

**ADOPTION - INVESTIGATION AND
RELEASE OF INFORMATION**

2008 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Kenneth W. Sumsion

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends the adoption chapter of the Judicial Code to provide for the investigation of adoption information by a confidential intermediary and the release of that information, or the arrangement of contact between an adoptee and a birth parent, by court order.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ amends provisions related to the inspection of vital records;
- ▶ establishes a procedure whereby an adult adoptee who is at least 30 years of age may petition the court for appointment of a confidential intermediary to gather information regarding, and make confidential contact with, a birth parent of the adult adoptee, in order to determine whether the birth parent is willing to release identifying information to, or make contact with, the adult adoptee;
- ▶ describes the contents of a petition for appointment of a confidential intermediary;
- ▶ describes the authority and responsibilities of a confidential intermediary;
- ▶ provides for payment for the services of a confidential intermediary by the petitioner;
- ▶ grants rulemaking authority to the Judicial Council;



- 28 ▶ describes the circumstances under which a court may release identifying or contact
- 29 information to, or allow contact with, a petitioner;
- 30 ▶ makes it a class A misdemeanor to intentionally or knowingly disclose identifying
- 31 or contact information obtained by a confidential intermediary under this bill, or
- 32 submitted under seal to a court, unless such disclosure is authorized by the
- 33 provisions of this bill or by court order; 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 **26-2-22**, as last amended by Laws of Utah 2006, Chapters 55 and 56

42 **78-30-16**, as last amended by Laws of Utah 1990, Chapter 65

43 ENACTS:

44 **78-30-20**, Utah Code Annotated 1953

45 **78-30-21**, Utah Code Annotated 1953

46 **78-30-22**, Utah Code Annotated 1953

47 **78-30-23**, Utah Code Annotated 1953

48 **78-30-24**, Utah Code Annotated 1953

49 **78-30-25**, Utah Code Annotated 1953

50 **78-30-26**, Utah Code Annotated 1953

51 **78-30-27**, Utah Code Annotated 1953



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

54 Section 1. Section **26-2-22** is amended to read:

55 **26-2-22. Inspection of vital records.**

56 (1) (a) The vital records shall be open to inspection, but only in compliance with the

57 provisions of:

58 (i) this chapter[;];

59 (ii) Section 78-30-18;

60 (iii) an order issued under Subsection 78-30-21(2)(a); or

61 (iv) department rules[~~and Section 78-30-18~~].

62 (b) It is unlawful for any state or local officer or employee to disclose data contained in
63 vital records contrary to this chapter or department rule.

64 (c) A custodian of vital records may permit inspection of a vital record or issue a
65 certified copy of a record or a part of a record when the custodian is satisfied that the applicant
66 has demonstrated a direct, tangible, and legitimate interest.

67 (2) A direct, tangible, and legitimate interest in a vital record is present only if:

68 (a) the request is from the subject, a member of the subject's immediate family, the
69 guardian of the subject, or a designated legal representative;

70 (b) the request involves a personal or property right of the subject of the record;

71 (c) the request is for official purposes of a state, local, or federal governmental agency;

72 (d) the request is for a statistical or medical research program and prior consent has
73 been obtained from the state registrar; [~~or~~]

74 (e) the request is a certified copy of an order of a court of record specifying the record
75 to be examined or copied[~~;~~]; or

76 (f) the request is made pursuant to an order issued under Subsection 78-30-21(2)(a).

77 (3) For purposes of Subsection (2):

78 (a) "immediate family member" means a spouse, child, parent, sibling, grandparent, or
79 grandchild;

80 (b) a designated legal representative means an attorney, physician, funeral service
81 director, genealogist, or other agent of the subject or the subject's immediate family who has
82 been delegated the authority to access vital records;

83 (c) except as provided in Title 78, Chapter 30, Adoption, a parent, or the immediate
84 family member of a parent, who does not have legal or physical custody of or visitation or
85 parent-time rights for a child because of the termination of parental rights pursuant to Title 78,
86 Chapter 3a, Juvenile Court Act of 1996, or by virtue of consenting to or relinquishing a child
87 for adoption pursuant to Title 78, Chapter 30, Adoption, may not be considered as having a
88 direct, tangible, and legitimate interest; and

89 (d) a commercial firm or agency requesting names, addresses, or similar information

90 may not be considered as having a direct, tangible, and legitimate interest.

91 (4) Upon payment of a fee established in accordance with Section 63-38-3.2, the
92 following records shall be available to the public:

93 (a) except as provided in Subsection 26-2-10(4)(b), a birth record, excluding
94 confidential information collected for medical and health use, if 100 years or more have passed
95 since the date of birth;

96 (b) a death record if 50 years or more have passed since the date of death; and

97 (c) a vital record not subject to Subsection (4)(a) or (b) if 75 years or more have passed
98 since the date of the event upon which the record is based.

99 Section 2. Section **78-30-16** is amended to read:

100 **78-30-16. Definitions -- Applications.**

101 (1) As used in this section and Sections 78-30-17 through [~~78-30-19~~] 78-30-27:

102 (a) "Adoptee" means a person who has been legally adopted.

103 (b) "Adoption" means the judicial act which creates the relationship of parent and child
104 where it did not previously exist and which permanently deprives a birth parent of his parental
105 rights.

106 (c) "Adult adoptee" means an adoptee who is 21 years of age or older.

107 (d) "Adult sibling" means a brother or sister of the adoptee, who is 21 years of age or
108 older and whose birth mother or father is the same as that of the adoptee.

109 (e) "Birth parent" means a biological mother, a person whose paternity of a child is
110 established, or, an alleged father, who has been identified as the father of a child by the child's
111 birth mother, and who has not denied paternity.

112 (f) "Bureau" means the Bureau of Vital Statistics within the Department of Health
113 operating under Title 26, Chapter 2.

114 (g) "Genetic and social history" means a comprehensive report, when obtainable, on an
115 adoptee's birth parents, aunts, uncles, and grandparents, which contains the following
116 information:

117 (i) medical history;

118 (ii) health status;

119 (iii) cause of and age at death;

120 (iv) height, weight, eye, and hair color;

- 121 (v) ethnic origins;
- 122 (vi) where appropriate, levels of education and professional achievement; and
- 123 (vii) religion, if any.
- 124 (h) "Health history" means a comprehensive report of the adoptee's health status at the
- 125 time of placement for adoption, and his medical history, including neonatal, psychological,
- 126 physiological, and medical care history.

127 (i) "Identifying information" means the name and address of a birth parent or adult

128 adoptee, or other specific information which by itself or in reasonable conjunction with other

129 information may be used to identify that person.

130 (2) Sections 78-30-17 through ~~[78-30-19]~~ 78-30-27 do not apply to adoptions by a

131 stepparent whose spouse is the adoptee's birth parent.

132 (3) Sections 78-30-17 through ~~[78-30-19]~~ 78-30-27 apply only to adoptions of

133 adoptees born in, or adopted in, this state.

134 Section 3. Section **78-30-20** is enacted to read:

135 **78-30-20. Petition for appointment of a confidential intermediary.**

136 (1) An adult adoptee who is at least 30 years of age may petition the district court for

137 appointment of a confidential intermediary for the purpose of contacting a birth parent of the

138 adult adoptee to determine whether the birth parent desires to disclose identifying information

139 to the adult adoptee or to allow contact by the adult adoptee.

140 (2) The petition described in Subsection (1) shall include:

141 (a) identifying information of the adult adoptee, including the adult adoptee's name,

142 gender, date of birth, address, and telephone number;

143 (b) any information known by the adult adoptee about the birth parent of the adult

144 adoptee, including the birth parent's age or approximate age, if known;

145 (c) a statement that the adult adoptee is currently registered under the mutual consent

146 registry described in Section 78-30-18;

147 (d) any other information known by the adult adoptee that may assist a confidential

148 intermediary in identifying and contacting a birth parent; and

149 (e) a statement that the adult adoptee agrees to pay the reasonable expenses and

150 reasonable fees of the confidential intermediary.

151 Section 4. Section **78-30-21** is enacted to read:

152 **78-30-21. Appointment of a confidential intermediary.**

153 (1) Upon the filing of a petition described in Section 78-30-20, the court shall appoint a
154 confidential intermediary to identify and contact a birth parent of the petitioner, unless the
155 court finds good cause for not appointing a confidential intermediary.

156 (2) If the court appoints a confidential intermediary under Subsection (1), the court:

157 (a) shall provide the confidential intermediary with an order of appointment that
158 includes:

159 (i) the name of the confidential intermediary;

160 (ii) a statement indicating that the confidential intermediary is authorized to obtain
161 identifying or contact information of the petitioner and the birth parents of the petitioner,
162 including vital records and adoption records, in order to assist the confidential intermediary to
163 identify, locate, and contact a birth parent of the petitioner;

164 (iii) the date that the order is entered; and

165 (iv) the date on which the order expires;

166 (b) shall order that the petitioner is responsible to pay the reasonable expenses and
167 reasonable fees of the confidential intermediary to identify, locate, and make or arrange contact
168 with a birth parent of the petitioner;

169 (c) shall specify a maximum amount of expenses and fees, chargeable to the petitioner,
170 that the confidential intermediary may incur without obtaining permission from the petitioner
171 and the court to exceed this amount;

172 (d) may require that the petitioner make an initial payment, or periodic payments, of a
173 specified amount, to the confidential intermediary; and

174 (e) shall order that any court documents that may assist the confidential intermediary to
175 identify or contact a birth parent of the petitioner be released to the confidential intermediary.

176 Section 5. Section **78-30-22** is enacted to read:

177 **78-30-22. Qualifications of a confidential intermediary -- Priority to select a**
178 **confidential intermediary.**

179 (1) The Judicial Council may, by rule, establish the qualifications for a person that may
180 be appointed as a confidential intermediary.

181 (2) If the adoption agency or attorney who arranged or facilitated an adoption is known
182 by the court, or may be easily discovered by the court, the court shall appoint a qualified

183 person, designated by the adoption agency or the attorney, as the confidential intermediary,
184 unless the adoption agency or attorney fails to select a qualified confidential intermediary
185 within five days, excluding weekends and holidays, after the day on which the adoption agency
186 or attorney is contacted regarding the opportunity to select a confidential intermediary.

187 (3) If, after appointment of a confidential intermediary other than a confidential
188 intermediary described in Subsection (2), the confidential intermediary discovers the identity of
189 the agency or attorney who arranged or facilitated an adoption:

190 (a) the confidential intermediary shall:

191 (i) notify the court of the discovered information within three days, excluding
192 weekends and holidays, of the day on which the information is discovered; and

193 (ii) refrain from contacting a birth parent of the petitioner, until further order of the
194 court; and

195 (b) the court shall appoint a qualified person, designated by the adoption agency or
196 attorney who arranged or facilitated the adoption, as the confidential intermediary, unless the
197 adoption agency or attorney fails to select a confidential intermediary within five days,
198 excluding weekends and holidays, after the day on which the adoption agency or attorney is
199 contacted regarding the opportunity to select a confidential intermediary.

200 Section 6. Section **78-30-23** is enacted to read:

201 **78-30-23. Duties of a confidential intermediary.**

202 (1) A confidential intermediary appointed by the court:

203 (a) shall make a diligent effort to identify, locate, and contact a birth parent of the
204 petitioner; and

205 (b) shall make a diligent search of adoption records and other records related to the
206 petitioner or the birth parents of the petitioner, in order to identify, locate, and contact a birth
207 parent of the petitioner.

208 (2) If the confidential intermediary locates a birth parent of the petitioner, the
209 confidential intermediary:

210 (a) shall contact the birth parent in a discreet and confidential manner to:

211 (i) inform the birth parent that a biological child of the birth parent has filed a petition
212 under Section 78-30-20; and

213 (ii) inquire whether the birth parent desires to disclose identifying information to the

214 petitioner or allow contact with the petitioner; and

215 (b) may not inform the birth parent of the petitioner of any identifying information of
216 the petitioner, unless the petitioner requests, in writing, that specific identifying information be
217 disclosed by the confidential intermediary to the birth parent of the petitioner.

218 (3) If a birth parent contacted by a confidential intermediary under Subsection (2)(a)
219 indicates that the birth parent desires to disclose identifying information to the petitioner, or to
220 allow contact with the petitioner, the confidential intermediary:

221 (a) shall obtain written consent from the birth parent to:

222 (i) release identifying information to the petitioner that specifies the information to be
223 released; or

224 (ii) arrange for the petitioner to make contact with the birth parent in a manner
225 specified by the birth parent;

226 (b) shall provide the identifying information, or the contact information, under seal, to
227 the court;

228 (c) shall inform the petitioner that the birth parent has agreed to provide identifying
229 information to, or to allow contact with, the petitioner; and

230 (d) may not release the identifying information or contact information to the petitioner,
231 or any other person, or arrange contact between the petitioner and the birth parent, without a
232 court order authorizing such action.

233 (4) If a birth parent contacted by a confidential intermediary under Subsection (2)(a)
234 fails or refuses to disclose identifying information to the petitioner, or to allow contact with the
235 petitioner, the confidential intermediary:

236 (a) shall inform the birth parent of the procedures for registering with the mutual
237 consent, voluntary adoption registry under Section 78-30-18;

238 (b) shall ask the birth parent if the birth parent is willing to be contacted by a
239 confidential intermediary at a later time to determine whether the birth parent will agree to
240 disclosure of identifying information to, or to arrange contact with, the petitioner at that time;

241 (c) if the birth parent agrees, under Subsection (4)(b), to be contacted at a later time,
242 obtain written consent from the birth parent that specifies the date in the future after which a
243 confidential intermediary may contact the birth parent;

244 (d) shall provide, under seal, to the court:

- 245 (i) the information gathered by the confidential intermediary;
246 (ii) a written statement that the birth parent failed or refused to disclose identifying
247 information to, or allow contact with, the petitioner; and
248 (iii) (A) the written consent, described in Subsection (4)(c); or
249 (B) a written statement that the birth parent failed to, or refused to, consent to be
250 contacted at a later time;
251 (e) may not inform the petitioner, or any other person other than the court, of the birth
252 parent's identifying information or contact information;
253 (f) may not attempt to arrange contact between the petitioner and the birth parent; and
254 (g) shall, within 24 hours, excluding weekends and holidays, of the time that the
255 petition is dismissed by the court, destroy copies of all identifying or contact information
256 relating to the birth parent, that are in the possession or control of the confidential intermediary.
257 (5) If the confidential intermediary is unable to identify or contact a birth parent of the
258 petitioner within one year after the day on which the court appoints the confidential
259 intermediary, the confidential intermediary shall provide a written report to the court that
260 includes:
261 (a) the information gathered by the confidential intermediary, under seal;
262 (b) without disclosing identifying information or contact information of a birth parent,
263 the efforts made by the confidential intermediary to identify or contact the birth parent; and
264 (c) without disclosing identifying information or contact information of a birth parent,
265 the opinion of the confidential intermediary regarding other actions that could be taken to
266 identify or contact the birth parent, the likelihood of success of those actions, the approximate
267 cost of taking those actions, and the additional time needed to take those actions.
268 (6) If the confidential intermediary discovers that a birth parent of the petitioner is
269 deceased, the confidential intermediary shall inform the court of this fact, in writing and under
270 seal.

271 Section 7. Section **78-30-24** is enacted to read:

272 **78-30-24. Itemization and payment of expenses and fees.**

- 273 (1) (a) A confidential intermediary shall, on a monthly basis, submit to the petitioner
274 and the court, an itemization of expenses incurred, and fees charged, by the confidential
275 intermediary.

276 (b) The itemization described in Subsection (1)(a) may not include any information
277 that would disclose to the petitioner, or lead to unauthorized discovery by the petitioner, of the
278 identity or contact information of a birth parent of the petitioner.

279 (2) The petitioner is required to pay the reasonable expenses and reasonable fees
280 charged by the confidential intermediary within 30 days after the day that the itemization is
281 mailed or otherwise delivered to the petitioner, unless the court orders otherwise.

282 (3) If a petitioner fails to pay the reasonable expenses and reasonable fees of a
283 confidential intermediary, the court may:

284 (a) order the confidential intermediary to cease efforts to gather information on the
285 petitioner's behalf;

286 (b) order the petitioner to pay the reasonable expenses and reasonable fees of the
287 confidential intermediary;

288 (c) refuse to authorize the release of identifying or contact information obtained by the
289 confidential intermediary until the reasonable expenses and reasonable fees of the confidential
290 intermediary are paid in full;

291 (d) dismiss the petition filed under Section 78-30-20; or

292 (e) enter any other lawful order determined to be appropriate by the court.

293 (4) A confidential intermediary may not continue to incur expenses or fees that are:

294 (a) chargeable to the petitioner after the one-year period described in Subsection
295 78-30-23(5), without first receiving permission from the petitioner and the court; or

296 (b) in excess of the maximum amount specified by the court under Subsection
297 78-30-21(2)(c), without first receiving permission from the petitioner and the court.

298 Section 8. Section **78-30-25** is enacted to read:

299 **78-30-25. Court proceedings.**

300 (1) The court may hold review hearings to discuss the progress of the confidential
301 intermediary and to determine whether the petitioner desires the confidential intermediary to
302 continue the search for information.

303 (2) The court may dismiss a petition filed under Section 78-30-20:

304 (a) at the request of the petitioner; or

305 (b) if the court determines that:

306 (i) (A) after making a diligent effort, the confidential intermediary has not succeeded in

307 obtaining the information sought by the petition; and
308 (B) it is unlikely that the confidential intermediary will be able to obtain the
309 information sought by the petition;
310 (ii) the petitioner is less than 30 years of age;
311 (iii) except as provided in Subsection (6), the petition seeks the identifying or contact
312 information of a birth parent who has already been contacted by a confidential intermediary on
313 behalf of the petitioner, in a previous proceeding initiated under Section 78-30-21, unless:
314 (A) it is likely that the birth parent is deceased; or
315 (B) (I) the birth parent agreed, under Subsection 78-30-23(4)(c), to be contacted at a
316 later time; and
317 (II) the time specified by the birth parent, under Subsection 78-30-23(4)(c), is after the
318 day on which the petition is dismissed;
319 (iv) the court is prohibited from releasing the identifying information of a birth parent
320 under Subsection (5); or
321 (v) the person is prohibited from filing the petition under Section 78-30-26.
322 (3) Except as provided in Subsection (5) or 78-30-24(3)(c), the court shall disclose to
323 the petitioner the identifying information, or allow contact in the manner specified by the birth
324 parent of the petitioner, if:
325 (a) the birth parent:
326 (i) is currently living; and
327 (ii) has provided written consent to:
328 (A) disclose the information to the petitioner; or
329 (B) allow contact with the petitioner;
330 (b) both birth parents of the petitioner are deceased; or
331 (c) one birth parent of the petitioner is deceased and, after a diligent search by the
332 confidential intermediary, the other birth parent:
333 (i) cannot be identified; or
334 (ii) is identified and consents to disclosure of the deceased birth parent's information to
335 the petitioner.
336 (4) If a birth parent of the petitioner fails or refuses to consent to disclosure of
337 identifying information to the petitioner, or to contact with the petitioner, the court shall:

338 (a) if the birth parent provides written consent to be contacted by a confidential
339 intermediary in the future:

340 (i) inform the petitioner of the date after which the birth parent has agreed to be
341 contacted; and

342 (ii) dismiss the petition; or

343 (b) if the birth parent of the petitioner fails or refuses to provide written consent to be
344 contacted by a confidential intermediary in the future, dismiss the petition.

345 (5) The court may not disclose identifying information or contact information to a
346 petitioner, or allow contact to be arranged between the petitioner and a birth parent of the
347 petitioner, if the petitioner has a sibling who:

348 (a) is a biological child of the same birth parent;

349 (b) is under the age of 21 years; and

350 (c) was raised, or is being raised, in the same family setting as the petitioner.

351 (6) A petition dismissed under Subsection (2) may be refiled if a birth parent who
352 refused to consent to disclosure of information, or to allow contact, contacts a confidential
353 intermediary and informs the confidential intermediary that the birth parent now desires to
354 disclose identifying information to, or allow contact with, the petitioner.

355 Section 9. Section **78-30-26** is enacted to read:

356 **78-30-26. Filing a subsequent petition.**

357 (1) No person may file a subsequent petition to seek identifying or contact information
358 of a birth parent who failed or refused to disclose identifying information to the petitioner, or
359 allow contact with the petitioner, under Section 78-30-23, unless:

360 (a) (i) the birth parent who failed or refused to disclose the information, or allow
361 contact, consents, under Subsection 78-30-25(4)(a), to be contacted in the future; and

362 (ii) the petition is filed on or after the date specified in the consent described in
363 Subsection 78-30-25(4)(a);

364 (b) (i) it is likely that the birth parent who failed or refused to disclose the information,
365 or to allow contact, is deceased; and

366 (ii) the subsequent petition is filed at least five years after the day on which the last
367 petition, seeking identifying or contact information of the birth parent described in
368 Subsection(1)(b)(i), was dismissed; or

369 (c) the birth parent consents, under Subsection 78-30-25(6), to disclose identifying
370 information to, or allow contact by, the petitioner.

371 (2) (a) Except as provided in Subsection (2)(b), a person may not file a subsequent
372 petition to seek identifying or contact information of a birth parent who was the subject of a
373 previous petition filed by the petitioner, unless the subsequent petition is filed at least five
374 years after the day on which the previous petition was dismissed.

375 (b) A court, for good cause, may shorten or extend the five year period described in
376 Subsection (2)(a).

377 Section 10. Section **78-30-27** is enacted to read:

378 **78-30-27. Penalty for unlawful disclosure.**

379 A person or confidential intermediary who intentionally or knowingly discloses
380 identifying or contact information obtained by a confidential intermediary, or submitted under
381 seal to a court, under Sections 78-30-20 through 78-30-26, is guilty of a class A misdemeanor,
382 unless the disclosure is made in a manner that is permitted under Section 78-30-20 through
383 78-30-26 or as otherwise permitted by law or pursuant to a court order.

Legislative Review Note
as of 1-14-08 10:09 AM

Office of Legislative Research and General Counsel

H.B. 289 - Adoption - Investigation and Release of Information

Fiscal Note

2008 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.
