

ADOPTION AMENDMENTS

2007 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Sheryl L. Allen

Senate Sponsor: Carlene M. Walker

LONG TITLE

General Description:

This bill amends the Adoption chapter of the Judicial Code and related provisions.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ modifies the background check requirements with regard to a prospective adoptive parent who is not a resident of Utah;
- ▶ modifies and clarifies requirements necessary for an unmarried biological father to preserve his right to notice and consent for an adoption;
- ▶ modifies requirements relating to notice of an adoption proceeding;
- ▶ describes the circumstances under which an adoption may or may not be contested;
- ▶ expands and describes provisions relating to who may take consents or relinquishments for adoption;
- ▶ provides for, and describes, the jurisdiction of a district court to terminate parental rights under certain circumstances;
- ▶ describes the grounds upon which a district court may terminate parental rights;
- ▶ describes when a birth parent's parental rights and duties are dissolved in relation to a child who is to be adopted;
- ▶ provides that a court may, for good cause, order a final decree of adoption earlier than the six month and one year requirements currently provided for by law; and



28 ▶ makes technical changes.

29 **Monies Appropriated in this Bill:**

30 None

31 **Other Special Clauses:**

32 None

33 **Utah Code Sections Affected:**

34 AMENDS:

35 **78-30-3.6**, as enacted by Chapter 101, Laws of Utah 2001

36 **78-30-4.13**, as last amended by Chapters 137 and 150, Laws of Utah 2005

37 **78-30-4.14**, as repealed and reenacted by Chapter 186, Laws of Utah 2006

38 **78-30-4.16**, as last amended by Chapter 137, Laws of Utah 2005

39 **78-30-4.18**, as last amended by Chapter 122, Laws of Utah 2004

40 **78-30-8**, as last amended by Chapter 208, Laws of Utah 1991

41 **78-30-11**, as last amended by Chapters 65 and 245, Laws of Utah 1990

42 **78-30-14**, as last amended by Chapter 186, Laws of Utah 2006

43 **78-45c-103**, as enacted by Chapter 247, Laws of Utah 2000

44 ENACTS:

45 **78-30-7.1**, Utah Code Annotated 1953



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

48 Section 1. Section **78-30-3.6** is amended to read:

49 **78-30-3.6. Prospective parent not a resident -- Preplacement requirements.**

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

53 (a) comply with the provisions of Section 78-30-3.5; and

54 (b) (i) if the child is in state custody, submit fingerprints for a Federal Bureau of
55 Investigation national criminal history record check[-] through the Criminal and Technical
56 Services Division of the Department of Public Safety in accordance with the provisions of
57 Section 62A-2-120; or

58 (ii) subject to Subsection (2), if the child is not in state custody:

59 (A) submit fingerprints for a Federal Bureau of Investigation national criminal history
 60 records check as a personal records check; or

61 (B) complete a criminal records check and child abuse database check for each state
 62 and, if available, country, where the potential adoptive parent resided during the five years
 63 immediately preceding the day on which the adoption petition is to be finalized.

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

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

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

72 (2) For purposes of Subsection (1)(b)(ii):

73 (a) if the adoption is being handled by a human services program, as defined in Section
 74 62A-2-101:

75 (i) the criminal history check described in Subsection (1)(b)(ii)(A) shall be submitted
 76 in accordance with procedures established by the Criminal Investigations and Technical
 77 Services Division of the Department of Public Safety; and

78 (ii) ~~H~~→ **subject to Subsection (3)**, ~~←H~~ the criminal history check described in Subsection
 78a (1)(b)(ii)(B) shall be submitted
 79 in a manner acceptable to the court that will:

80 (A) preserve the chain of custody of the results; and

81 (B) not permit tampering with the results by a prospective adoptive parent or other
 82 interested party; and

83 (b) if the adoption is being handled by a private attorney, and not a human services
 84 program, the criminal history checks described in Subsection (1)(b)(ii), shall be:

85 (i) submitted in accordance with procedures established by the Criminal Investigations
 86 and Technical Services Division of the Department of Public Safety; or

87 (ii) ~~H~~→ **subject to Subsection (3)**, ~~←H~~ submitted in a manner acceptable to the
 87a court that will:

88 (A) preserve the chain of custody of the results; and

89 (B) not permit tampering with the results by a prospective adoptive parent or other

90 interested party.

90a **Ĥ→ (3) In order to comply with Subsection (2)(a)(ii) or (b)(ii), the manner in which**
90b **the criminal history check is submitted shall be approved by the court. ←Ĥ**

91 Section 2. Section **78-30-4.13** is amended to read:

92 **78-30-4.13. Notice of adoption proceedings.**

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

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

97 (ii) has a duty to protect his own rights and interests.

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

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

101 (a) any person or agency whose consent or relinquishment is required under Section
102 78-30-4.14, unless that right has been terminated by:

103 (i) waiver;

104 (ii) relinquishment;

105 (iii) consent; or

106 (iv) judicial action;

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

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

111 (d) the petitioner's spouse, if any, only if the petitioner's spouse has not joined in the
112 petition;

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

114 (f) any person who, prior to the time the mother executes her consent for adoption or
115 relinquishes the child for adoption, is recorded on the birth certificate as the child's father, with
116 the knowledge and consent of the mother;

117 (g) any person who is:

118 (i) openly living in the same household with the child at the time the consent is
119 executed or relinquishment made; and

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

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

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

125 (i) initiate proceedings in a district court of the state of Utah to establish paternity
126 under Title 78, Chapter 45g, Utah Uniform Parentage Act; and

127 (ii) file a notice of the initiation of the proceedings described in Subsection (3)(a)(i)
128 with the state registrar of vital statistics within the Department of Health.

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

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

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

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

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

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

139 (B) relinquishment of the child for adoption.

140 (4) Notice provided in accordance with this section need not disclose the name of the
141 mother of the child who is the subject of an adoption proceeding.

142 (5) The notice required by this section:

143 (a) may be served immediately after relinquishment or execution of consent;

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

145 (c) shall specifically state that the person served must respond to the petition within 30
146 days of service if he intends to intervene in or contest the adoption[-];

147 (d) shall state the consequences, described in Subsection (6)(b), for failure of a person
148 to file a motion for relief within 30 days after the day on which the person is served with notice
149 of an adoption proceeding;

150 (e) is not required to include, nor be accompanied by, a summons or a copy of the
151 petition for adoption; and

152 (f) shall state where the person may obtain a copy of the petition for adoption.
153 (6) (a) Any person who has been served with notice of an adoption proceeding and who
154 wishes to contest the adoption shall file a motion in the adoption proceeding:
155 (i) within 30 days after the day on which the person was served with notice of the
156 adoption proceeding;
157 (ii) that shall set forth specific relief sought; and
158 (iii) that shall be accompanied by a memorandum specifying the factual and legal
159 grounds upon which the motion is based.
160 (b) Any person who fails to file a motion for relief within 30 days after the day on
161 which the person was served with notice of the adoption proceeding:
162 (i) waives any right to further notice in connection with the adoption;
163 (ii) forfeits all rights in relation to the adoptee; and
164 (iii) is barred from thereafter bringing or maintaining any action to assert any interest in
165 the adoptee.
166 (7) Service of notice under this section shall be made as follows:
167 (a) (i) ~~[With regard to]~~ Subject to Subsection (5)(e), service on a person whose consent
168 is necessary under Section 78-30-4.14~~[, service]~~ shall be in accordance with the provisions of
169 the Utah Rules of Civil Procedure.
170 (ii) If service of a person described in Subsection (7)(a)(i) is by publication, the court
171 shall designate the content of the notice regarding the identity of the parties.
172 (iii) The notice described in this Subsection (7)(a) may not include the name of a
173 person seeking to adopt the adoptee.
174 (b) (i) Except as provided in Subsection (7)(b)(ii) to any other person for whom notice
175 is required under this section, service by certified mail, return receipt requested, is sufficient.
176 (ii) If the service described in Subsection (7)(b)(i) cannot be completed after two
177 attempts, the court may issue an order providing for service by publication, posting, or by any
178 other manner of service.
179 (c) Notice to a person who has initiated a paternity proceeding and filed notice of that
180 action with the state registrar of vital statistics in the Department of Health in accordance with
181 the requirements of Subsection (3), shall be served by certified mail, return receipt requested, at
182 the last address filed with the registrar.

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

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

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

190 (11) Except as to those persons whose consent to an adoption is required under Section
191 78-30-4.14, the sole purpose of notice under this section is to enable the person served to:

192 (a) intervene in the adoption; and

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

194 Section 3. Section **78-30-4.14** is amended to read:

195 **78-30-4.14. Necessary consent to adoption or relinquishment for adoption.**

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

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

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

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

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

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

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

213 (g) the person or agency to whom an adoptee has been relinquished and that is placing

214 the child for adoption.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

244 (5) (a) If an unmarried biological father was prevented from complying with a

245 requirement of Subsection (4) by the person or authorized agency having lawful custody of the
246 child, the unmarried biological father is not required to comply with that requirement.

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

251 (6) Except as provided in Subsection (10), and subject to Subsection (8), with regard to
252 a child who is six months of age or less at the time the child is placed with adoptive parents,
253 consent of an unmarried biological father is not required unless, prior to the time the mother
254 executes her consent for adoption or relinquishes the child for adoption, the unmarried
255 biological father:

256 (a) initiates proceedings in a district court of the state of Utah to establish paternity
257 under Title 78, Chapter 45g, Utah Uniform Parentage Act;

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

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

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

261 (iii) agreeing to a court order of child support and the payment of expenses incurred in
262 connection with the mother's pregnancy and the child's birth;

263 (c) consistent with Subsection (7), files notice of the commencement of paternity
264 proceedings, described in Subsection (6)(a), with the state registrar of vital statistics within the
265 Department of Health, in a confidential registry established by the department for that purpose;
266 and

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

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

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

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

275 (7) The notice described in Subsection (6)(c) is considered filed when it is entered into

276 the registry described in Subsection (6)(c).

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

278 (a) the court determines, in accordance with the requirements and procedures of Title
279 78, Chapter 3a, Part 4, Termination of Parental Rights Act, that the unmarried biological
280 father's rights should be terminated, based on the petition of any interested party; or

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

283 (ii) the unmarried biological father fails to comply with Subsection (6) within ten
284 business days after the day that notice of the rescission described in Subsection (8)(b)(i) is
285 mailed by the Office of Vital Records within the Department of Health as provided in Section
286 78-45g-306.

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

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

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

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

294 (10) (a) For purposes of this Subsection (10), "qualifying circumstance" means that, at
295 any point during the time period beginning at the conception of the child and ending at the time
296 the mother executed a consent to adoption or relinquishment of the child for adoption:

297 (i) the child or the child's mother resided, on a permanent or temporary basis, in the
298 state of Utah;

299 (ii) the mother intended to give birth to the child in the state of Utah;

300 (iii) the child was born in the state of Utah; or

301 (iv) the mother intended to execute a consent to adoption or relinquishment of the child
302 for adoption:

303 (A) in the state of Utah; or

304 (B) under the laws of the state of Utah.

305 (b) For purposes of Subsection (10)(c)(i), a court shall consider the totality of the
306 circumstances when determining whether an unmarried biological father has demonstrated a

307 full commitment to his parental responsibilities, including, if applicable:

308 (i) efforts he has taken to discover the location of the child or the child's mother;

309 (ii) whether he has expressed or demonstrated an interest in taking responsibility for
310 the child;

311 (iii) whether, and to what extent, he has developed, or attempted to develop, a
312 relationship with the child;

313 (iv) whether he offered to provide and, if the offer was accepted, did provide, financial
314 support for the child or the child's mother;

315 (v) whether, and to what extent, he has communicated, or attempted to communicate,
316 with the child or the child's mother;

317 (vi) whether he has filed legal proceedings to establish his paternity of, and take
318 responsibility for, the child;

319 (vii) whether he has filed a notice with a public official or agency relating to:

320 (A) his paternity of the child; or

321 (B) legal proceedings to establish his paternity of the child; or

322 (viii) other evidence that demonstrates that he has demonstrated a full commitment to
323 his parental responsibilities.

324 ~~(b)~~ (c) Notwithstanding the provisions of Subsections (4) and (6), the consent of an
325 unmarried biological father is required with respect to an adoptee who is under the age of 18 if:

326 (i) (A) the unmarried biological father did not know, and through the exercise of
327 reasonable diligence could not have known, before the time the mother executed a consent to
328 adoption or relinquishment of the child for adoption, that a qualifying circumstance existed;
329 ~~and~~

330 (B) before the mother executed a consent to adoption or relinquishment of the child for
331 adoption, the unmarried biological father fully complied with the requirements to establish
332 parental rights in the child, and to preserve the right to notice of a proceeding in connection
333 with the adoption of the child, imposed by:

334 (I) the last state where the unmarried biological father knew, or through the exercise of
335 reasonable diligence should have known, that the mother resided in before the mother executed
336 the consent to adoption or relinquishment of the child for adoption; or

337 (II) the state where the child was conceived; ~~or~~ and

338 (C) the unmarried biological father has demonstrated, based on the totality of the
339 circumstances, a full commitment to his parental responsibilities, as described in Subsection
340 (10)(b); or

341 (ii) (A) the unmarried biological father knew, or through the exercise of reasonable
342 diligence should have known, before the time the mother executed a consent to adoption or
343 relinquishment of the child for adoption, that a qualifying circumstance existed; and

344 (B) the unmarried biological father complied with the requirements of Subsection (4)
345 or (6) before the later of:

346 (I) 20 days after the day that the unmarried biological father knew, or through the
347 exercise of reasonable diligence should have known, that a qualifying circumstance existed; or

348 (II) the time that the mother executed a consent to adoption or relinquishment of the
349 child for adoption.

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

353 (a) notice of any judicial proceeding in connection with the adoption of the child; and

354 (b) consent, or refuse to consent, to the adoption of the child.

355 Section 4. Section **78-30-4.16** is amended to read:

356 **78-30-4.16. Contested adoptions -- Rights of parties -- Determination of custody.**

357 (1) If a person whose consent for an adoption is required pursuant to Subsection
358 78-30-4.14(1)(b), (c), (d), (e), or (f) refused to consent, the court shall determine whether
359 proper grounds exist for the termination of that person's rights pursuant to the provisions of this
360 chapter or Title 78, Chapter 3a, Part 4, Termination of Parental Rights Act.

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

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

365 (i) dismiss the adoption petition;

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

367 and

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

- 369 (3) Evidence considered at the custody hearing may include:
- 370 (a) evidence of psychological or emotional bonds that the child has formed with a third
371 person, including the prospective adoptive parent; and
- 372 (b) any detriment that a change in custody may cause the child.
- 373 (4) The fact that a person relinquished a child for adoption or consented to the adoption
374 may not be considered as evidence that it is not in the child's best interest for custody to be
375 awarded to such person or that:
- 376 (a) the person is unfit or incompetent to be a parent;
- 377 (b) the person has neglected or abandoned the child; or
- 378 (c) the person is not interested in having custody of the child.
- 379 (5) Any custody order entered pursuant to this section may also:
- 380 (a) include provisions for:
- 381 (i) parent-time by a biological parent; or
- 382 (ii) visitation by an interested third party; and
- 383 (b) provide for the financial support of the child.
- 384 (6) (a) If a person or entity whose consent is required for an adoption under Subsection
385 78-30-4.14(1)(a) or (g) refuses to consent, the court shall proceed with an evidentiary hearing
386 and award custody as set forth in Subsection (2).
- 387 (b) The court may also finalize the adoption if doing so is in the best interest of the
388 child.
- 389 (7) (a) [An adoption may not be contested] A person may not contest an adoption after
390 the final decree of adoption is entered[-], if that person:
- 391 (i) was a party to the adoption proceeding;
- 392 (ii) was served with notice of the adoption proceeding; or
- 393 (iii) executed a consent to the adoption or relinquishment for adoption.
- 394 (b) No person may contest an adoption after one year from the day on which the final
395 decree of adoption is entered.
- 396 (c) The limitations on contesting an adoption action, described in this Subsection (7),
397 apply to all attempts to contest an adoption:
- 398 (i) regardless of whether the adoption is contested directly or collaterally; and
- 399 (ii) regardless of the basis for contesting the adoption, including claims of fraud.

400 duress, undue influence, lack of capacity or competency, mistake of law or fact, or lack of
401 jurisdiction.

402 (d) The limitations on contesting an adoption action, described in this Subsection (7),
403 do not prohibit a timely appeal of:

404 (i) a final decree of adoption; or

405 (ii) a decision in an action challenging an adoption, if the action was brought within the
406 time limitations described in Subsections (7)(a) and (b).

407 Section 5. Section **78-30-4.18** is amended to read:

408 **78-30-4.18. Persons who may take consents and relinquishments.**

409 (1) A consent or relinquishment by a birth mother or an adoptee shall be signed before:

410 (a) a judge of any court that has jurisdiction over adoption proceedings, or a person
411 appointed by that judge for the purpose of taking consents or relinquishments; or

412 (b) a person who is authorized by a licensed child-placing agency to take consents or
413 relinquishments so long as the signature is notarized or witnessed by two individuals who are
414 not members of the birth mother's immediate family.

415 (2) If the consent or relinquishment of a birth mother or adoptee is taken out of state it
416 shall be signed before:

417 (a) a person who is authorized by a child-placing agency to take consents or
418 relinquishments; ~~[or]~~

419 (b) a person authorized or appointed to take consents or relinquishments by a court of
420 this state that has jurisdiction over adoption proceedings~~[-or]~~;

421 (c) a court ~~[of that state]~~ that has jurisdiction over adoption proceedings~~[-]~~ in the state
422 where the consent or relinquishment is taken; or

423 (d) a person authorized, under the laws of the state where the consent or relinquishment
424 is taken, to take consents or relinquishments of a birth mother or adoptee.

425 (3) The consent or relinquishment of any other person or agency as required by Section
426 78-30-4.14 may be signed before a Notary Public or any person authorized to take a consent or
427 relinquishment under Subsection (1) or (2).

428 (4) A person, authorized by Subsection (1) or (2) to take consents or relinquishments,
429 shall certify to the best of his information and belief that the person executing the consent or
430 relinquishment has read and understands the consent or relinquishment and has signed it freely

431 and voluntarily.

432 (5) A person executing a consent or relinquishment is entitled to receive a copy of the
433 consent or relinquishment.

434 Section 6. Section **78-30-7.1** is enacted to read:

435 **78-30-7.1. District court jurisdiction over certain termination of parental rights**
436 **proceedings.**

437 (1) A district court has jurisdiction to hear and decide a petition to terminate parental
438 rights in a child if the party who filed the petition is seeking to terminate parental rights in a
439 child for the purpose of facilitating the adoption of the child.

440 (2) A petition to terminate parental rights under this section may:

441 (a) be joined with a proceeding on an adoption petition; or

442 (b) be filed as a separate proceeding.

443 (3) A court may enter a final order terminating parental rights before a final decree of
444 adoption is entered.

445 (4) (a) Nothing in this section limits the jurisdiction of a juvenile court relating to
446 proceedings to terminate parental rights as described in Section 78-3a-104.

447 (b) This section does not grant jurisdiction to a district court to terminate parental
448 rights in a child if the child is under the jurisdiction of the juvenile court in a pending abuse,
449 neglect, dependency, or termination of parental rights proceeding.

450 (5) The district court may terminate a person's parental rights in a child if:

451 (a) the person executes a voluntary consent to adoption, or relinquishment for
452 adoption, of the child, in accordance with:

453 (i) the requirements of this chapter; or

454 (ii) the laws of another state or country, if the consent is valid and irrevocable;

455 (b) the person is an unmarried biological father who is not entitled to consent to
456 adoption, or relinquishment for adoption, under Section 78-30-4.14;

457 (c) the person:

458 (i) received notice of the adoption proceeding relating to the child under Section
459 78-30-4.13; and

460 (ii) failed to file a motion for relief, under Subsection 78-30-4.13(6), within 30 days
461 after the day on which the person was served with notice of the adoption proceeding;

462 (d) the court finds, under Section 78-45g-607, that the person is not a parent of the
463 child; or

464 (e) the person's parental rights are terminated on grounds described in Title 78, Chapter
465 3a, Part 4, Termination of Parental Rights Act.

466 Section 7. Section **78-30-8** is amended to read:

467 **78-30-8. Final decree of adoption -- Agreement by adoptive parent or parents.**

468 ~~[The]~~ (1) Except as provided in Subsection (2), the adoptive parent or parents and the
469 child being adopted shall appear before the appropriate court, and an agreement shall be
470 executed by the adoptive parent or parents stating that the child shall be adopted and treated in
471 all respects as his own lawful child.

472 (2) A court may waive the requirement that the adoptive parent or parents and the child
473 being adopted appear before the court if:

474 (a) the adoption is not contested; and

475 (b) all requirements of this chapter to obtain a final decree of adoption are otherwise
476 complied with.

477 Section 8. Section **78-30-11** is amended to read:

478 **78-30-11. Birth parent's rights and duties dissolved.**

479 ~~[The]~~ A birth [parents] parent of an adopted child [are, from the time the final decree of
480 adoption is entered,] is released from all parental duties toward and all responsibilities for the
481 adopted child, and [have] has no further rights with regard to that child[-] at the earlier of:

482 (1) the time the parent's parental rights are terminated; or

483 (2) the time the final decree of adoption is entered.

484 Section 9. Section **78-30-14** is amended to read:

485 **78-30-14. Division of Child and Family Services -- Duties -- Report -- Fee.**

486 (1) At the request of the court, the division, through its field agents, persons licensed
487 by the division for the care and placement of children, or through the probation officer of the
488 juvenile court or court of like jurisdiction of the county, under the division's supervision, shall:

489 (a) verify the allegations of the petition for adoption of a minor child;

490 (b) make a thorough investigation of the matter; and

491 (c) report the division's findings in writing to the court.

492 (2) (a) When the court requests an investigation under Subsection (1), the court shall

493 serve a copy of the petition, together with a statement containing the names and addresses of
494 the child and petitioners, on the division by certified mail.

495 (b) The division, or the person appointed by the division, shall complete the
496 investigation described in Subsection (2)(a) and submit a written report to the court within 60
497 days after the day that the petition is served on the division.

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

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

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

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

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

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

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

509 (e) any other facts and circumstances pertaining to the child and the child's welfare.

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

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

514 (6) If the report submitted by the division under Subsection (2) disapproves of the
515 adoption of the child by the petitioner, the court may dismiss the petition.

516 (7) (a) Except as provided in Subsection (7)(b), a final decree of adoption may not be
517 entered until the child has lived in the home of the adoptive parent or parents for six months,
518 unless, based on a finding of good cause, the court orders that the final decree of adoption may
519 be entered at an earlier time.

520 (b) If the adoptive parent is the spouse of the birth parent, a final decree of adoption
521 may not be entered until the child has lived in the home of that adoptive parent for one year,
522 unless, based on a finding of good cause, the court orders that the final decree of adoption may
523 be entered at an earlier time.

524 (c) In the event the child dies during the time that the child is placed in the home of an
525 adoptive parent or parents for the purpose of adoption, the court has authority to enter a final
526 decree of adoption after the child's death upon the request of the adoptive parents.

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

530 (i) one of the adoptive parents dies;

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

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

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

538 (f) The court may enter a final decree of adoption declaring that a child is adopted by
539 both deceased adoptive parents if:

540 (i) both of the adoptive parents die after the child is placed in the adoptive parent's
541 home; and

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

543 (8) Nothing in this section shall be construed to grant any rights to the birth parents of
544 a child to assert any interest in the child during the six-month or one-year periods described in
545 this section.

546 Section 10. Section **78-45c-103** is amended to read:

547 **78-45c-103. Proceedings governed by other law.**

548 (1) For purposes of this section, "adoption proceeding" means any proceeding under
549 Title 78, Chapter 30, Adoption.

550 (2) This chapter does not govern:

551 [(+) (a) an adoption proceeding; or

552 [(2) (b) a proceeding pertaining to the authorization of emergency medical care for a
553 child.

Legislative Review Note
as of 11-16-06 9:42 AM

Office of Legislative Research and General Counsel

Interim Committee Note
as of 12-19-06 7:09 AM

The Health and Human Services Interim Committee recommended this bill.

H.B. 51 - Adoption Amendments

Fiscal Note

2007 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.

12/28/2006, 10:02:35 AM, Lead Analyst: Byrne, D.

Office of the Legislative Fiscal Analyst