

1 **CHILD SUPPORT EXEMPTION FOR**
2 **ADOPTIVE PARENTS OF CERTAIN**
3 **CHILDREN IN STATE CUSTODY**

4 2005 GENERAL SESSION

5 STATE OF UTAH

6 **Sponsor: Parley G. Hellewell**

7
8 **LONG TITLE**

9 **General Description:**

10 This bill amends provisions of the Human Services Code and the Judicial Code relating
11 to child support.

12 **Highlighted Provisions:**

13 This bill:

14 ▶ prohibits the Office of Recovery Services, within the Department of Human
15 Services, from collecting child support from a parent if the parent adopted the child
16 from or through the Division of Child and Family Services or the equivalent agency
17 of any state, district, or territory of the United States:

18 • unless the child is removed from the custody of the parent because the minor is
19 an abused child; or

20 • except to the extent that failure to collect child support would constitute a
21 violation of Title 78, Chapter 45, Uniform Civil Liability for Support Act;

22 ▶ prohibits a court from ordering a parent to pay child support for a minor in state
23 custody, or a minor placed with an individual by a court, if the parent adopted the
24 child from or through the Division of Child and Family Services or the equivalent
25 agency of any state, district, or territory of the United States:

26 • unless the child is in the custody of the state due to the fault of the parent; or

27 • except to the extent that failure to enter an order to pay child support would



28 constitute a violation of Title 78, Chapter 45, Uniform Civil Liability for Support Act; and
29 ▶ makes technical changes.

30 **Monies Appropriated in this Bill:**

31 None

32 **Other Special Clauses:**

33 None

34 **Utah Code Sections Affected:**

35 AMENDS:

36 **62A-11-104**, as last amended by Chapters 90 and 176, Laws of Utah 2003

37 **78-3a-906**, as last amended by Chapter 176, Laws of Utah 2003



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

40 Section 1. Section **62A-11-104** is amended to read:

41 **62A-11-104. Duties of office.**

42 The office has the following duties:

43 (1) except as provided in Subsection (13), to provide child support services if:

44 (a) the office has received an application for child support services;

45 (b) the state has provided public assistance; or

46 (c) a child lives out of the home in the protective custody, temporary custody, or
47 custody or care of the state;

48 (2) for the purpose of collecting child support, to carry out the obligations of the
49 department contained in:

50 (a) this chapter [and in];

51 (b) Title 78, [Chapters] Chapter 45, Uniform Civil Liability for Support Act[;];

52 (c) Title 78, Chapter 45a, Uniform Act on Paternity[;]; and

53 (d) Title 78, Chapter 45f, Uniform Interstate Family Support Act[; for the purpose of
54 collecting child support];

55 (3) except as provided in Subsection (13), to collect money due the department which
56 could act to offset expenditures by the state;

57 (4) to cooperate with the federal government in programs designed to recover health
58 and social service funds;

59 (5) to collect civil or criminal assessments, fines, fees, amounts awarded as restitution,
60 and reimbursable expenses owed to the state or any of its political subdivisions, if the office
61 has contracted to provide collection services;

62 (6) to implement income withholding for collection of child support in accordance with
63 Part 4, Income Withholding in IV-D Cases, of this chapter;

64 (7) to enter into agreements with financial institutions doing business in the state to
65 develop and operate, in coordination with such financial institutions, a data match system in the
66 manner provided for in Section 62A-11-304.5;

67 (8) to establish and maintain the state case registry in the manner required by the Social
68 Security Act, 42 U.S.C. Sec. 654a, ~~[which]~~ that shall include a record in each case of:

69 (a) the amount of monthly or other periodic support owed under the order~~[-, and]~~;

70 (b) other amounts due or overdue under the order, including:

71 (i) arrearages[-];

72 (ii) interest[-];

73 (iii) late payment penalties[-]; or

74 (iv) fees[-, due or overdue under the order];

75 ~~[(b)]~~ (c) any amount described in Subsection (8)(a) that has been collected;

76 ~~[(c)]~~ (d) the distribution of collected amounts;

77 ~~[(d)]~~ (e) the birth date of any child for whom the order requires the provision of
78 support; and

79 ~~[(e)]~~ (f) the amount of any lien imposed with respect to the order pursuant to this part;

80 (9) to contract with the Department of Workforce Services to establish and maintain
81 the new hire registry created under Section 35A-7-103;

82 (10) to determine whether an individual who has applied for or is receiving cash
83 assistance or Medicaid is cooperating in good faith with the office as required by Section
84 62A-11-307.2;

85 (11) to finance any costs incurred from collections, fees, General Fund appropriation,
86 contracts, and federal financial participation; ~~[and]~~

87 (12) to provide notice to a noncustodial parent in accordance with Section
88 62A-11-304.4 of the opportunity to contest the accuracy of allegations by a custodial parent of
89 nonpayment of past-due child support, prior to taking action against a noncustodial parent to

90 collect the alleged past-due support[-]; and

91 (13) (a) except as provided in Subsection (13)(b), the office may not collect child
 92 support from a parent if the parent adopted the child from or through the Division of Child and
 93 Family Services or the equivalent agency of any state, district, or territory of the United States;
 94 and

95 (b) notwithstanding Subsection (13)(a), the office may collect child support from a
 96 parent described in Subsection (13)(a):

97 (i) if the child is removed from the custody of the parent because the child is an abused
 98 child; or

99 (ii) to the extent that failure to collect child support would constitute a violation of
 100 Title 78, Chapter 45, Uniform Civil Liability for Support Act.

101 Section 2. Section **78-3a-906** is amended to read:

102 **78-3a-906. Child support obligation when custody of a minor is vested in an**
 103 **individual or institution -- Exception for adoptive parents of certain children.**

104 (1) (a) The court shall take the action described in Subsection (1)(b) when:

105 [(+)] (i) [~~When legal custody of a minor is vested by~~] the court vests legal custody of a
 106 minor in a:

107 (A) secure youth corrections facility; or [~~any other~~]

108 (B) state department, division, or agency other than [~~his~~] the minor's parents[-, or if
 109 the]; or

110 (ii) (A) guardianship of the [~~child has been~~] minor is granted to another party; and

111 (B) an agreement for a guardianship subsidy [~~has been~~] is signed by the guardian[-].

112 (b) When the court grants custody or guardianship of a minor under Subsection (1)(a),
 113 the court shall:

114 (i) except as provided in Subsection (1)(c), order the minor's parents[-, a parent,] or any
 115 other obligated person to pay child support for each month the [~~child~~] minor is in custody[-
 116 in]; and

117 (ii) in the same proceeding [~~the court shall~~], inform the parents, a parent, or any other
 118 obligated person, verbally and in writing, of the requirement to pay child support in accordance
 119 with Title 78, Chapter 45, Uniform Civil Liability for Support Act.

120 (c) Except as provided in Subsection (1)(d), the court may not order a parent of a minor

121 described in Subsection (1)(b)(i) to pay child support if the parent adopted the minor from or
122 through the Division of Child and Family Services or the equivalent agency of any state,
123 district, or territory of the United States.

124 (d) Notwithstanding Subsection (1)(c), the court shall order the parent of a minor
125 described in Subsection (1)(b)(i) to pay child support:

126 (i) if the minor is removed from the custody of the parent because the minor is an
127 abused child; or

128 (ii) to the extent that failure to enter the order would constitute a violation of Title 78,
129 Chapter 45, Uniform Civil Liability for Support Act.

130 (2) (a) ~~[H]~~ Except as provided in Subsection (2)(d), if legal custody of a minor is
131 vested by the court in a secure youth corrections facility, or any other state department,
132 division, or agency, the court may refer the establishment of a child support order to the Office
133 of Recovery Services. ~~[The]~~

134 (b) A referral made under Subsection (2)(a) shall be sent to the Office of Recovery
135 Services within three working days of the hearing.

136 (c) Support obligation amounts shall be set by the Office of Recovery Services in
137 accordance with Title 78, Chapter 45, Uniform Civil Liability for Support Act.

138 (d) Except as provided in Subsection (2)(e), the court may not make the referral
139 described in Subsection (2)(a) if the parent of the minor adopted the minor from or through the
140 Division of Child and Family Services or the equivalent agency of any state, district, or
141 territory of the United States.

142 (e) Notwithstanding Subsection (2)(d), the court may make the referral described in
143 Subsection (2)(a), if:

144 (i) the minor is removed from the custody of a parent due to the fault of the parent; or

145 (ii) failure to make the referral described in Subsection (2)(a) would constitute a
146 violation of Title 78, Chapter 45, Uniform Civil Liability for Support Act.

147 (3) (a) ~~If [referred to the Office of Recovery Services pursuant to]~~ the court makes a
148 referral under Subsection (2), the court shall ~~[also]~~ inform the parties:

149 (i) that ~~[they]~~ the parties are required to contact the Office of Recovery Services within
150 30 days ~~[of the date]~~ after the day of the hearing to establish a child support order; and

151 (ii) of the penalty described in Subsection (5) for failing to ~~[do so]~~ comply with

152 Subsection (3)(a)(i).

153 (b) If there is no existing child support order for the [~~child~~] minor, the liability for
154 support shall accrue beginning on the 61st day [~~following~~] after the day of the hearing [~~that~~
155 ~~occurs the first time the court~~] at which the court first vests custody of the [~~child~~] minor in:

156 (i) a secure youth corrections facility[;]; or

157 (ii) any [~~other~~] state department, division, or agency other than [~~his~~] the minor's
158 parents.

159 (4) If a child is returned home and legal custody is subsequently vested by the court in
160 a secure youth corrections facility or any [~~other~~] state department, division, or agency other
161 than [~~his~~] the minor's parents, the liability for support shall accrue from the date the minor is
162 subsequently removed from the home, including time spent in detention or sheltered care.

163 (5) (a) If [~~the parents;~~] a parent[;] or other obligated person meets with the Office of
164 Recovery Services within 30 days [~~of the date~~] after the day of the hearing, the child support
165 order may not include a judgment for past due support for more than two months.

166 (b) Notwithstanding Subsection (5)(a), the court may order the liability of support to
167 begin to accrue from the date of the proceeding [~~referenced~~] referred to in Subsection (1)(b) if:

168 (i) [~~the parents;~~] a parent[;] or any other obligated person [~~obligated~~] fails to meet with
169 the Office of Recovery Services within 30 days after [~~being~~] the day on which the parent or
170 other obligated person is informed orally and in writing by the court of that requirement; and

171 (ii) the Office of Recovery Services took reasonable steps under the circumstances to
172 contact the parents[; ~~parent;~~] or other obligated person [~~obligated within the subsequent 30-day~~
173 ~~period~~], within 30 days after the day on which the period described in Subsection (5)(b)(i)
174 ends, to facilitate the establishment of the child support order.

175 (c) For purposes of Subsection (5)(b)(ii), the Office of Recovery Services shall be
176 presumed to have taken reasonable steps if the office:

177 (i) has a signed, returned receipt for a certified letter mailed to the address of the
178 parents, parent, or other obligated person regarding the requirement that a child support order
179 be established; or

180 (ii) has [~~had~~] a documented conversation, whether by telephone or in person, with the
181 parents, parent, or other obligated person regarding the requirement that a child support order
182 be established.

183 (6) In collecting arrears, the Office of Recovery Services shall comply with Section
184 62A-11-320 in setting a payment schedule or demanding payment in full.

185 (7) (a) Unless otherwise ordered, the parents or other obligated person described in this
186 section shall pay ~~[the]~~ any child support ordered under this section to the Office of Recovery
187 Services.

188 (b) The clerk of the court, the Office of Recovery Services, or the Department of
189 Human Services and its divisions shall have authority to receive periodic payments for the care
190 and maintenance of the minor, such as Social Security payments or railroad retirement
191 payments made in the name of or for the benefit of, the minor.

192 (8) (a) ~~[No court order under this section]~~ A court order against a parent or other
193 person ~~[shall be entered]~~ may not be entered under this section, unless:

194 (i) notice of the hearing ~~[has been]~~ is served within the state~~[-];~~;

195 (ii) a voluntary appearance is made~~[-];~~ or

196 (iii) a waiver of service given.

197 (b) The notice ~~[shall specify]~~ described in Subsection (8)(a) shall state that a hearing
198 with respect to the financial support of the minor will be held.

199 (9) An existing child support order payable to a parent or other obligated person shall
200 be assigned to the Department of Human Services as provided in Section 62A-1-117.

201 (10) (a) Subsections (3) through (9) ~~[shall]~~ do not apply if legal custody of a minor is
202 vested by the court in an individual.

203 (b) If legal custody of a minor is vested by the court in an individual, the court:

204 (i) except as provided in Subsection (10)(c), may order the parents, a parent, or any
205 other obligated person to pay child support to the individual~~[- In the same proceeding the~~
206 ~~court]; and~~

207 (ii) shall, at the same time, inform the parents, a parent, or any other obligated person,
208 verbally and in writing, of the requirement to pay child support in accordance with Title 78,
209 Chapter 45, Uniform Civil Liability for Support Act.

210 (c) Except as provided in Subsection (10)(d), the court may not order a parent of a
211 minor described in Subsection (10)(b) to pay child support if the parent adopted the minor from
212 or through the Division of Child and Family Services or the equivalent agency of any state,
213 district, or territory of the United States.

214 (d) Notwithstanding Subsection (10)(c), the court shall order the parent of a minor
215 described in Subsection (10)(b) to pay child support:

216 (i) if the minor is removed from the custody of the parent because the minor is an
217 abused child; or

218 (ii) to the extent that failure to enter the order would constitute a violation of Title 78,
219 Chapter 45, Uniform Civil Liability for Support Act.

Legislative Review Note
as of 1-26-05 12:25 PM

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

Office of Legislative Research and General Counsel

State Impact

This legislation will reduce collections to the Department of Human Services by about \$200,000. This includes dedicated credits of \$58,000 and federal IVD and XIX funds by \$142,000. These funds are part of the operating budgets of the Divisions of Child and Family Services, Juvenile Justice, Services for People with Disabilities and the State Hospital.

	<u>FY 2006</u> <u>Approp.</u>	<u>FY 2007</u> <u>Approp.</u>	<u>FY 2006</u> <u>Revenue</u>	<u>FY 2007</u> <u>Revenue</u>
Federal Funds	\$0	\$0	(\$142,000)	(\$142,000)
Dedicated Credits	\$0	\$0	(\$58,000)	(\$58,000)
TOTAL	\$0	\$0	(\$200,000)	(\$200,000)

Individual and Business Impact

Some parents of adoptive children from the Division of Child and Family Services would not be required to pay child support if the child is subsequently placed in State custody.

Office of the Legislative Fiscal Analyst