unlawful for any person to enter into, induce, arrange, procure,
18 knowingly advertise for, or otherwise assist in an agreement for genetic gestational
19 carrier, with or without compensation, whether written or unwritten. For purposes
20 of this Section, "genetic gestational carrier" and "compensation" shall have the same
21 meaning as defined in R.S. 9:2718.1.

22 (4) It shall be unlawful for any person to give or offer payment of money,
23 objects, services, or anything of monetary value to induce any gestational carrier,
24 whether or not she is party to an enforceable or unenforceable agreement for genetic
25 gestational carrier or gestational carrier contract, to consent to an abortion as defined
26 in R.S. 40:1061.9.

27 E.C. A person convicted of violating any of the provisions of this Section
28 shall be punished by a fine not to exceed fifty thousand dollars or imprisonment with
29 or without hard labor for not more than ten years, or both.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 643 Original

2018 Regular Session

Edmonds

Abstract: Provides for the regulation of adoption expenses.

Present law (Ch.C. Art. 1131) provides that following the surrender of a child for adoption, the adoptive parents are required to file the authentic act of surrender and a certification or court order for adoption.

Proposed law retains present law and additionally requires the filing of a preliminary estimate and accounting of fees and charges related to the adoption.

Present law (Ch.C. Arts. 1200 and 1223) provides for the allowable expenses to be paid by the prospective adoptive parents.

Proposed law requires the payment of expenses to be through DCFS, an adoption agency, or an adoption attorney and narrows the allowable expenses from reasonable to actual expenses.

Proposed law limits living expenses to the amount needed to maintain an adequate standard of living and includes an illustrative list of the types of living expenses.

Proposed law provides that allowable living expenses shall not include vehicles, salary or wages, recreation or leisure activities, permanent housing, gifts, or other payments for the monetary gain of the mother and limits the allowable living expenses to \$7,500.

Proposed law authorizes the court to approve additional expenses upon a finding that the expense is reasonable and necessary.

Proposed law provides that prospective adoptive parents may seek reimbursement of expenses paid to a mother in anticipation of an adoption if the mother is not pregnant or if she is accepting payments from more than one prospective adoptive parent.

Present law (Ch.C. Arts. 1201 and 1223.1) requires the filing of an adoption disclosure affidavit of all fees and charges paid.

Proposed law retains present law but requires the inclusion of receipts, the name and address of each recipient, the purpose of the payment, and the amount and date it was made. Proposed law also specifically lists utilities, which are allowable living expenses.

Proposed law requires the affiant to certify that they understand that in accordance with R.S. 14:286, making a false statement in any adoption disclosure affidavit with the intent to deceive and with knowledge that the statement is false is punishable by a fine of up to \$50,000 or imprisonment with or without hard labor for more than 10 years, or both.

Present law (R.S. 14:286) provides that it is unlawful to sell a child, receive anything of value for the procurement of a child, or make certain unapproved disbursements in connection with an adoption. Present law also includes a list of allowable expenses.

Proposed law clarifies the elements of the crime of the sale of minor children and adds that it shall also be unlawful to make false statements on an adoption disclosure affidavit.

Proposed law deletes the list of allowable expenses with a reference to the same list provided in the Children's Code.

(Amends Ch.C. Arts. 1131(A), 1200, 1201, 1223, and 1223.1 and R.S. 14:286)