

ADOPTION AMENDMENTS

2006 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Ann W. Hardy

Senate Sponsor: Carlene M. Walker

LONG TITLE

General Description:

This bill amends provisions of the Judicial Code relating to adoption.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ modifies background check requirements for out-of-state prospective adoptive parents;
- ▶ describes the persons from whom consent for adoption of a child, or consent to relinquish a child for adoption, must be obtained;
- ▶ describes when an unmarried biological father is entitled to consent, or withhold consent, to the adoption of a child, or relinquishment of a child for adoption;
- ▶ establishes a procedure for an unmarried biological father to preserve his right to consent to adoption of a child, or relinquishment of a child for adoption, when a declaration of paternity of the unmarried biological father is rescinded;
- ▶ describes the requirements necessary for an unmarried biological father to preserve his right to consent to adoption of a child, or relinquishment of a child for adoption:
 - when the unmarried biological father did not know, and through the exercise of reasonable diligence would not be expected to know, that the state of Utah may have obtained jurisdiction over the child or the child's mother; or
 - when the unmarried biological father did not have time to take action to



28 preserve his rights within the state of Utah after he became aware, or should have become
29 aware, that the state of Utah may have obtained jurisdiction over the child or the child's mother;

30 ▶ describes the circumstances under which an adoption may be finalized after the
31 death of an adoptive parent or an adoptee;

32 ▶ requires the Office of Vital Records within the Department of Health to mail notice
33 of the rescission of a declaration of paternity to the nonrescinding signatory; and

34 ▶ makes technical changes.

35 Monies Appropriated in this Bill:

36 None

37 Other Special Clauses:

38 None

39 Utah Code Sections Affected:

40 AMENDS:

41 **78-30-1.1**, as last amended by Chapter 137, Laws of Utah 2005

42 **78-30-3.6**, as enacted by Chapter 101, Laws of Utah 2001

43 **78-30-4.12**, as last amended by Chapter 137, Laws of Utah 2005

44 **78-30-4.15**, as last amended by Chapter 129, Laws of Utah 1998

45 **78-30-14**, as last amended by Chapter 318, Laws of Utah 1996

46 **78-45g-306**, as enacted by Chapter 150, Laws of Utah 2005

47 REPEALS AND REENACTS:

48 **78-30-4.14**, as last amended by Chapter 137, Laws of Utah 2005



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

51 Section 1. Section **78-30-1.1** is amended to read:

52 **78-30-1.1. Definitions.**

53 As used in this chapter:

54 (1) "Adoption service provider" means a:

55 (a) child-placing agency; or

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

58 (i) adoptive parents; or

59 (ii) birth parents.

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

62 (3) "Division" means the Division of Child and Family Services, within the
63 Department of Human Services, created in Section 62A-4a-103.

64 ~~[(3)]~~ (4) "Licensed counselor" means a person who is licensed by the state, or another
65 state, district, or territory of the United States as a:

- 66 (a) certified social worker;
- 67 (b) clinical social worker;
- 68 (c) psychologist;
- 69 (d) marriage and family therapist;
- 70 (e) professional counselor; or
- 71 (f) an equivalent licensed professional of another state, district, or territory of the
72 United States.

73 ~~[(4)]~~ (5) "Parent," for purposes of Section 78-30-3.3, means any person described in
74 Subsections 78-30-4.14(1)(b) through (f) from whom consent for adoption or relinquishment
75 for adoption is required under Section 78-30-4.14.

76 ~~[(5)]~~ (6) "Unmarried biological father" means a person who:

- 77 (a) is the biological father of a child; and
- 78 (b) was not married to the biological mother of the child described in Subsection ~~[(5)]~~
79 ~~(6)~~(a) at the time of the child's:
- 80 (i) conception; or
- 81 (ii) birth.

82 Section 2. Section **78-30-3.6** is amended to read:

83 **78-30-3.6. Prospective parent not a resident -- Preplacement requirements.**

84 ~~[(1)]~~ When an adoption petition is to be finalized in this state with regard to any
85 prospective adoptive parent who is not a resident of this state at the time a child is placed in
86 that person's home, the potential adoptive parent shall:

- 87 ~~[(a)]~~ (1) comply with the provisions of Section 78-30-3.5; and
- 88 (2) obtain:
- 89 ~~[(b)]~~ (a) ~~[submit fingerprints for]~~ a Federal Bureau of Investigation national criminal

90 history record check[-]; or

91 (b) from each state or country where the prospective adoptive parent has resided in the
92 previous five years:

93 (i) a criminal history report; and

94 (ii) a report from that state's or country's database of persons who have committed child
95 abuse or neglect, if such a report may be obtained from that state or country.

96 ~~[(2) The fingerprints referenced in Subsection (1)(b) shall be submitted to the Federal~~
97 ~~Bureau of Investigation either:]~~

98 ~~[(a) through the Criminal Investigations and Technical Services Division of the~~
99 ~~Department of Public Safety in accordance with the provisions of Section 62A-2-120; or]~~

100 ~~[(b) if the prospective adoptive parent is pursuing the adoption with a private attorney,~~
101 ~~the request shall be submitted to the Federal Bureau of Investigation as a personal records~~
102 ~~check, in accordance with procedures established by the Criminal Investigations and Technical~~
103 ~~Services Division of the Department of Public Safety.]~~

104 Section 3. Section **78-30-4.12** is amended to read:

105 **78-30-4.12. Rights and responsibilities of parties in adoption proceedings.**

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

109 (2) The Legislature finds that:

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

113 (b) an unmarried mother, faced with the responsibility of making crucial decisions
114 about the future of a newborn child, is entitled to privacy, and has the right to make timely and
115 appropriate decisions regarding her future and the future of the child, and is entitled to
116 assurance regarding the permanence of an adoptive placement;

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

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

120 (e) an unmarried biological father has an inchoate interest that acquires constitutional

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

126 (3) (a) In enacting [~~Subsection 78-30-1.1(5) and~~] Sections 78-30-4.12 through
127 78-30-4.21, the Legislature prescribes the conditions for determining whether an unmarried
128 biological father's action is sufficiently prompt and substantial to require constitutional
129 protection.

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

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

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

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

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

147 Section 4. Section **78-30-4.14** is repealed and reenacted to read:

148 **78-30-4.14. Necessary consent to adoption or relinquishment for adoption.**

149 (1) Except as provided in Subsection (2), consent to adoption of a child, or
150 relinquishment of a child for adoption, is required from:

151 (a) the adoptee, if the adoptee is more than 12 years of age, unless the adoptee does not

152 have the mental capacity to consent;

153 (b) both parents or the surviving parent of an adoptee who was conceived or born
154 within a marriage;

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

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

159 (e) consistent with Subsection (3), any biological parent who has executed and filed a
160 voluntary declaration of paternity with the state registrar of vital statistics within the
161 Department of Health in accordance with Title 78, Chapter 45e, Voluntary Declaration of
162 Paternity Act, prior to the mother's execution of consent to adoption or her relinquishment of
163 the child for adoption;

164 (f) an unmarried biological father of an adoptee, only if he strictly complies with the
165 requirements of Subsections (4) through (8) and (10); and

166 (g) the person or agency to whom an adoptee has been relinquished and that is placing
167 the child for adoption.

168 (2) (a) The consent of a person described in Subsections (1)(b) through (g) is not
169 required if the adoptee is 18 years of age or older.

170 (b) The consent of a person described in Subsections (1)(b) through (f) is not required
171 if the person's parental rights relating to the adoptee have been terminated.

172 (3) For purposes of Subsection (1)(e), a voluntary declaration of paternity is considered
173 filed when it is entered into a database that:

174 (a) can be accessed by the Department of Health; and

175 (b) is designated by the state registrar of vital statistics as the official database for
176 voluntary declarations of paternity.

177 (4) Except as provided in Subsections (5)(a) and (10), and consistent with Subsection
178 (8), with regard to a child who is placed with adoptive parents more than six months after birth,
179 consent of an unmarried biological father is not required unless the unmarried biological father:

180 (a) (i) developed a substantial relationship with the child by:

181 (A) visiting the child monthly, unless the unmarried biological father was physically or
182 financially unable to visit the child on a monthly basis; or

183 (B) engaging in regular communication with the child or with the person or authorized
184 agency that has lawful custody of the child;

185 (ii) took some measure of responsibility for the child and the child's future; and

186 (iii) demonstrated a full commitment to the responsibilities of parenthood by financial
187 support of the child of a fair and reasonable sum in accordance with the father's ability; or

188 (b) (i) openly lived with the child:

189 (A) (I) for a period of at least six months during the one-year period immediately
190 preceding the day on which the child is placed with adoptive parents; or

191 (II) if the child is less than one year old, for a period of at least six months beginning
192 on the day on which the child is born and ending on the day on which the child is placed with
193 adoptive parents; and

194 (B) immediately preceding placement of the child with adoptive parents; and

195 (ii) openly held himself out to be the father of the child during the six-month period
196 described in Subsection (4)(b)(i)(A).

197 (5) (a) If an unmarried biological father was prevented from complying with a
198 requirement of Subsection (4) by the person or authorized agency having lawful custody of the
199 child, the unmarried biological father is not required to comply with that requirement.

200 (b) The subjective intent of an unmarried biological father, whether expressed or
201 otherwise, that is unsupported by evidence that the requirements in Subsection (4) have been
202 met, shall not preclude a determination that the father failed to meet the requirements of
203 Subsection (4).

204 (6) Except as provided in Subsections (8) and (10), with regard to a child who is six
205 months of age or less at the time the child is placed with adoptive parents, consent of an
206 unmarried biological father is not required unless, prior to the time the mother executes her
207 consent for adoption or relinquishes the child for adoption, the unmarried biological father:

208 (a) initiates proceedings to establish paternity under Title 78, Chapter 45g, Utah
209 Uniform Parentage Act;

210 (b) files with the court that is presiding over the paternity proceeding a sworn affidavit:

211 (i) stating that he is fully able and willing to have full custody of the child;

212 (ii) setting forth his plans for care of the child; and

213 (iii) agreeing to a court order of child support and the payment of expenses incurred in

214 connection with the mother's pregnancy and the child's birth;

215 (c) consistent with Subsection (7), files notice of the commencement of paternity
216 proceedings with the state registrar of vital statistics within the Department of Health, in a
217 confidential registry established by the department for that purpose; and

218 (d) offered to pay and paid a fair and reasonable amount of the expenses incurred in
219 connection with the mother's pregnancy and the child's birth, in accordance with his financial
220 ability, unless:

221 (i) he did not have actual knowledge of the pregnancy;

222 (ii) he was prevented from paying the expenses by the person or authorized agency
223 having lawful custody of the child; or

224 (iii) the mother refuses to accept the unmarried biological father's offer to pay the
225 expenses described in this Subsection (6)(d).

226 (7) The notice described in Subsection (6)(c) is considered filed when it is entered into
227 the registry described in Subsection (6)(c).

228 (8) Consent of an unmarried biological father is not required under this section if:

229 (a) the court determines, in accordance with the requirements and procedures of Title
230 78, Chapter 3a, Part 4, Termination of Parental Rights Act, that the unmarried biological
231 father's rights should be terminated, based on the petition of any interested party; or

232 (b) (i) a declaration of paternity declaring the unmarried biological father to be the
233 father of the child is rescinded under Section 78-45g-306; and

234 (ii) the unmarried biological father fails to comply with Subsection (6) within ten
235 business days after the day that notice of the rescission described in Subsection (8)(b)(i) is
236 mailed by the Office of Vital Records within the Department of Health as provided in Section
237 78-45g-306.

238 (9) Unless the adoptee is conceived or born within a marriage, the petitioner in an
239 adoption proceeding shall, prior to entrance of a final decree of adoption, file with the court a
240 certificate from the state registrar of vital statistics within the Department of Health, stating:

241 (a) that a diligent search has been made of the registry of notices from unmarried
242 biological fathers described in Subsection (6)(c); and

243 (b) (i) that no filing has been found pertaining to the father of the child in question; or

244 (ii) if a filing is found, the name of the putative father and the time and date of filing.

245 (10) Notwithstanding the provisions of Subsections (4) and (6), the consent of an
246 unmarried biological father, with respect to an adoptee who is under the age of 18, is required
247 if:

248 (a) (i) the unmarried biological father did not know, and through the exercise of
249 reasonable diligence could not have known, that the child or the child's mother were present in
250 the state of Utah at any time during the period of time beginning at the conception of the child
251 and ending at the time the mother executed a consent to adoption or relinquishment of the child
252 for adoption; and

253 (ii) before the mother executed a consent to adoption or relinquishment of the child for
254 adoption, the unmarried biological father fully complied with the requirements to establish
255 parental rights in the child, and to preserve the right to notice of a proceeding in connection
256 with the adoption of the child, imposed by:

257 (A) the last state where the unmarried biological father knew, or through the exercise
258 of reasonable diligence should have known, that the mother resided in before the mother came
259 to the state of Utah; or

260 (B) the state where the child was conceived; or

261 (b) (i) the unmarried biological father knew, or through the exercise of reasonable
262 diligence should have known, that the child or the child's mother were present in the state of
263 Utah at any time during the period of time beginning at the conception of the child and ending
264 at the time the mother executed a consent to adoption or relinquishment of the child for
265 adoption; and

266 (ii) the unmarried biological father complied with the requirements of Subsection (4)
267 or (6) before the later of:

268 (A) 20 days after the day that the unmarried biological father knew, and through the
269 exercise of reasonable diligence should have known, that the child or the child's mother were
270 present in the state of Utah; or

271 (B) the time that the mother executed a consent to adoption or relinquishment of the
272 child for adoption.

273 (11) An unmarried biological father who does not fully and strictly comply with the
274 requirements of this section is considered to have waived and surrendered any right in relation
275 to the child, including the right to:

- 276 (a) notice of any judicial proceeding in connection with the adoption of the child; and
277 (b) consent, or refuse to consent, to the adoption of the child.

278 Section 5. Section **78-30-4.15** is amended to read:

279 **78-30-4.15. Responsibility of each party for own actions -- Fraud or**
280 **misrepresentation.**

281 (1) Each parent of a child conceived or born outside of marriage is responsible for his
282 or her own actions and is not excused from strict compliance with the provisions of this
283 chapter based upon any action, statement, or omission of the other parent or third parties.

284 (2) Any person injured by fraudulent representations or actions in connection with an
285 adoption is entitled to pursue civil or criminal penalties in accordance with existing law. A
286 fraudulent representation is not a defense to strict compliance with the requirements of this
287 chapter, and is not a basis for dismissal of a petition for adoption, vacation of an adoption
288 decree, or an automatic grant of custody to the offended party. Custody determinations shall be
289 based on the best interest of the child, in accordance with the provisions of Section 78-30-4.16.

290 (3) The Legislature finds no practical way to remove all risk of fraud or
291 misrepresentation in adoption proceedings, and has provided a method for absolute protection
292 of an unmarried biological father's rights by compliance with the provisions of this chapter. In
293 balancing the rights and interests of the state, and of all parties affected by fraud, specifically
294 the child, the adoptive parents, and the unmarried biological father, the Legislature has
295 determined that the unmarried biological father is in the best position to prevent or ameliorate
296 the effects of fraud and that, therefore, the burden of fraud shall be borne by him.

297 ~~[(4) The Legislature finds that an unmarried biological father who resides in another~~
298 ~~state may not, in every circumstance, be reasonably presumed to know of, and strictly comply~~
299 ~~with, the requirements of this chapter. Therefore when all of the following requirements have~~
300 ~~been met, that unmarried biological father may contest an adoption, prior to finalization of the~~
301 ~~decree of adoption, and assert his interest in the child; the court may then, in its discretion,~~
302 ~~proceed with an evidentiary hearing under Subsection 78-30-4.16(2):]~~

303 ~~[(a) the unmarried biological father resides and has resided in another state where the~~
304 ~~unmarried mother was also located or resided;]~~

305 ~~[(b) the mother left that state without notifying or informing the unmarried biological~~
306 ~~father that she could be located in the state of Utah;]~~

307 ~~[(c) the unmarried biological father has, through every reasonable means, attempted to~~
308 ~~locate the mother but does not know or have reason to know that the mother is residing in the~~
309 ~~state of Utah; and]~~

310 ~~[(d) the unmarried biological father has complied with the most stringent and complete~~
311 ~~requirements of the state where the mother previously resided or was located, in order to~~
312 ~~protect and preserve his parental interest and right in the child in cases of adoption.]~~

313 Section 6. Section **78-30-14** is amended to read:

314 **78-30-14. Division of Child and Family Services -- Duties -- Report -- Fee.**

315 (1) At the request of the court, the ~~[Division of Child and Family Services]~~ division,
316 through its field agents, persons licensed by the division for the care and placement of children,
317 or through the probation officer of the juvenile court or court of like jurisdiction of the county,
318 under the division's supervision, shall:

319 (a) verify the allegations of the petition for adoption of a minor child[;];

320 (b) make a thorough investigation of the matter[;]; and

321 (c) report ~~[its]~~ the division's findings in writing to the court.

322 (2) (a) When the court requests an investigation under Subsection (1), ~~[it]~~ the court
323 shall serve a copy of the petition, together with a statement containing the names and addresses
324 of the child and petitioners, on the division by certified mail.

325 (b) The division, or the person appointed by the division, shall complete the
326 investigation described in Subsection (2)(a) and submit ~~[the]~~ a written report to the court
327 within 60 days ~~[of that service]~~ after the day that the petition is served on the division.

328 (3) (a) The division shall charge the petitioner a reasonable fee for the services
329 provided under this section.

330 (b) Fees collected shall be deposited in the General Fund.

331 (4) The written report submitted to the court under this section shall state:

332 (a) why the birth parents, if living, desire to be released from the care, support, and
333 guardianship of the child;

334 (b) whether the birth parents have abandoned the child or are morally unfit for custody;

335 (c) whether the proposed adoptive parent or parents are financially able and morally fit
336 to have the care, supervision, and training of the child;

337 (d) the physical and mental condition of the child, so far as that may be determined;

338 and

339 (e) any other facts and circumstances pertaining to the child and ~~[his]~~ the child's
340 welfare.

341 (5) (a) The court shall conduct a full hearing on the petition for adoption and examine
342 the parties in interest under oath.

343 (b) The court may adjourn the hearing from time to time as the nature of the case
344 requires.

345 (6) If the report submitted by the ~~[Division of Child and Family Services]~~ division
346 under Subsection (2) disapproves of the adoption of the child by the petitioner, the court may
347 dismiss the petition.

348 (7) (a) ~~[A]~~ Except as provided in Subsection (7)(b), a final decree of adoption may not
349 be entered until the child has lived in the home of the adoptive parent or parents for six months.
350 [However, if]

351 (b) If the adoptive parent is the spouse of the birth parent, a final decree of adoption
352 may not be entered until the child has lived in the home of that adoptive parent for one year.

353 (c) In the event the child dies ~~[prior to the expiration of that six-month or one-year~~
354 ~~period,]~~ during the time that the child is placed in the home of an adoptive parent or parents for
355 the purpose of adoption, the court has authority to enter a final decree of adoption after the
356 child's death upon the request of the adoptive parents. [This subsection shall not]

357 (d) The court may enter a final decree of adoption declaring that a child is adopted by
358 both a deceased and a surviving adoptive parent if, after the child is placed in the home of the
359 child's adoptive parents:

360 (i) one of the adoptive parents dies;

361 (ii) the surviving adoptive parent requests that the court enter the decree; and

362 (iii) the decree is entered after the child has lived in the home of the surviving adoptive
363 parent for at least six months.

364 (e) Upon request of a surviving birth parent, or a surviving parent for whom adoption
365 of a child has been finalized, the court may enter a final decree of adoption declaring that a
366 child is adopted by a deceased adoptive parent who was the spouse of the surviving parent at
367 the time of the adoptive parent's death.

368 (f) The court may enter a final decree of adoption declaring that a child is adopted by

369 both deceased adoptive parents if:

370 (i) both of the adoptive parents die after the child is placed in the adoptive parent's

371 home; and

372 (ii) it is in the best interests of the child to enter the decree.

373 (8) Nothing in this section shall be construed to grant any rights to the birth parents of

374 a child to assert any interest in the child during [~~that~~] the six-month or one-year [period]

375 periods described in this section.

376 Section 7. Section **78-45g-306** is amended to read:

377 **78-45g-306. Proceeding for rescission.**

378 (1) A signatory may rescind a declaration of paternity or denial of paternity by filing a

379 voluntary rescission document with the Office of Vital Records in a form prescribed by the

380 office before the earlier of:

381 [~~(+)~~] (a) 60 days after the effective date of the declaration or denial, as provided in

382 Sections 78-45g-303 and 78-45g-304; or

383 [~~(2)~~] (b) the date of notice of the first adjudicative proceeding to which the signatory is

384 a party, before a tribunal to adjudicate an issue relating to the child, including a proceeding that

385 establishes support.

386 (2) Upon receiving a voluntary rescission document from a signatory under Subsection

387 (1), the Office of Vital Records shall provide notice of the rescision, by mail, to the other

388 signatory at the last-known address of that signatory.

Legislative Review Note

as of 1-18-06 1:38 PM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel