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# SENATE BILL No. 422

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 31-14-21-9.1; IC 31-19; IC 31-35-1; IC 35-41-1-3.1; IC 35-46-1.

**Synopsis:** Adoption procedural requirements. Requires a petitioner for adoption to pay a \$30 adoption history record keeping fee. Establishes requirements for prebirth waivers of paternity and waivers of notice of adoption, and specifies that a waiver is irrevocable. Prohibits a mother from executing a prebirth consent to adoption, and requires a father's prebirth consent to adoption to be in writing and notarized, and to contain an advisement that the waiver is irrevocable. Specifies that the burden of proof in certain adoption proceedings is by clear and convincing evidence. Requires a child placing agency, a governmental entity, or an adoption attorney to maintain adoption records for 40 years and provides for the transfer of these records in certain situations. Makes a name change requested in an out-of-state adoption petition effective in Indiana. Makes it a Class D felony for certain persons to: (1) receive compensation or reimbursement for locating children, expectant mothers, or adoptive parents with the intent of facilitating an adoption; or (2) advertise that a child is available for adoption or that the person is able to place, locate, or receive a child for adoption.

**Effective:** July 1, 2005.

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**Clark**

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January 13, 2005, read first time and referred to Committee on Judiciary.

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First Regular Session 114th General Assembly (2005)

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 2004 Regular Session of the General Assembly.

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## SENATE BILL No. 422



A BILL FOR AN ACT to amend the Indiana Code concerning family law and juvenile law.

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

1 SECTION 1. IC 31-14-21-9.1 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 9.1. (a) At the initial  
3 hearing held under section 9 of this chapter, the court shall order all the  
4 parties to the paternity action to undergo blood or genetic testing.

5 (b) If the alleged father is unable to pay for the initial costs of the  
6 testing, the court shall order that the tests be paid by the state  
7 department of health from putative father registry fees collected under  
8 ~~IC 31-19-2-8(2)~~. **IC 31-19-2-8**. The state department of health may  
9 recover costs from an individual found to be the biological father of the  
10 child in the action.

11 SECTION 2. IC 31-19-2-8 IS AMENDED TO READ AS  
12 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 8. Unless the petitioner  
13 for adoption seeks under section 1 of this chapter to adopt a person who  
14 is at least eighteen (18) years of age, the petitioner for adoption must  
15 attach to the petition for adoption:

16 (1) an adoption history fee of twenty dollars (\$20) payable to the  
17 state department of health; ~~and~~



1           **(2) unless the adoption involves a child related to a petitioner**  
2           **for adoption, an adoption history record keeping fee of thirty**  
3           **dollars (\$30) payable to the state department of health; and**  
4           ~~(2)~~ **(3) a putative father registry fee of fifty dollars (\$50) payable**  
5           **to the state department of health for:**

6                 (A) administering the putative father registry established by  
7                 IC 31-19-5; and

8                 (B) paying for blood or genetic testing in a paternity action in  
9                 which an adoption is pending in accordance with  
10                IC 31-14-21-9.1.

11           SECTION 3. IC 31-19-4-8 IS AMENDED TO READ AS  
12           FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 8. (a) The notice  
13           required by this chapter may be waived in writing before or after the  
14           birth of a child.

- 15           (b) A waiver of notice under subsection (a) must:  
16                 (1) be in writing and signed in the presence of a notary public;  
17                 and  
18                 (2) acknowledge that:  
19                         **(A) the waiver is irrevocable; and**  
20                         **(B) the person signing the waiver will not receive notice of**  
21                         **the adoption proceedings.**

22           A person who waives notice of an adoption may not subsequently  
23           challenge or contest an adoption of the child.

24           SECTION 4. IC 31-19-4-9 IS AMENDED TO READ AS  
25           FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 9. The notice required  
26           by this chapter is not necessary:

- 27                 **(1) if actual notice has been given to a putative father under**  
28                 **IC 31-19-3; or**

- 29                 **(2) if:**  
30                         **(A) a person has attempted to give notice to a putative**  
31                         **father at a particular address under IC 31-19-3; and**  
32                         **(B) the putative father could not be located at that address;**  
33                         **unless the putative father registers that address with the**  
34                         **putative father registry under IC 31-19-5.**

35           SECTION 5. IC 31-19-4.5-4 IS AMENDED TO READ AS  
36           FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 4. (a) The notice  
37           required by this chapter may be waived in writing before or after the  
38           birth of a child.

- 39           (b) A waiver of notice under subsection (a) must:  
40                 (1) be in writing and signed in the presence of a notary public;  
41                 and  
42                 (2) acknowledge that:

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- 1                   **(A) the waiver is irrevocable; and**
- 2                   **(B) the person signing the waiver will not receive notice of**
- 3                   **the adoption proceedings.**

4           A person who waives notice of an adoption may not challenge or  
 5           contest an adoption of the child.

6           SECTION 6. IC 31-19-9-2 IS AMENDED TO READ AS  
 7           FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2. **(a)** The consent to  
 8           adoption may be executed at any time after the birth of the child either  
 9           in the presence of:

- 10           (1) the court;
- 11           (2) a notary public or other person authorized to take
- 12           acknowledgments; or
- 13           (3) an authorized agent of:
  - 14           (A) the division of family and children;
  - 15           (B) a county office of family and children; or
  - 16           (C) a licensed child placing agency.

17           **(b) The child's mother may not execute a consent to adoption**  
 18           **before the birth of the child.**

19           **(c) The child's father may execute a consent to adoption before**  
 20           **the birth of the child if the consent to adoption:**

- 21           **(1) is in writing;**
- 22           **(2) is signed by the child's father in the presence of a notary**  
 23           **public; and**
- 24           **(3) contains an acknowledgment that:**
  - 25           **(A) the consent to adoption is irrevocable; and**
  - 26           **(B) the child's father will not receive notice of the adoption**  
 27           **proceedings.**

28           **(d) A child's father who consents to the adoption of the child**  
 29           **under subsection (c) may not challenge or contest the child's**  
 30           **adoption.**

31           SECTION 7. IC 31-19-9-8 IS AMENDED TO READ AS  
 32           FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 8. (a) Consent to  
 33           adoption, which may be required under section 1 of this chapter, is not  
 34           required from any of the following:

- 35           (1) A parent or parents if the child is adjudged to have been  
 36           abandoned or deserted for at least six (6) months immediately  
 37           preceding the date of the filing of the petition for adoption.
- 38           (2) A parent of a child in the custody of another person if for a  
 39           period of at least one (1) year the parent:
  - 40           (A) fails without justifiable cause to communicate
  - 41           significantly with the child when able to do so; or
  - 42           (B) knowingly fails to provide for the care and support of the

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- 1 child when able to do so as required by law or judicial decree.  
 2 (3) The biological father of a child born out of wedlock whose  
 3 paternity has not been established:  
 4 (A) by a court proceeding other than the adoption proceeding;  
 5 or  
 6 (B) by executing a paternity affidavit under IC 16-37-2-2.1.  
 7 (4) The biological father of a child born out of wedlock who was  
 8 conceived as a result of:  
 9 (A) a rape for which the father was convicted under  
 10 IC 35-42-4-1;  
 11 (B) child molesting (IC 35-42-4-3);  
 12 (C) sexual misconduct with a minor (IC 35-42-4-9); or  
 13 (D) incest (IC 35-46-1-3).  
 14 (5) The putative father of a child born out of wedlock if the  
 15 putative father's consent to adoption is irrevocably implied under  
 16 section 15 of this chapter.  
 17 (6) The biological father of a child born out of wedlock if the:  
 18 (A) father's paternity is established after the filing of a petition  
 19 for adoption in a court proceeding or by executing a paternity  
 20 affidavit under IC 16-37-2-2.1; and  
 21 (B) father is required to but does not register with the putative  
 22 father registry established by IC 31-19-5 within the period  
 23 required by IC 31-19-5-12.  
 24 (7) A parent who has relinquished the parent's right to consent to  
 25 adoption as provided in this chapter.  
 26 (8) A parent after the parent-child relationship has been  
 27 terminated under IC 31-35 (or IC 31-6-5 before its repeal).  
 28 (9) A parent judicially declared incompetent or mentally defective  
 29 if the court dispenses with the parent's consent to adoption.  
 30 (10) A legal guardian or lawful custodian of the person to be  
 31 adopted who has failed to consent to the adoption for reasons  
 32 found by the court not to be in the best interests of the child.  
 33 (11) A parent if:  
 34 (A) a petitioner for adoption proves by clear and convincing  
 35 evidence that the parent is unfit to be a parent; and  
 36 (B) the best interests of the child sought to be adopted would  
 37 be served if the court dispensed with the parent's consent.  
 38 **(12) A child's biological father who denies paternity of the**  
 39 **child before or after the birth of the child if the denial of**  
 40 **paternity:**  
 41 **(A) is in writing;**  
 42 **(B) is signed by the child's father in the presence of a**

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**notary public; and**  
**(C) contains an acknowledgment that:**  
**(i) the denial of paternity is irrevocable; and**  
**(ii) the child's father will not receive notice of adoption proceedings.**

**A child's father who denies paternity of the child under this subsection may not challenge or contest the child's adoption.**

(b) If a parent has made only token efforts to support or to communicate with the child the court may declare the child abandoned by the parent.

SECTION 8. IC 31-19-10-0.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 0.5. The party bearing the burden of proof in a proceeding under this chapter must prove the party's case by clear and convincing evidence.**

SECTION 9. IC 31-19-12-5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 5. (a) As used in this section, "record" includes the following:**

- (1) A court document.**
- (2) A medical record.**
- (3) A social or medical history.**
- (4) A photograph.**
- (5) Correspondence being held for the benefit of:**
  - (A) a birth parent;**
  - (B) a person who was adopted;**
  - (C) an adoptive parent; or**
  - (D) a sibling of the person who was adopted.**

**(b) A child placing agency, governmental entity, or licensed attorney who arranges or facilitates an adoption shall maintain a record concerning an adoption finalized in Indiana until the person who was adopted is at least forty (40) years of age.**

- (c) A:**
- (1) child placing agency that ceases operations in Indiana;**
  - (2) governmental entity that ceases operations or is no longer involved with adoptions; or**
  - (3) licensed attorney who arranges or facilitates an adoption who no longer practices in Indiana;**

**shall transfer all adoption records to the state registrar for inclusion in the adoption history program administered by the state registrar, or, after giving notice to the state registrar, to a transferee agency that assumes responsibility for the preservation**

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1 of records maintained as part of the adoption history program.

2 (d) An attorney who complies with this section does not violate  
3 attorney-client privilege.

4 (e) A record maintained or transferred under this section is  
5 confidential.

6 SECTION 10. IC 31-19-15-1 IS AMENDED TO READ AS  
7 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1. (a) Except as  
8 provided in section 2 of this chapter or IC 31-19-16, if the biological  
9 or previous adoptive parents of an adopted person are alive, the:  
10 biological parents are:

11 (1) biological or previous adoptive parents are relieved of all  
12 legal duties and obligations to the adopted child and except as  
13 provided in subsection (b);

14 (2) biological or previous adoptive parents are divested of all  
15 rights with respect to the child; and

16 (3) parent-child relationship between the biological or  
17 previous adoptive parents is terminated;

18 after the adoption.

19 (b) A support obligation owed by a biological or previous  
20 adoptive parent to the adopted person before the entry of an  
21 adoption decree continues after the adoption.

22 SECTION 11. IC 31-19-18-5 IS AMENDED TO READ AS  
23 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 5. The state registrar:

24 (1) may adopt rules under IC 4-22-2; and

25 (2) shall prescribe forms necessary;

26 to implement this chapter, IC 31-19-12-5, and IC 31-19-19 through  
27 IC 31-19-24.

28 SECTION 12. IC 31-19-28-1 IS AMENDED TO READ AS  
29 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1. Whenever a person  
30 is adopted outside Indiana, under the laws of the state, territory, or  
31 country where the adoption took place:

32 (1) the adoption decree:

33 (A) when filed with the clerk of the court of any county in  
34 Indiana; and

35 (B) when entered upon the order book of the court in open  
36 session;

37 has the same force and effect as if the adoption decree were made  
38 in accordance with this article; and

39 (2) the adopted person:

40 (A) has the same rights; and

41 (B) is capable of taking by inheritance, upon the death of the  
42 adoptive parent, property located in Indiana;

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1 as though the person had been adopted according to the laws of  
 2 Indiana; **and**  
 3 **(3) if a name other than a name in the adoption decree is**  
 4 **requested, the adopted person shall take the name requested**  
 5 **in a petition filed under this section.**

6 SECTION 13. IC 31-35-1-6 IS AMENDED TO READ AS  
 7 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 6. (a) Except as  
 8 provided in subsection (b), the parents must give their consent in open  
 9 court unless the court makes findings of fact upon the record that:

- 10 (1) the parents gave their consent in writing before a person
- 11 authorized by law to take acknowledgments;
- 12 (2) the parents were notified of their constitutional and other legal
- 13 rights and of the consequences of their actions under advised in
- 14 **accordance with** section 12 of this chapter; and
- 15 (3) the parents failed to appear.

16 (b) The consent of a parent to the termination of the parent-child  
 17 relationship under this chapter is not required if:

- 18 (1) consent to the termination of the parent-child relationship is
- 19 implied under section 4.5 of this chapter, if the parent is the
- 20 putative father; ~~or~~
- 21 (2) the parent's consent to the adoption of the child would not be
- 22 required under:

- 23 **(A) IC 31-19-9-8;**
- 24 ~~(A)~~ **(B) IC 31-19-9-9; or**
- 25 ~~(B)~~ **(C) IC 31-19-9-10; or**
- 26 **(3) the child's biological father denies paternity of the child**
- 27 **before or after the birth of the child if the denial of paternity:**
- 28 **(A) is in writing;**
- 29 **(B) is signed by the child's father in the presence of a**
- 30 **notary public; and**
- 31 **(C) contains an acknowledgment that:**
- 32 **(i) the denial of paternity is irrevocable; and**
- 33 **(ii) the child's father will not receive notice of adoption**
- 34 **or termination of parent-child relationship proceedings.**

35 **A child's father who denies paternity of the child under subdivision**  
 36 **(3) may not challenge or contest the child's adoption or termination**  
 37 **of the parent-child relationship.**

38 SECTION 14. IC 31-35-1-11 IS AMENDED TO READ AS  
 39 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 11. (a) If the court  
 40 makes findings of fact upon the record that:

- 41 (1) one (1) parent has made a valid consent to the termination of
- 42 the parent-child relationship;

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1 (2) the other parent:  
 2 (A) is required under this chapter to consent to the termination  
 3 of the parent-child relationship;  
 4 (B) cannot be located, after a good faith effort has been made  
 5 to do so, or has been located but fails to appear at the  
 6 termination hearing; and  
 7 (C) has been served with notice of the hearing in the most  
 8 effective means under the circumstances; and  
 9 (3) the investigation that may be required by section 7 of this  
 10 chapter has been completed and entered on the record;  
 11 the court may enter a default judgment against the unavailable parent  
 12 and terminate as to both parents.

13 **(b) A parent may waive the notice required by subsection**  
 14 **(a)(2)(C) if the waiver:**

- 15 (1) is in writing;  
 16 (2) is signed by the parent in the presence of a notary public;  
 17 and  
 18 (3) contains an acknowledgment that:  
 19 (A) the waiver is irrevocable; and  
 20 (B) the parent will not receive notice of:  
 21 (i) adoption; or  
 22 (ii) termination of parent-child relationship;  
 23 proceedings.

24 **(c) A parent who waives notice under subsection (b) may not**  
 25 **challenge or contest:**

- 26 (1) the termination of the parent-child relationship; or  
 27 (2) the child's adoption.

28 SECTION 15. IC 35-41-1-3.1 IS ADDED TO THE INDIANA  
 29 CODE AS A NEW SECTION TO READ AS FOLLOWS  
 30 [EFFECTIVE JULY 1, 2005]: **Sec. 3.1. "Advertise" means to make**  
 31 **a communication to the public.**

32 SECTION 16. IC 35-46-1-9 IS AMENDED TO READ AS  
 33 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 9. (a) Except as  
 34 provided in subsection (b), a person who, with respect to an adoption,  
 35 transfers or receives any property in connection with the waiver of  
 36 parental rights, the termination of parental rights, the consent to  
 37 adoption, or the petition for adoption commits profiting from an  
 38 adoption, a Class D felony.

39 (b) This section does not apply to the transfer or receipt of:

- 40 (1) reasonable attorney's fees;  
 41 (2) hospital and medical expenses concerning childbirth and  
 42 pregnancy incurred by the adopted person's birth mother;

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- 1 (3) reasonable charges and fees levied by a child placing agency
- 2 licensed under IC 12-17.4 or by a county office of family and
- 3 children;
- 4 (4) reasonable expenses for psychological counseling relating to
- 5 adoption incurred by the adopted person's birth parents;
- 6 (5) reasonable costs of housing, utilities, and phone service 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;
- 9 (6) reasonable costs of maternity clothing for the adopted person's
- 10 birth mother;
- 11 (7) reasonable travel expenses incurred by the adopted person's
- 12 birth mother that relate to the pregnancy or adoption;
- 13 (8) any additional itemized necessary living expenses for the
- 14 adopted person's birth mother during the second or third trimester
- 15 of pregnancy and not more than six (6) weeks after childbirth, not
- 16 listed in subdivisions (5) through (7) in an amount not to exceed
- 17 one thousand dollars (\$1,000); or
- 18 (9) other charges and fees approved by the court supervising the
- 19 adoption, including reimbursement of not more than actual wages
- 20 lost as a result of the inability of the adopted person's birth mother
- 21 to work at her regular, existing employment due to a medical
- 22 condition, excluding a psychological condition, if:
- 23 (A) the attending physician of the adopted person's birth
- 24 mother has ordered or recommended that the adopted person's
- 25 birth mother discontinue her employment; and
- 26 (B) the medical condition and its direct relationship to the
- 27 pregnancy of the adopted person's birth mother are
- 28 documented by her attending physician.
- 29 In determining the amount of reimbursable lost wages, if any, that are
- 30 reasonably payable to the adopted person's birth mother under
- 31 subdivision (9), the court shall offset against the reimbursable lost
- 32 wages any amounts paid to the adopted person's birth mother under
- 33 subdivisions (5) and (8) and any unemployment compensation received
- 34 by or owed to the adopted person's birth mother.
- 35 (c) Except as provided in this subsection, payments made under
- 36 subsection (b)(5) through (b)(9) may not exceed three thousand dollars
- 37 (\$3,000) and must be disclosed to the court supervising the adoption.
- 38 The amounts paid under subsection (b)(5) through (b)(9) may exceed
- 39 three thousand dollars (\$3,000) to the extent that a court in Indiana
- 40 with jurisdiction over the child who is the subject of the adoption
- 41 approves the expenses after determining that:
- 42 (1) the expenses are not being offered as an inducement to

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1 proceed with an adoption; and  
 2 (2) failure to make the payments may seriously jeopardize the  
 3 health of either the child or the mother of the child and the direct  
 4 relationship is documented by **a licensed social worker or the**  
 5 **attending physician.**

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

11 (e) The limitations in this section apply regardless of the state or  
 12 country in which the adoption is finalized.

13 SECTION 17. IC 35-46-1-9.6 IS ADDED TO THE INDIANA  
 14 CODE AS A NEW SECTION TO READ AS FOLLOWS  
 15 [EFFECTIVE JULY 1, 2005]: **Sec. 9.6. (a) This section does not**  
 16 **apply to:**

- 17 (1) the division of family and children;
- 18 (2) an agency or person authorized to act on behalf of the
- 19 division of family and children;
- 20 (3) a county office of family and children;
- 21 (4) a child placing agency licensed in Indiana; or
- 22 (5) an attorney licensed to practice law in Indiana.

23 (b) A person who accepts compensation or reimbursement for  
 24 services related to locating:

- 25 (1) a child;
  - 26 (2) an expectant mother; or
  - 27 (3) a prospective adoptive parent;
- 28 **with the intent to facilitate an adoption commits unlawful**  
 29 **procurement of adoption, a Class D felony.**

30 SECTION 18. IC 35-46-1-9.7 IS ADDED TO THE INDIANA  
 31 CODE AS A NEW SECTION TO READ AS FOLLOWS  
 32 [EFFECTIVE JULY 1, 2005]: **Sec. 9.7. (a) This section does not**  
 33 **apply to:**

- 34 (1) the division of family and children;
- 35 (2) an agency or person authorized to act on behalf of the
- 36 division of family and children;
- 37 (3) a county office of family and children;
- 38 (4) a child placing agency licensed in Indiana;
- 39 (5) an attorney licensed to practice law in Indiana; or
- 40 (6) a prospective adoptive parent who has been approved for
- 41 adoptive placement:

42 (A) by a licensed child placing agency in Indiana; or

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**(B) by a licensed child placing agency outside Indiana and represented by an attorney licensed to practice law in Indiana.**

**(b) A person who knowingly or intentionally advertises:**

- (1) a child offered or sought for adoption; or**
- (2) that the person is able to place, locate, or receive a child for adoption;**

**commits unlawful adoption advertising, a Class D felony.**

**SECTION 19. [EFFECTIVE JULY 1, 2005] IC 35-46-1-9, as amended by this act, and IC 35-46-1-9.6 and IC 35-46-1-9.7, both as added by this act, apply only to crimes committed after June 30, 2005.**

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