

# Legislative Analysis



## **EXEMPT ADOPTION ATTORNEY SERVICES FROM PROHIBITION AGAINST TRANSFER OF LEGAL OR PHYSICAL CUSTODY OF A CHILD**

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**House Bill 5149 as reported from committee**  
**Sponsor: Rep. Douglas C. Wozniak**  
**1st Committee: Families, Children and Seniors**  
**2nd Committee: Judiciary**  
**Complete to 2-18-20**

*(Enacted as Public Act 184 of 2020)*

### **SUMMARY:**

House Bill 5149 would amend the Michigan Penal Code to exempt services provided by an adoption attorney relating to a court-supervised adoption proceeding under the Adoption Code (Chapter X of the Probate Code) from a prohibition against transferring the legal or physical custody of a child in certain circumstances.

The Penal Code currently prohibits a person from doing any of the following, or assisting or conspiring in any of the following, regardless of whether the person is paid or otherwise compensated for the activity:

- Transferring or attempting to transfer the legal or physical custody of a child with the intent to permanently divest a parent of parental responsibility. However, this does not apply if the transfer or attempted transfer is by valid court order.
- Assisting in or arranging for the permanent transfer, adoption, adoptive placement, or other permanent physical placement of a child. However, this does not apply to adoption activities under 1973 PA 116 performed as part of the person's duties.

The prohibition described above does not apply to the placement of a child under one or more of the following circumstances:

- With a relative, a child placing agency, or the Department of Health and Human Services (DHHS).
- By a child placing agency or DHHS.
- In accordance with the Interstate Compact on Placement of Children.
- In which the child will be returned within 180 days.
- With the specific intent that the child will be returned, that the placement benefits the child, and that the placement is based on the temporary needs of the family, including respite for the child and family; a vacation or school-sponsored activity or function; or a temporary inability of the parent or guardian to care for the child due to incarceration, military service, medical treatment, or another incapacity.

Under the bill, the prohibition described above would also not apply to placement of a child made in accordance with the Adoption Code.

The bill would also exempt both of the following from the prohibition described above:

- Services provided by an adoption attorney relating to a court-supervised adoption proceeding under the Adoption Code.
- Services provided by an adoption attorney under any of the exempt circumstances described above (including placement of a child in accordance with the Adoption Code).

The bill would take effect 90 days after being enacted into law.

MCL 750.136c

**FISCAL IMPACT:**

House Bill 5149 would have no fiscal impact on the state or local units of government.

**POSITIONS:**

A representative of the State Bar of Michigan testified in support of the bill. (1-28-20)

The Department of Health and Human Services indicated support for the bill. (1-28-20)

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.