

**ADOPTION PROCEDURES**

2000 GENERAL SESSION

STATE OF UTAH

**Sponsor: Howard C. Nielson**

5	Lane Beattie	Lyle W. Hillyard	Terry R. Spencer
6	Leonard M. Blackham	L. Alma Mansell	Howard A. Stephenson
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9 AN ACT RELATING TO ADOPTION; LIMITING ADOPTIVE PLACEMENTS; PROVIDING  
10 LIMITED EXCEPTIONS; LIMITING PLACEMENT ABILITIES OF PUBLIC AND PRIVATE  
11 LICENSED ADOPTION AGENCIES AND PRIVATE ATTORNEYS; LIMITING AND  
12 ESTABLISHING A SPECIFIED PRIORITY FOR ADOPTIVE PLACEMENT OF CHILDREN  
13 IN STATE CUSTODY; ESTABLISHING LEGISLATIVE FINDINGS AND POLICY;  
14 CLARIFYING THE AUTHORITY OF THE BOARD OF CHILD AND FAMILY SERVICES;  
15 AND MAKING TECHNICAL AMENDMENTS.

16 This act affects sections of Utah Code Annotated 1953 as follows:

17 AMENDS:

- 18 **62A-4a-102**, as last amended by Chapter 329, Laws of Utah 1997
- 19 **62A-4a-602**, as renumbered and amended by Chapter 260, Laws of Utah 1994
- 20 **62A-4a-607**, as last amended by Chapters 195 and 329, Laws of Utah 1997
- 21 **78-30-1**, as last amended by Chapter 65, Laws of Utah 1990
- 22 **78-30-1.5**, as enacted by Chapter 245, Laws of Utah 1990
- 23 **78-30-9**, as last amended by Chapters 65 and 245, Laws of Utah 1990

24 *Be it enacted by the Legislature of the state of Utah:*

25 Section 1. Section **62A-4a-102** is amended to read:

26 **62A-4a-102. Board of Child and Family Services.**

27 (1) (a) The Board of Child and Family Services, created in accordance with this section  
28 and with Sections 62A-1-105 and 62A-1-107, is responsible for establishing the policy of the

29 division in accordance with the requirements of this chapter and Title 78, Chapter 3a, regarding  
30 abuse, neglect, and dependency proceedings, youth services, and domestic violence services. The  
31 board is responsible to see that the legislative purposes for the division are carried out.

32 (b) (i) Effective July 1, 1994, the governor shall appoint, with the advice and consent of  
33 the Senate, 11 members to the Board of Child and Family Services.

34 (ii) Except as required by Subsection (1)(b)(iii), as terms of current board members expire,  
35 the governor shall appoint each new member or reappointed member to a four-year term.

36 (iii) Notwithstanding the requirements of Subsection (1)(b)(ii), the governor shall, at the  
37 time of appointment or reappointment, adjust the length of terms to ensure that the terms of board  
38 members are staggered so that approximately half of the board is appointed every two years.

39 (c) Two members of the board shall be persons who are or have been consumers, two  
40 members of the board shall be persons who are actively involved in children's issues specifically  
41 related to abuse and neglect, one member shall be a licensed foster parent, one member shall be  
42 a recognized expert in the social, developmental, and mental health needs of children, one member  
43 shall be a physician licensed to practice medicine in this state who is also a board certified  
44 pediatrician and who is an expert in child abuse and neglect, and one member shall be an adult  
45 relative of a child who is or has been in the foster care system.

46 (d) Six members of the board are necessary to constitute a quorum at any meeting.

47 (e) When a vacancy occurs in the membership for any reason, the replacement shall be  
48 appointed for the unexpired term.

49 (2) (a) Members shall receive no compensation or benefits for their services, but may  
50 receive per diem and expenses incurred in the performance of the member's official duties at the  
51 rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

52 (b) Members may decline to receive per diem and expenses for their service.

53 (3) The board shall:

54 (a) approve fee schedules for programs within the division;

55 (b) establish, by rule, procedures for developing its policies to ensure that private citizens,  
56 consumers, foster parents, private contract providers, allied state and local agencies, and others are  
57 provided with an opportunity to comment and provide input regarding any new policy or proposed  
58 revision of an existing policy; and

59 (c) provide a mechanism for systematic and regular review of existing policy and for

60 consideration of policy changes proposed by the persons and agencies described in Subsection  
61 (3)(b).

62 (4) (a) The board shall establish a three-member Consumer Hearing Panel to act  
63 independently of the board and the division, and to be the sole and final decision-making body to  
64 hear, resolve, and make recommendations regarding consumer complaints relating to the division.  
65 The board may appoint two alternates to serve on the Consumer Hearing Panel in the event that  
66 one or more of the members is unable to serve at any given time. This section does not restrict or  
67 limit access to the courts for any person, or override Title 62A, Chapter 2, Licensure of Programs  
68 and Facilities, or Title 67, Chapter 19, Utah State Personnel Management Act.

69 (b) The Consumer Hearing Panel may not include any employees of the division.

70 (c) The Consumer Hearing Panel shall report its recommendations to the board, the  
71 division, and the Legislative Oversight Panel described in Section 62A-4a-207. The division shall  
72 comply with the recommendations of the Consumer Hearing Panel.

73 (d) The department shall provide staff to the Consumer Hearing Panel.

74 (e) (i) Members of the panel shall receive a per diem allowance for each day or portion of  
75 a day spent in performing the duties of the panel, and shall be reimbursed for all necessary travel  
76 expenses.

77 (ii) The per diem reimbursement described in Subsection (4)(e)(i) may not exceed 75 days  
78 for any one individual panel member in any fiscal year.

79 (5) The board may create state advisory committees to advise it concerning programs  
80 offered by the Division of Child and Family Services. The board shall provide each committee  
81 with a specific charge in writing.

82 (6) The board shall establish policies for the determination of eligibility for services  
83 offered by the division in accordance with this chapter. The division may, by rule, establish  
84 eligibility standards for consumers.

85 (7) The board may not adopt or maintain any policy regarding placement for adoption or  
86 foster care that is more restrictive than applicable statutory provisions.

87 Section 2. Section **62A-4a-602** is amended to read:

88 **62A-4a-602. Licensure requirements -- Prohibited acts -- Limitation on adoptive**  
89 **placements.**

90 (1) No person, agency, firm, corporation, association, or group children's home may

91 engage in child placing, or solicit money or other assistance for child placing, without a valid  
92 license issued by the Office of Licensing, in accordance with Chapter 2 of this title. When a child  
93 placing agency's license is suspended or revoked in accordance with that chapter, the care, control,  
94 or custody of any child who has been in the care, control, or custody of that agency shall be  
95 transferred to the division.

96 (2) (a) An attorney, physician, or other person may assist a parent in identifying or locating  
97 a person interested in adopting the parent's child, or in identifying or locating a child to be adopted.  
98 However, no payment, charge, fee, reimbursement of expense, or exchange of value of any kind,  
99 or promise or agreement to make the same, may be made for that assistance.

100 (b) An attorney, physician, or other person may not:

101 (i) issue or cause to be issued to any person a card, sign, or device indicating that he is  
102 available to provide that assistance;

103 (ii) cause, permit, or allow any sign or marking indicating that he is available to provide  
104 that assistance, on or in any building or structure;

105 (iii) announce or cause, permit, or allow an announcement indicating that he is available  
106 to provide that assistance, to appear in any newspaper, magazine, directory, or on radio or  
107 television; or

108 (iv) advertise by any other means that he is available to provide that assistance.

109 (3) Nothing in this part precludes payment of fees for medical, legal, or other lawful  
110 services rendered in connection with the care of a mother, delivery and care of a child, or lawful  
111 adoption proceedings; and no provision of this part abrogates the right of procedures for  
112 independent adoption as provided by law.

113 (4) In accordance with federal law, only agents or employees of the division and of  
114 licensed child placing agencies may certify to the United States Immigration and Naturalization  
115 Service that a family meets the division's preadoption requirements.

116 (5) (a) Beginning May 1, 2000, neither a licensed child placing agency nor any attorney  
117 practicing in this state may place a child for adoption, either temporarily or permanently, with any  
118 individual or individuals who would not be qualified for adoptive placement pursuant to the  
119 provisions of Sections 78-30-1, 78-30-1.5, and 78-30-9.

120 (b) Beginning May 1, 2000, the division, as a licensed child placing agency, may not place  
121 a child in foster care with any individual or individuals that would not be qualified for adoptive

122 placement pursuant to the provisions of Sections 78-30-1, 78-30-1.5, and 78-30-9. However,  
 123 nothing in this Subsection (5)(b) limits the placement of a child in foster care with the child's  
 124 biological or adoptive parent § [~~§ OR BLOOD RELATIVE~~§] § .

125 (c) Beginning May 1, 2000, with regard to children in the custody of the state, the division  
 126 shall establish a policy providing that priority for foster care and adoptive placement shall be  
 127 provided to families in which both a mother and father are legally married under the laws of this  
 128 state. However, nothing in this Subsection (5)(c) limits the placement of a child with the child's  
 129 biological or adoptive parent § [~~§ OR BLOOD RELATIVE~~§] § .

129a § [~~§ (d) FOR PURPOSES OF THIS SUBSECTION (5), "BLOOD RELATIVE" MEANS A CHILD'S~~  
 129b ~~GRANDPARENT, AUNT, OR UNCLE~~§] §

130 Section 3. Section **62A-4a-607** is amended to read:

131 **62A-4a-607. Promotion of adoption -- Agency notification of potential adoptive**  
 132 **parents -- DCFS utilization of those parents -- Limitation on adoptive placement.**

133 (1) (a) The division and all agencies licensed under this part shall promote adoption when  
 134 that is a possible and appropriate alternative for a child. Specifically, in accordance with Section  
 135 62A-4a-205.6, the division shall actively promote the adoption of all children in its custody who  
 136 have a final plan for termination of parental rights pursuant to Section 78-3a-312, or a permanency  
 137 goal of adoption.

138 (b) Beginning May 1, 2000, the division may not place a child for adoption, either  
 139 temporarily or permanently, with any individual or individuals who do not qualify for adoptive  
 140 placement pursuant to the provisions of Sections 78-30-1, 78-30-1.5, and 78-30-9.

141 (2) The division shall obtain or conduct research of prior adoptive families to determine  
 142 what families may do to be successful with their adoptive children and shall make this research  
 143 available to potential adoptive parents.

144 (3) (a) On or before July 1, 1997, each agency licensed under this part shall provide all  
 145 potential adoptive parents who have applied for adoption with that agency with information  
 146 regarding all children in the custody of the division who have a permanency goal of adoption and  
 147 who are eligible for adoption. That notification shall include information regarding adoption  
 148 subsidies, ongoing medical and mental health coverage for the adopted child, training for adoptive  
 149 parents, and continued support for adoptive parents pursuant to Section 62A-4a-205.6.

150 (b) The notification and information provided pursuant to Subsection (3)(a) shall include  
 151 a time-limited request for permission from the potential adoptive parents to provide the division  
 152 with their names. With regard to those parents who grant permission, the agency shall provide the

153 division with those names within ten calendar days of receiving permission. Upon receipt of those  
 154 names, the division shall consider the suitability of those persons as potential adoptive parents for  
 155 children in the custody of the division, provide the agency with the names and complete case  
 156 histories of appropriate children, and provide the training and support described in [~~Subsection~~]  
 157 Section 62A-4a-205.6[~~(4)~~].

158 Section 4. Section **78-30-1** is amended to read:

159 **78-30-1. Who may adopt.**

160 (1) Any minor child may be adopted by an adult person, in accordance with the provisions  
 161 and requirements of this section and this chapter.

162 (2) Any adult may be adopted by any other adult. However, all provisions of this chapter  
 163 apply to the adoption of an adult just as though the person being adopted were a minor, except that  
 164 consent of the parents of an adult person being adopted is not required.

165 (3) (a) A child may be adopted by § [f] either [f] § :

166 (i) adults who are legally married to each other, including adoption by a stepparent; § [f] or [f]

166a (ii) ~~A BLOOD RELATIVE; OR~~

167 [f] (ii) [~~(iii)~~] § by any single adult, except as provided in Subsection (3)(b).

168 (b) A child may not be adopted by a person who is cohabiting in a relationship that is not  
 169 a legally valid and binding marriage in this state § [~~§, UNLESS THAT PERSON IS A BLOOD~~

169a RELATIVE-§] § . For purposes of this § [f] Subsection (3)(b) [~~section~~] § :

170 "cohabiting" means residing with another person and being involved in a sexual relationship with  
 171 that person § [~~§, AND "BLOOD RELATIVE" MEANS A CHILD'S GRANDPARENT, AUNT, OR UNCLE-§] § .~~

171a § [~~§ (4) NOTWITHSTANDING THE PROVISIONS OF SUBSECTION (3), A COURT MAY GRANT AN~~

171b ADOPTION TO A PERSON OR PERSONS WHO ARE COHABITING, IF THE COURT DETERMINES BY

171c CLEAR AND CONVINCING EVIDENCE THAT THE PERSON OR PERSONS HAVE ESTABLISHED A

171d SIGNIFICANT PARENTAL RELATIONSHIP WITH THE CHILD, AND THAT THE ADOPTION IS IN THE

171e BEST INTEREST OF THE CHILD. §] §

172 Section 5. Section **78-30-1.5** is amended to read:

173 **78-30-1.5. Legislative intent -- Best interest of child.**

174 (1) It is the intent and desire of the Legislature that in every adoption the best interest of  
 175 the child should govern and be of foremost concern in the court's determination.

176 (2) The court shall make a specific finding regarding the best interest of the child, in  
 177 accordance with Section 78-30-9 and the provisions of this chapter.

178 Section 6. Section **78-30-9** is amended to read:

179 **78-30-9. Decree of adoption -- Best interest of child -- Legislative finds.**

180 (1) The court shall examine each person appearing before it in accordance with this  
 181 chapter, separately, and, if satisfied that the interests of the child will be promoted by the adoption,  
 182 it shall enter a final decree of adoption declaring that the child is adopted by the adoptive parent  
 183 or parents and shall be regarded and treated in all respects as the child of the adoptive parent or

184 parents.

185 (2) The court shall make a specific finding regarding the best interest of the child taking  
 186 into consideration information provided to the court pursuant to the requirements of Subsection  
 187 78-30-3.5(2) relating to the health, safety, and welfare of the child and the moral climate of the  
 188 potential adoptive placement.

189 (3) (a) The Legislature specifically finds that § [~~§~~, ~~EXCEPT WITH REGARD TO A BLOOD~~  
 189a RELATIVE, §] § it is not in a child's best interest to be adopted  
 190 by a person or persons who are cohabiting in a relationship that is not a legally valid and binding  
 191 marriage under the laws of this state, pursuant to the requirements and limitations of Section  
 192 30-1-2.

§ (b) § Except as provided in Subsection 62A-4a-602(5)(c) with regard to children in the custody  
 193 of the Division of Child and Family Services, nothing in this section limits or prohibits the  
 194 placement of a child with a single adult who is not cohabiting as defined in Subsection (3)(b).

195 § [~~(b)~~] (c) § For purposes of this section, "cohabiting" means residing with another person and  
 196 being involved in a sexual relationship with that person.

## Legislative Review Note

as of 2-8-00 9:32 AM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel