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ADOPTION PROCEDURES

2000 GENERAL SESSION

STATE OF UTAH

Sponsor: Howard C. Nielson

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

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

AMENDS:

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

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

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

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

(1) (a) The Board of Child and Family Services, created in accordance with this section 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.

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.

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 either:

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

167 (ii) 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. For purposes of this Subsection (3)(b),
170 "cohabiting" means residing with another person and being involved in a sexual relationship with
171 that person.

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 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. 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) 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