

**ADOPTION AMENDMENTS**

2005 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Ann W. Hardy**

Senate Sponsor: Carlene M. Walker

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**LONG TITLE**

**General Description:**

This bill makes changes to the procedures, rights, and requirements of the chapter of the Judicial Code relating to adoption.

**Highlighted Provisions:**

This bill:

- ▶ defines terms;
- ▶ describes the rights and duties of a parent and a guardian with respect to a minor for whom a guardian is appointed;
- ▶ provides that the payment of certain adoption related expenses does not constitute the crime of sale of a child;
- ▶ provides that before a parent consents to the adoption of the parent's child or relinquishes the parent's child to a child-placing agency, the parent has the right to participate in counseling at the expense of the adoptive parents or the child-placing agency;
- ▶ describes the persons who are entitled to notice of adoption proceedings;
- ▶ describes the persons from whom consent for adoption or relinquishment of a child for adoption is required;
- ▶ provides that a person's relinquishment of a child for adoption may not be considered as evidence that custody of the child should not be awarded to the person;
- ▶ provides that a minor has the power to relinquish the minor's child for adoption; and
- ▶ makes technical changes.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

- 75-5-209, as last amended by Chapter 30, Laws of Utah 1992
- 76-7-203, as last amended by Chapter 245, Laws of Utah 1990
- 78-30-1.1, as last amended by Chapter 20, Laws of Utah 1995
- 78-30-4.12, as enacted by Chapter 168, Laws of Utah 1995
- 78-30-4.13, as last amended by Chapter 122, Laws of Utah 2004
- 78-30-4.14, as last amended by Chapter 122, Laws of Utah 2004
- 78-30-4.16, as last amended by Chapter 122, Laws of Utah 2004
- 78-30-4.21, as renumbered and amended by Chapter 168, Laws of Utah 1995

ENACTS:

78-30-3.3, Utah Code Annotated 1953

REPEALS:

78-30-4.11, as enacted by Chapter 168, Laws of Utah 1995

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

Section 1. Section **75-5-209** is amended to read:

**75-5-209. Powers and duties of guardian of minor -- Residual parental rights and duties -- Adoption of a ward.**

[~~A~~] (1) For purposes of this section, "residual parental rights and duties" is as defined in Section 78-3a-103.

(2) Except as provided in Subsection (4)(a), a guardian of a minor has the powers and responsibilities of a parent who has not been deprived of custody of [his] the parent's unemancipated minor [and unemancipated child, except that a guardian is not legally obligated to

~~provide from his own funds for the ward and is not liable to third persons by reason of the parental relationship for acts of the ward. In particular, and without qualifying the foregoing, a guardian has the following powers and duties:], including the powers and responsibilities described in Subsection (3).~~

~~[(1) He]~~ (3) A guardian of a minor:

(a) must take reasonable care of [his ward's] the personal effects [and] of the guardian's ward;

(b) must commence protective proceedings if necessary to protect other property of the guardian's ward[-];

~~[(2) He]~~ (c) subject to Subsection (4)(b), may receive money payable for the support of the ward to the ward's parent, guardian, or custodian under the terms of [any] a:

(i) statutory benefit or insurance system[-, or any];

(ii) private contract[-];

(iii) devise[-];

(iv) trust[-];

(v) conservatorship; or

(vi) custodianship[-. He also];

(d) subject to Subsection (4)(b), may receive money or property of the ward paid or delivered by virtue of Section 75-5-102[-. Any sums so received shall be applied to the ward's current needs for support, care and education. He];

(e) except as provided in Subsection (4)(c), must exercise due care to conserve any excess money or property described in Subsection (3)(d) for the ward's future needs [unless a conservator has been appointed for the estate of the ward, in which case the excess shall be paid over at least annually to the conservator. Sums so received by the guardian are not to be used for compensation for his services except as approved by order of court or as determined by a duly appointed conservator other than the guardian. Unless];

(f) unless otherwise provided by statute, [a guardian] may institute proceedings to compel the performance by any person of a duty to;

- ~~(i)~~ support the ward; or ~~[to]~~
- ~~(ii)~~ pay sums for the welfare of the ward[-];
- ~~[(3) The guardian]~~
- ~~(g)~~ is empowered to:

  - ~~(i)~~ facilitate the ward's education, social, or other activities; and ~~[to]~~
  - ~~(ii)~~ subject to Subsection (4)(d), authorize medical or other professional care, treatment, or advice[-. A guardian is not liable by reason of this consent for injury to the ward resulting from the negligence or acts of third persons unless it would have been illegal for a parent to have consented. A guardian];
- ~~(h)~~ may consent to the:

  - ~~(i)~~ marriage of the guardian's ward, if specifically authorized by a court to give this consent; or
  - ~~(ii)~~ adoption of ~~[his]~~ the guardian's ward[-] if the:

    - ~~(A)~~ guardian of the ward is specifically authorized by a court to give this consent; and
    - ~~(B)~~ parental rights of the ward's parents have been terminated; and
- ~~[(4) A guardian]~~ ~~(i)~~ must report the condition of ~~[his ward]~~ the minor and of ~~[the ward's]~~ the minor's estate ~~[which]~~ that has been subject to ~~[his]~~ the guardian's possession or control[-];

  - ~~(i)~~ as ordered by court on petition of any person interested in the minor's welfare; or
  - ~~(ii)~~ as required by court rule.
- ~~(4) (a)~~ Notwithstanding Subsection (2), a guardian of a minor is not:

  - ~~(i)~~ legally obligated to provide from the guardian's own funds for the ward; and
  - ~~(ii)~~ liable to third persons by reason of the guardian's relationship for acts of the ward.
- ~~(b)~~ Sums received under Subsection (3)(c) or (d):

  - ~~(i)~~ may not be used for compensation for the services of a guardian, except as:

    - ~~(A)~~ approved by court order; or
    - ~~(B)~~ determined by a duly appointed conservator other than the guardian; and
  - ~~(ii)~~ shall be applied to the ward's current needs for support, care, and education.
- ~~(c)~~ Notwithstanding Subsection (3)(e), if a conservator is appointed for the estate of the

ward, the excess shall be paid over at least annually to the conservator.

(d) A guardian of a minor is not, by reason of giving the authorization described in Subsection (3)(g)(ii), liable for injury to the minor resulting from the negligence or acts of third persons, unless it would have been illegal for a parent to have given the authorization.

(5) A parent of a minor for whom a guardian is appointed retains residual parental rights and duties.

(6) If a parent of a minor for whom a guardian is appointed consents to the adoption of the minor, the guardian is entitled to:

(a) receive notice of the adoption proceeding pursuant to Section 78-30-4.13;

(b) intervene in the adoption; and

(c) present evidence to the court relevant to the best interest of the child pursuant to Subsection 78-30-4.13(11).

(7) If a minor for whom a guardian is appointed is adopted subsequent to the appointment, the guardianship shall terminate when the adoption is finalized.

Section 2. Section **76-7-203** is amended to read:

**76-7-203. Sale of child -- Felony -- Payment of adoption related expenses.**

[Any person]

(1) For purposes of this section:

(a) "adoption related expenses" means expenses that:

(i) are reasonably related to the adoption of a child;

(ii) are incurred for a reasonable amount; and

(iii) may include expenses:

(A) of the mother or father of the child being adopted, including:

(I) legal expenses;

(II) maternity expenses;

(III) medical expenses;

(IV) hospital expenses;

(V) counseling expenses;

(VI) temporary living expenses during the pregnancy or confinement of the mother; or  
(VII) expenses for travel between the mother's or father's home and the location where the child will be born or placed for adoption; or

(B) of a directly affected person for:

(I) travel between the directly affected person's home and the location where the child will be born or placed for adoption; or

(II) temporary living expenses during the pregnancy or confinement of the mother; and

(b) "directly affected person" means a person who is:

(i) a parent or guardian of a minor when the minor is the mother or father of the child being adopted;

(ii) a dependant of:

(A) the mother or father of the child being adopted; or

(B) the parent or guardian described in Subsection (1)(b)(i); or

(iii) the spouse of the mother or father of the child being adopted.

(2) Except as provided in Subsection (3), a person is guilty of a third degree felony if the person, while having custody, care, control, or possession of [any] a child, [who] sells, or disposes of, or attempts to sell or dispose of, [any] the child for and in consideration of the payment of money or other thing of value [is guilty of a felony of the third degree. However, this section does not prohibit any person, agency, or corporation from paying the actual and reasonable legal expenses, maternity expenses, related medical or hospital, and necessary living expenses of the mother preceding and during confinement].

(3) A person does not violate this section by paying adoption related expenses:

(a) as an act of charity[; so long as]; and

(b) if the payment is not made for the purpose of inducing the mother, parent, or legal guardian of a child to:

(i) place the child for adoption[;];

(ii) consent to an adoption[;]; or

(iii) cooperate in the completion of an adoption.

Section 3. Section **78-30-1.1** is amended to read:

**78-30-1.1. Definitions.**

As used in this chapter [~~the term "licensed child placing~~]:

(1) "Adoption service provider" means a:

(a) child-placing agency; or

(b) licensed counselor who has at least one year of experience providing professional social work services to:

(i) adoptive parents; or

(ii) birth parents.

(2) "Child-placing agency" means an agency licensed to place children for adoption under Title 62A, Chapter 4a, Part 6, Child and Family Services.

(3) "Licensed counselor" means a person who is licensed by the state, or another state, district, or territory of the United States as a:

(a) certified social worker;

(b) clinical social worker;

(c) psychologist;

(d) marriage and family therapist;

(e) professional counselor; or

(f) an equivalent licensed professional of another state, district, or territory of the United States.

(4) "Parent," for purposes of Section 78-30-3.3, means any person described in Subsections 78-30-4.14(1)(b) through (f) from whom consent for adoption or relinquishment for adoption is required under Section 78-30-4.14.

(5) "Unmarried biological father" means a person who:

(a) is the biological father of a child; and

(b) was not married to the biological mother of the child described in Subsection (5)(a) at the time of the child's:

(i) conception; or

(ii) birth.

Section 4. Section **78-30-3.3** is enacted to read:

**78-30-3.3. Counseling for parents.**

(1) Subject to Subsection (2)(a), before relinquishing a child to a child-placing agency, or consenting to the adoption of a child, a parent of the child has the right to participate in counseling:

(a) by a licensed counselor or an adoption service provider selected by the parent participating in the counseling:

(b) for up to three sessions of at least 50 minutes per session; and

(c) subject to Subsection (2)(b), at the expense of the:

(i) child-placing agency; or

(ii) prospective adoptive parents.

(2) (a) Notwithstanding Subsection (1), a parent who has the right to participate in the counseling described in this section may waive that right.

(b) Notwithstanding Subsection (1)(c), the total amount required to be paid by a child-placing agency or the prospective adoptive parents for the counseling described in Subsection (1) may not exceed \$250.

(3) Before a parent relinquishes a child to a child-placing agency, or consents to the adoption of a child, the parent shall be informed of the right described in Subsection (1) by the:

(a) child-placing agency;

(b) prospective adoptive parents; or

(c) representative of a person described in Subsection (3)(a) or (b).

(4) (a) Subject to Subsections (4)(b) and (c), before the day on which a final decree of adoption is entered, a statement shall be filed with the court that:

(i) is signed by each parent who:

(A) relinquishes the parent's parental rights; or

(B) consents to the adoption; and

(ii) states that, before the parent took the action described in Subsection (4)(a)(i)(A) or

(B), the parent was advised of the parent's right to participate in the counseling described in this section at the expense of the:

(A) child-placing agency; or

(B) prospective adoptive parents.

(b) The statement described in Subsection (4)(a) may be included in the document that:

(i) relinquishes the parent's parental rights; or

(ii) consents to the adoption.

(c) Failure by a person to give the notice described in Subsection (3), or pay for the counseling described in this section:

(i) shall not constitute grounds for invalidating a:

(A) relinquishment of parental rights; or

(B) consent to adoption; and

(ii) shall give rise to a cause of action for the recovery of damages suffered, if any, by the parent or guardian who took the action described in Subsection (4)(c)(i)(A) or (B) against the person required to:

(A) give the notice described in Subsection (3); or

(B) pay for the counseling described in this section.

Section 5. Section **78-30-4.12** is amended to read:

**78-30-4.12. Rights and responsibilities of parties in adoption proceedings.**

(1) The Legislature finds that the rights and interests of all parties affected by an adoption proceeding must be considered and balanced in determining what constitutional protections and processes are necessary and appropriate.

(2) The Legislature finds that:

(a) the state has a compelling interest in providing stable and permanent homes for adoptive children in a prompt manner, in preventing the disruption of adoptive placements, and in holding parents accountable for meeting the needs of children;

(b) an unmarried mother, faced with the responsibility of making crucial decisions about the future of a newborn child, is entitled to privacy, and has the right to make timely and

appropriate decisions regarding her future and the future of the child, and is entitled to assurance regarding the permanence of an adoptive placement;

(c) adoptive children have a right to permanence and stability in adoptive placements;

(d) adoptive parents have a constitutionally protected liberty and privacy interest in retaining custody of an adopted child; and

(e) an unmarried biological father has an inchoate interest that acquires constitutional protection only when he demonstrates a timely and full commitment to the responsibilities of parenthood, both during pregnancy and upon the child's birth. The state has a compelling interest in requiring unmarried biological fathers to demonstrate that commitment by providing appropriate medical care and financial support and by establishing legal paternity, in accordance with the requirements of this chapter.

(3) (a) In enacting [~~Sections 78-30-4.11~~] Subsection 78-30-1.1(5) and Sections 78-30-4.12 through 78-30-4.21, the Legislature prescribes the conditions for determining whether an unmarried biological father's action is sufficiently prompt and substantial to require constitutional protection.

(b) If an unmarried biological father fails to grasp the opportunities to establish a relationship with his child that are available to him, his biological parental interest may be lost entirely, or greatly diminished in constitutional significance by his failure to timely exercise it, or by his failure to strictly comply with the available legal steps to substantiate it.

(c) A certain degree of finality is necessary in order to facilitate the state's compelling interest. The Legislature finds that the interests of the state, the mother, the child, and the adoptive parents described in this section outweigh the interest of an unmarried biological father who does not timely grasp the opportunity to establish and demonstrate a relationship with his child in accordance with the requirements of this chapter.

(d) An unmarried biological father has the primary responsibility to protect his rights.

(e) An unmarried biological father is presumed to know that the child may be adopted without his consent unless he strictly complies with the provisions of this chapter, manifests a prompt and full commitment to his parental responsibilities, and establishes paternity.

(4) The Legislature finds that an unmarried mother has a right of privacy with regard to her pregnancy and adoption plan, and therefore has no legal obligation to disclose the identity of an unmarried biological father prior to or during an adoption proceeding, and has no obligation to volunteer information to the court with respect to the father.

Section 6. Section **78-30-4.13** is amended to read:

**78-30-4.13. Notice of adoption proceedings.**

(1) (a) An unmarried[;] biological father, by virtue of the fact that he has engaged in a sexual relationship with a woman[;]:

(i) is considered to be on notice that a pregnancy and an adoption proceeding regarding [that] the child may occur[;]; and

(ii) has a duty to protect his own rights and interests. [~~He is therefore~~]

(b) An unmarried biological father is entitled to actual notice of a birth or an adoption proceeding with regard to [that] his child only as provided in this section.

(2) Notice of an adoption proceeding shall be served on each of the following persons:

(a) any person or agency whose consent or relinquishment is required under Section 78-30-4.14, unless that right has been terminated by:

(i) waiver[;];

(ii) relinquishment[;];

(iii) consent[;]; or

(iv) judicial action;

(b) any person who has initiated a paternity proceeding and filed notice of that action with the state registrar of vital statistics within the Department of Health, in accordance with Subsection (3);

(c) any legally appointed custodian or guardian of the adoptee;

(d) the petitioner's spouse, if any, only if [~~he~~] the petitioner's spouse has not joined in the petition;

(e) the adoptee's spouse, if any;

(f) any person who, prior to the time the mother executes her consent for adoption or

relinquishes the child [~~to a licensed child-placing agency~~] for adoption, is recorded on the birth certificate as the child's father, with the knowledge and consent of the mother;

(g) any person who is;

(i) openly living in the same household with the child at the time the consent is executed or relinquishment made[;]; and [~~who is~~]

(ii) holding himself out to be the child's father; and

(h) any person who is married to the child's mother at the time she executes her consent to the adoption or relinquishes the child for adoption.

(3) (a) In order to preserve any right to notice and consent, an unmarried, biological father may, consistent with Subsection (3)(d):

(i) initiate proceedings to establish paternity under Title 78, Chapter 45a, Uniform Act on Paternity[;]; and

(ii) file a notice of the initiation of [~~those~~] the proceedings described in Subsection (3)(a)(i) with the state registrar of vital statistics within the Department of Health [~~prior to the mother's execution of consent or her relinquishment to an agency. That action and notice may also be filed prior to the child's birth~~].

(b) If the unmarried, biological father does not know the county in which the birth mother resides, he may initiate his action in any county, subject to a change in trial pursuant to Section 78-13-7.

(c) The Department of Health shall provide forms for the purpose of filing the notice described in Subsection (3)(a)(ii), and make those forms available in the office of the county health department in each county.

(d) The action and notice described in Subsection (3)(a):

(i) may be filed before or after the child's birth; and

(ii) shall be filed prior to the mother's:

(A) execution of consent to adoption of the child; or

(B) relinquishment of the child for adoption.

(4) Notice provided in accordance with this section need not disclose the name of the

mother of the child who is the subject of an adoption proceeding.

(5) The notice required by this section:

(a) may be served immediately after relinquishment or execution of consent~~[-but];~~

(b) shall be served at least 30 days prior to the final dispositional hearing~~[-The notice];~~

and

(c) shall specifically state that the person served must respond to the petition within 30 days of service if he intends to intervene in or contest the adoption.

(6) (a) Any person who has been served with notice of an adoption proceeding and who wishes to contest the adoption shall file a motion in the adoption proceeding:

(i) within 30 days after ~~[service. The motion]~~ the day on which the person was served with notice of the adoption proceeding;

(ii) that shall set forth specific relief sought; and

(iii) that shall be accompanied by a memorandum specifying the factual and legal grounds upon which the motion is based.

(b) Any person who fails to file a motion for relief within 30 days after ~~[service of notice]~~ the day on which the person was served with notice of the adoption proceeding:

(i) waives any right to further notice in connection with the adoption~~[-];~~

(ii) forfeits all rights in relation to the adoptee~~[-];~~ and

(iii) is barred from thereafter bringing or maintaining any action to assert any interest in the adoptee.

(7) Service of notice under this section shall be made as follows:

(a) (i) With regard to a person whose consent is necessary under Section 78-30-4.14, service shall be in accordance with the provisions of the Utah Rules of Civil Procedure.

(ii) If service of a person described in Subsection (7)(a)(i) is by publication, the court shall designate the content of the notice regarding the identity of the parties.

(iii) The notice described in this Subsection (7)(a) may not include the name of ~~[the person or persons]~~ a person seeking to adopt the adoptee.

(b) ~~[As]~~ (i) Except as provided in Subsection (7)(b)(ii) to any other person for whom

notice is required under this section, service by certified mail, return receipt requested, is sufficient.

(ii) If ~~[that]~~ the service described in Subsection (7)(b)(i) cannot be completed after two attempts, the court may issue an order providing for service by publication, posting, or by any other manner of service.

(c) Notice to a person who has initiated a paternity proceeding and filed notice of that action with the state registrar of vital statistics in the Department of Health in accordance with the requirements of Subsection (3), shall be served by certified mail, return receipt requested, at the last address filed with the registrar.

(8) The notice required by this section may be waived in writing by the person entitled to receive notice.

(9) Proof of service of notice on all persons for whom notice is required by this section shall be filed with the court before the final dispositional hearing on the adoption.

(10) Notwithstanding any other provision of law, neither the notice of an adoption proceeding nor any process in that proceeding is required to contain the name of the person or persons seeking to adopt the adoptee.

(11) Except as to those persons whose consent to an adoption is required under Section 78-30-4.14, the sole purpose of notice under this section is to enable the person served to:

(a) intervene in the adoption; and

(b) present evidence to the court relevant to the best interest of the child.

Section 7. Section **78-30-4.14** is amended to read:

**78-30-4.14. Necessary consent to adoption or relinquishment for adoption.**

(1) Either relinquishment of a child for adoption [~~to a licensed child-placing agency~~] or consent to adoption of a child is required from:

(a) the adoptee, if he is more than 12 years of age, unless he does not have the mental capacity to consent;

(b) both parents or the surviving parent of an adoptee who was conceived or born within a marriage, unless the adoptee is 18 years of age or older;

(c) the mother of an adoptee born outside of marriage;

(d) any biological parent who has been adjudicated to be the child's biological father by a court of competent jurisdiction prior to the mother's execution of consent to adoption or her relinquishment [~~to an agency~~] of the child for adoption;

(e) any biological parent who has executed and filed a voluntary declaration of paternity with the state registrar of vital statistics within the Department of Health in accordance with Title 78, Chapter 45e, Voluntary Declaration of Paternity Act, prior to the mother's execution of consent to adoption or her relinquishment [~~to an agency~~] of the child for adoption, which voluntary declaration of paternity is considered filed when entered into a database that can be accessed by the Department of Health;

(f) an unmarried[;] biological father of an adoptee, [~~as defined in Section 78-30-4.11;~~] only if the requirements and conditions of Subsection (2)(a) or (b) have been proven; and

(g) the [~~licensed child-placing~~] person or agency to whom an adoptee has been relinquished and that is placing the child for adoption.

(2) In accordance with Subsection (1), the consent of an unmarried, biological father is necessary only if the father has strictly complied with the requirements of this section.

(a) (i) With regard to a child who is placed with adoptive parents more than six months after birth, an unmarried[;] biological father shall have developed a substantial relationship with the child, taken some measure of responsibility for the child and the child's future, and demonstrated a full commitment to the responsibilities of parenthood by financial support of the child, of a fair and reasonable sum and in accordance with the father's ability, when not prevented from doing so by the person or authorized agency having lawful custody of the child, and either:

(A) visiting the child at least monthly when physically and financially able to do so, and when not prevented from doing so by the person or authorized agency having lawful custody of the child; or

(B) regular communication with the child or with the person or agency having the care or custody of the child, when physically and financially unable to visit the child, and when not prevented from doing so by the person or authorized agency having lawful custody of the child.

(ii) The subjective intent of an unmarried[;] biological father, whether expressed or otherwise, unsupported by evidence of acts specified in this Subsection (2) shall not preclude a determination that the father failed to meet the requirements of Subsection (2)(a)(i).

(iii) An unmarried[;] biological father who openly lived with the child for a period of six months within the one-year period after the birth of the child and immediately preceding placement of the child with adoptive parents, and openly held himself out to be the father of the child during that period, shall be considered to have developed a substantial relationship with the child and to have otherwise met the requirements of Subsection (2)(a)(i).

(b) With regard to a child who is under six months of age at the time he is placed with adoptive parents, an unmarried[;] biological father shall have manifested a full commitment to his parental responsibilities by performing all of the acts described in this Subsection (2) prior to the time the mother executes her consent for adoption or relinquishes the child [~~to a licensed child-placing agency~~] for adoption. The father shall:

(i) initiate proceedings to establish paternity under Title 78, Chapter 45a, Uniform Act on Paternity, and file with that court a sworn affidavit stating that he is fully able and willing to have full custody of the child, setting forth his plans for care of the child, and agreeing to a court order of child support and the payment of expenses incurred in connection with the mother's pregnancy and the child's birth;

(ii) file notice of the commencement of paternity proceedings with the state registrar of vital statistics within the Department of Health, in a confidential registry established by the department for that purpose, which notice is considered filed when the notice is entered in the registry of notices from unmarried biological fathers; and

(iii) if he had actual knowledge of the pregnancy, paid a fair and reasonable amount of the expenses incurred in connection with the mother's pregnancy and the child's birth, in accordance with his means, and when not prevented from doing so by the person or authorized agency having lawful custody of the child.

(3) An unmarried[;] biological father whose consent is required under Subsection (1) or (2) may nevertheless lose his right to consent if the court determines, in accordance with the

requirements and procedures of Title 78, Chapter 3a, Part 4, Termination of Parental Rights Act, that his rights should be terminated, based on the petition of any interested party.

(4) If there is no showing that an unmarried[;] biological father has consented to or waived his rights regarding a proposed adoption, the petitioner shall file with the court a certificate from the state registrar of vital statistics within the Department of Health, stating that a diligent search has been made of the registry of notices from unmarried biological fathers described in Subsection (2)(b)(ii), and that no filing has been found pertaining to the father of the child in question, or if a filing is found, stating the name of the putative father and the time and date of filing. That certificate shall be filed with the court prior to entrance of a final decree of adoption.

(5) An unmarried[;] biological father who does not fully and strictly comply with each of the conditions provided in this section, is [~~deemed~~] considered to have waived and surrendered any right in relation to the child, including the right to notice of any judicial proceeding in connection with the adoption of the child, and his consent to the adoption of the child is not required.

Section 8. Section **78-30-4.16** is amended to read:

**78-30-4.16. Contested adoptions -- Rights of parties -- Determination of custody.**

(1) If a person whose consent for an adoption is required pursuant to Subsection 78-30-4.14(1)(b), (c), (d), (e), or (f) refused to consent, the court shall determine whether proper grounds exist for the termination of that person's rights pursuant to the provisions of this chapter or Title 78, Chapter 3a, Part 4, Termination of Parental Rights Act.

(2) (a) If there are proper grounds to terminate the person's parental rights, the court shall order that the person's rights be terminated.

(b) If there are not proper grounds to terminate the person's parental rights, the court shall:

~~(a)~~ (i) dismiss the adoption petition; ~~and~~

~~(b)~~ (ii) conduct an evidentiary hearing to determine who should have custody of the child; and

(iii) award custody of the child in accordance with the child's best interest.

(3) Evidence considered at the custody hearing may include:

(a) evidence of psychological or emotional bonds that the child has formed with a third person, including the prospective adoptive parent~~;~~; and

(b) any detriment that a change in custody may cause the child.

(4) The fact that a person relinquished a child ~~[to a licensed child-placing agency]~~ for adoption or consented to the adoption may not be considered as evidence that it is not in the child's best interest for custody to be awarded to such person or that:

(a) the person is unfit or incompetent to be a parent;

(b) the person has neglected or abandoned the child; or

(c) the person is not interested in having custody of the child.

(5) Any custody order entered pursuant to this section may also:

(a) include provisions for:

(i) parent-time by a biological parent; or

(ii) visitation by an interested third party~~;~~; and

(b) provide for the financial support of the child.

(6) (a) If a person or entity whose consent is required for an adoption under Subsection 78-30-4.14(1)(a) or (g) refuses to consent, the court shall proceed with an evidentiary hearing and award custody as set forth in Subsection (2).

(b) The court may also finalize the adoption if doing so is in the best interest of the child.

(7) An adoption may not be contested after the final decree of adoption is entered.

Section 9. Section **78-30-4.21** is amended to read:

**78-30-4.21. Power of a minor to consent or relinquish.**

(1) A minor parent has the power to:

(a) consent to the adoption of ~~[his or her]~~ the minor's child; and ~~[has the power to]~~

(b) relinquish ~~[his or her]~~ the minor's control or custody of the child ~~[to a licensed child-placing agency. That]~~ for adoption.

(2) The consent or relinquishment described in Subsection (1) is valid and has the same

force and effect as a consent or relinquishment executed by an adult parent.

(3) A minor parent, having executed a consent or relinquishment, cannot revoke that consent upon reaching the age of majority or otherwise becoming emancipated.

**Section 10. Repealer.**

This bill repeals:

Section **78-30-4.11, Definition.**