

HB0308S02 compared with HB0308S01

~~{deleted text}~~ shows text that was in HB0308S01 but was deleted in HB0308S02.

inserted text shows text that was not in HB0308S01 but was inserted into HB0308S02.

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Representative Christine F. Watkins proposes the following substitute bill:

PARENTAL RIGHTS OF BIOLOGICAL FATHERS

2012 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Christine F. Watkins

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends Title 78B, Chapter 6, Particular Proceedings, ~~{and Chapter 15, Utah Uniform Parentage Act, }~~ relating to consent and notice requirements before the adoption of a child.

Highlighted Provisions:

This bill:

- ▶ requires that notice of ~~{an}~~ a potential adoption proceeding be provided to an unmarried biological father ~~{in certain circumstances}~~, unless an exception exists;
- ▶ ~~{modifies the procedure}~~ provides that an unmarried biological father ~~{must follow}~~ who receives notice of a potential adoption proceeding but fails to take action to protect his ~~{parental}~~ potential rights ~~{in regard to a child age six months or younger}~~;

HB0308S02 compared with HB0308S01

- ~~modifies the procedure the office of vital records and statistics must follow in accepting a notice of intent to initiate paternity proceedings;~~
- ~~permits a birth mother to revoke her consent to adoption under a limited circumstance}~~ within 30 days after receiving the notice shall irrevocably forfeit:
 - the ability to assert the right to consent or refuse to consent to an adoption of the child;
 - the ability to assert the right to contest any future adoption of the child; and
 - the right to notice of any adoption proceedings related to the child; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

78B-6-110, as last amended by Laws of Utah 2010, Chapter 237

78B-6-121, as last amended by Laws of Utah 2009, Chapter 159

~~{ **78B-6-126**, as renumbered and amended by Laws of Utah 2008, Chapter 3~~

~~**78B-15-401**, as renumbered and amended by Laws of Utah 2008, Chapter 3} ENACTS:~~

78B-6-110.1, Utah Code Annotated 1953

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

Section 1. Section **78B-6-110** is amended to read:

78B-6-110. Notice of adoption proceedings.

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

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

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

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

HB0308S02 compared with HB0308S01

~~(2) [Notice] {Except as provided in} and Section {78B-6-111, notice} 78B-6-110.1.~~

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

(a) any person or agency whose consent or relinquishment is required under Section 78B-6-120 or 78B-6-121, unless that right has been terminated by:

- (i) waiver;
- (ii) relinquishment;
- (iii) consent; or
- (iv) judicial action;

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

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

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

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

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

(g) a person who is:

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

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

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

~~{ (i) an unmarried biological father, if:~~

~~(i) he has preserved his rights under Subsection (3); or~~

~~(ii) subject to the requirements of Subsection (12), he is not a resident of Utah.~~

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

(i) initiate proceedings in a district court of ~~{}~~ the state of ~~{}~~ Utah to establish paternity under Title 78B, Chapter 15, Utah Uniform Parentage Act; and

HB0308S02 compared with HB0308S01

(ii) file a notice of ~~the~~ commencement of ~~the~~ ~~intent to commence~~ the proceedings described in Subsection (3)(a)(i) with the state registrar of vital statistics within the Department of Health.

(b) If the unmarried, biological father does not know the county in which the birth mother resides, he may initiate his action in any county, subject to a change in trial pursuant to Section 78B-3-307.

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

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

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

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

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

(B) relinquishment of the child for adoption.

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

(5) The notice required by this section:

(a) may be served at any time after the petition for adoption is filed;

(b) shall be served at least 30 days prior to the final dispositional hearing;

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

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

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

(f) shall state where the person may obtain a copy of the petition for adoption.

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

(i) within 30 days after the day on which the person was served with notice of the adoption proceeding;

HB0308S02 compared with HB0308S01

(ii) setting forth specific relief sought; and

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

(b) A person who fails to fully and strictly comply with all of the requirements described in Subsection (6)(a) within 30 days after the day on which the person was served with notice of the adoption proceeding:

(i) waives any right to further notice in connection with the adoption;

(ii) forfeits all rights in relation to the adoptee; and

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

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

(a) (i) Subject to Subsection (5)(e), service on a person whose consent is necessary under Section 78B-6-120 or 78B-6-121 shall be in accordance with the provisions of the Utah Rules of Civil Procedure.

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

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

(b) (i) Except as provided in Subsection (7)(b)(ii) to any other person for whom notice is required under this section, service by certified mail, return receipt requested, is sufficient.

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

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

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

(9) Proof of service of notice on all persons for whom notice is required by this section

HB0308S02 compared with HB0308S01

shall be filed with the court before the final dispositional hearing on the adoption.

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

(11) Except as to those persons whose consent to an adoption is required under Section 78B-6-120 or 78B-6-121, the sole purpose of notice under this section is to enable the person served to:

- (a) intervene in the adoption; and
- (b) present evidence to the court relevant to the best interest of the child.

~~Section 2. Section 78B-6-110.1 is enacted to read:~~

78B-6-110.1. Notice of potential adoption proceedings.

(1) As used in this section, "birth father" means:

- (a) a potential biological father; or
- (b) an unmarried biological father ~~is not a resident of Utah.~~

~~_____ (a) a written notice of the existence of an adoption plan shall be:~~

~~_____ (i) sent to the unmarried biological father's last known or reasonably ascertainable address by certified mail; or~~

~~_____ (ii) published in a newspaper of general circulation subject to Subsection (13), in the area where the unmarried biological father was last known or believed to reside if his address is not known or reasonably ascertainable; and~~

~~_____ (b) shall include a statement indicating that:~~

~~_____ (i) if the unmarried biological father desires to assert or preserve his parental rights, he must comply with Sections 78B-6-121 and 78B-6-122;.~~

(2) Except as provided in Subsection (9), before a relinquishment of a child for adoption, a birth mother or her designee shall notify a birth father of the child that the mother of the child is considering an adoptive placement for the child.

(3) Providing a birth father with notice under Subsection (2) does not obligate the mother of the child to proceed with an adoptive placement of the child.

(4) The notice described in Subsection (2) shall include the following information:

- (a) a statement that the mother intends to place the child for adoption;
- (b) a statement that the mother has named the person receiving the notice as a potential

HB0308S02 compared with HB0308S01

birth father of her child:

(c) the requirements to assert the right to contest the adoption, including taking the following steps within 30 days ~~of the later of~~ after the day on which the notice is served ~~or~~:

(i) initiating proceedings to establish or assert paternity in a district court of Utah within 30 days after the day on which ~~the mother executes her consent to the adoption or relinquishes the child for adoption:~~

~~(ii) if the unmarried biological father fails~~ notice is serviced, including filing an affidavit stating:

(A) that the birth father is fully able and willing to have full custody of the child;

(B) the birth father's plans to care for the child; and

(C) that the birth father agrees pay for child support and expenses incurred in connection with the pregnancy and birth;

(ii) filing a notice of commencement of paternity proceedings with the state registrar of vital statistics within the Utah Department of Health; and

(iii) offering to pay, and paying, a fair and reasonable amount of the expenses incurred in connection with the mother's pregnancy and birth, in accordance with his financial ability, unless the birth mother refuses to accept the birth father's offer to pay;

(d) the consequences for failure to comply with ~~Sections 78B-6-121 and 78B-6-122~~ Subsection (4)(c), ~~he shall~~ including that:

~~(A) i~~ ~~irrevocably lose~~ the birth father's ability to assert the right to consent or refuse to consent to the adoption is irrevocably lost;

~~(B) ii~~ the birth father will lose the ability to assert the right to contest any future adoption of the child; and

~~(C) iii~~ the birth father will lose the right to notice of any adoption proceedings related to the child; ~~and~~

~~(iii) e~~ ~~if~~ that the ~~unmarried biological~~ birth father ~~wishes to~~ may consent to the adoption ~~;~~

~~(A) he is under no obligation to respond to the notice~~, if any, within 30 days after the day on which the notice is received, and that his consent is irrevocable;

(f) that no communication between the mother of the child, or a person claiming to represent the mother of the child, and the birth father changes the rights and responsibilities of

HB0308S02 compared with HB0308S01

~~the birth father described in this Subsection (12) and his consent shall be implied after the time limit; the notice:~~

~~(g) that the birth father may wish to consult an attorney regarding his potential rights and obligations; and~~

~~(h) the name and contact information of the individual sending the notice.~~

~~(5) The notice described in Subsection (~~12~~)(a) expires; and~~

~~(B) he may respond to indicate his desire to execute his consent.~~

~~(13) If ~~2~~) may not include the name of the birth mother without her prior, written consent.~~

~~(6) If a birth father contacts the individual who provides him the notice described in Subsection (2) offering to pay, or providing payment, for expenses incurred in connection with the mother's pregnancy and birth under Subsection (4)(c)(iii), and the individual is not the birth mother, the individual:~~

~~(a) shall inform the birth mother of the birth father's offer;~~

~~(b) shall give any money the birth father gives to the individual to the birth mother; and~~

~~(c) may not refuse the birth father's payment on the birth mother's behalf.~~

~~(7) If the recipient of the notice described in Subsection (~~12~~)(a) is published in a newspaper under Subsection (~~12~~)(a)(ii), it:~~

~~(a) shall include the name of the unmarried biological father;~~

~~(b) shall include the contact information of an individual with knowledge of the adoption plan who the unmarried biological father may contact with questions regarding his potential rights or obligations;~~

~~(c) may not include the name or identifying information of a potential adoptive parent; and~~

~~(d) may not include the name of the biological mother without her written consent.~~

~~Section ~~2~~2) does not fully and strictly comply with the requirements of Subsection (4)(c) within 30 days after the day on which he receives the notice, he forfeits:~~

~~(a) the ability to assert the right to consent or refuse to consent to an adoption of the child described in the notice;~~

~~(b) the ability to assert the right to contest any future adoption of the child described in the notice; and~~

HB0308S02 compared with HB0308S01

(c) the right to notice of any adoption proceedings relating to the child described in the notice.

(8) The notice described in Subsection (2) shall be served on a birth father in accordance with the Utah Rules of Civil Procedure or by certified mail.

(9) The birth mother is excused from the requirements of this section if:

(a) notice of, or consent to, an adoption proceeding would not be required under Section 78B-6-111; or

(b) it is shown by a preponderance of the evidence in a judicial proceeding that the birth father has engaged in physically abusive behavior toward the birth mother in the past, and she fears he will be abusive in the future.

Section 3. Section **78B-6-121** is amended to read:

78B-6-121. Consent of unmarried biological father.

(1) Except as provided in Subsections (2)(a) and 78B-6-122(1), and subject to Subsection (5), with regard to a child who is placed with adoptive parents more than six months after birth, consent of an unmarried biological father is not required unless the unmarried biological father:

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

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

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

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

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

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

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

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

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

HB0308S02 compared with HB0308S01

(ii) openly held himself out to be the father of the child during the six-month period described in Subsection (1)(b)(i)(A).

(2) (a) If an unmarried biological father was prevented from complying with a requirement of Subsection (1) by the person or authorized agency having lawful custody of the child, the unmarried biological father is not required to comply with that requirement.

(b) The subjective intent of an unmarried biological father, whether expressed or otherwise, that is unsupported by evidence that the requirements in Subsection (1) have been met, shall not preclude a determination that the father failed to meet the requirements of Subsection (1).

(3) Except as provided in ~~Subsection~~ Subsections (7) and 78B-6-122(1), and subject to Subsection (5), with regard to a child who is six months of age or less at the time the child is placed with adoptive parents, consent of an unmarried biological father is not required unless ~~Subsection (7)(a)~~, prior to the time ~~Subsection (7)(a)~~

~~Subsection (7)(a)~~ before the mother executes her consent for adoption or relinquishes the child for adoption, the unmarried biological father:

~~Subsection (7)(a)~~ initiates proceedings in a district court of Utah to establish paternity under Title 78B, Chapter 15, Utah Uniform Parentage Act; ~~Subsection (7)(a)~~

~~Subsection (7)(b)~~ files with the court that is presiding over the paternity proceeding a sworn affidavit; ~~Subsection (7)(b)~~

~~Subsection (7)(b)(i)~~ stating that he is fully able and willing to have full custody of the child; ~~Subsection (7)(b)(i)~~

~~Subsection (7)(b)(ii)~~ setting forth his plans for care of the child; and ~~Subsection (7)(b)(ii)~~

~~Subsection (7)(b)(iii)~~ agreeing to a court order of child support and the payment of expenses incurred in connection with the mother's pregnancy and the child's birth; ~~Subsection (7)(b)(iii)~~

~~Subsection (7)(c)~~ ~~Subsection (7)(c)(i)~~ consistent with Subsection (4), files notice of ~~Subsection (7)(c)~~ the commencement of ~~Subsection (7)(c)~~ intent to commence paternity proceedings ~~Subsection (7)(c)~~, described in Subsection (3)(a), ~~Subsection (7)(c)~~ with the state registrar of vital statistics within the Department of Health, in a confidential registry established by the department for that purpose; and

~~Subsection (7)(d)~~ ~~Subsection (7)(d)(i)~~ offered to pay and paid a fair and reasonable amount of the expenses incurred in connection with the mother's pregnancy and the child's birth, in accordance with his financial ability, unless:

~~Subsection (7)(d)(i)~~ ~~Subsection (7)(d)(i)(A)~~ he did not have actual knowledge of the pregnancy;

HB0308S02 compared with HB0308S01

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

~~§(iii)§(C)~~ the mother refuses to accept the unmarried biological father's offer to pay the expenses described in this Subsection (3)~~§(d)§(a)(ii); and~~

~~— (b) within 30 days after filing a notice of intent to commence paternity proceedings under Subsection (3)(a)(i), the unmarried biological father:~~

~~— (i) initiates proceedings in a district court of Utah to establish paternity under Title 78B, Chapter 15, Utah Uniform Parentage Act; and~~

~~— (ii) files with the court that is presiding over the paternity proceeding a sworn affidavit:~~

~~— (A) stating that he is fully able and willing to have full custody of the child;~~

~~— (B) setting forth his plans for care of the child; and~~

~~— (C) agreeing to a court order of child support and the payment of expenses incurred in connection with the mother's pregnancy and the child's birth.~~

~~§(d).~~

(4) The notice described in Subsection (3)~~§(c)§(a)(i)~~ is considered filed when it is entered into the registry described in Subsection (3)~~§(c)§(a)(i)~~.

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

~~{ — (a) the child is six months of age or less and the unmarried biological father does not fully and strictly comply with Subsection (3);~~

~~— (b) the unmarried biological father has initiated proceedings in a district court of Utah to establish paternity under Title 78B, Chapter 15, Utah Uniform Parentage Act, but the court has:~~

~~— (i) adjudicated the paternity of the child and ruled against the unmarried biological father; or~~

~~— (ii) dismissed the proceeding for want of prosecution under Section 78B-15-621;~~

~~§~~ ~~§(a)§(c)~~ the court determines, in accordance with the requirements and procedures of Title 78A, Chapter 6, Part 5, Termination of Parental Rights Act, that the unmarried biological father's rights should be terminated, based on the petition of any interested party;

~~[or]~~

~~§(b)§(d)~~ (i) a declaration of paternity declaring the unmarried biological father to be the father of the child is rescinded under Section 78B-15-306; and

HB0308S02 compared with HB0308S01

(ii) the unmarried biological father fails to comply with Subsection (3) within 10 business days after the day that notice of the rescission described in Subsection (5) ~~(b)~~ ~~(d)~~ (i) is mailed by the Office of Vital Records within the Department of Health as provided in Section 78B-15-306 ~~;~~ or

(c) the unmarried biological father was notified under Subsection 78B-6-110.1 and failed to fulfill the requirements of Subsection (3) within 30 days after receiving the notice.

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

(a) that a diligent search has been made of the registry of notices from unmarried biological fathers described in Subsection (3) ~~(c)~~ ~~(a)(i)~~; and

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

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

~~{ (7) If the unmarried biological father is not a resident of Utah, he shall have 30 days from the later of the day on which he received notice of the adoption proceeding, as described in Subsection 78B-6-110(12), or the day on which the mother executes her consent to the adoption, to fulfill the requirements of Subsections (3)(a) and (b).~~

~~Section 3. Section 78B-6-126 is amended to read:~~

~~78B-6-126. When consent or relinquishment effective:~~

~~[A] (1) Except as provided in Subsection (2), a consent or relinquishment is effective when it is signed and may not be revoked.~~

~~(2) A mother may revoke her consent to an adoption within 30 days after the day on which the unmarried biological father:~~

~~(a) successfully asserts his parental rights by fully and strictly complying with Sections 78B-6-120 through 78B-6-122;~~

~~(b) is adjudicated to be the father of the child under Title 78B, Chapter 15, Utah Uniform Parentage Act; and~~

~~(c) refuses to relinquish or terminate his parental rights and consent to the adoption.~~

~~Section 4. Section 78B-15-401 is amended to read:~~

~~78B-15-401. Maintenance of records:~~

HB0308S02 compared with HB0308S01

~~—— (1) The Office of Vital Records shall register the following records which are filed with the office:~~

~~—— (a) all declarations of paternity;~~

~~—— (b) all judicial and administrative determinations of paternity; and~~

~~—— (c) all notices of proceedings to establish paternity which are filed pursuant to Sections 78B-6-110, 78B-6-120, 78B-6-121, and 78B-6-122.~~

~~—— [(2) A notice of initiation of paternity proceedings may not be accepted into the registry unless accompanied by a copy of the pleading which has been filed with the court to establish paternity.]~~

~~—— [(3)] (2) A notice of [initiation of] intent to initiate paternity proceedings may not be filed if another man is the adjudicated or declarant father.~~

~~‡~~