

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 requirements before the adoption of a child.

Highlighted Provisions:

This bill:

- ▶ requires that notice of an adoption proceeding be provided to an unmarried biological father in certain circumstances;
- ▶ modifies the procedure an unmarried biological father must follow to protect his parental rights in regard to a child age six months or younger;
- ▶ 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; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None



26 **Utah Code Sections Affected:**

27 AMENDS:

28 **78B-6-110**, as last amended by Laws of Utah 2010, Chapter 237

29 **78B-6-121**, as last amended by Laws of Utah 2009, Chapter 159

30 **78B-6-126**, as renumbered and amended by Laws of Utah 2008, Chapter 3

31 **78B-15-401**, as renumbered and amended by Laws of Utah 2008, Chapter 3



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

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

35 **78B-6-110. Notice of adoption proceedings.**

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

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

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

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

43 (2) ~~[Notice]~~ Except as provided in Section 78B-6-111, notice of an adoption
44 proceeding shall be served on each of the following persons:

45 (a) any person or agency whose consent or relinquishment is required under Section
46 78B-6-120 or 78B-6-121, unless that right has been terminated by:

47 (i) waiver;

48 (ii) relinquishment;

49 (iii) consent; or

50 (iv) judicial action;

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

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

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

- 57 (e) the adoptee's spouse, if any;
- 58 (f) any person who, prior to the time the mother executes her consent for adoption or
59 relinquishes the child for adoption, is recorded on the birth certificate as the child's father, with
60 the knowledge and consent of the mother;
- 61 (g) a person who is:
- 62 (i) openly living in the same household with the child at the time the consent is
63 executed or relinquishment made; and
- 64 (ii) holding himself out to be the child's father; ~~and~~
- 65 (h) any person who is married to the child's mother at the time she executes her consent
66 to the adoption or relinquishes the child for adoption[-]; and
- 67 (i) an unmarried biological father, if:
- 68 (i) he has preserved his rights under Subsection (3); or
- 69 (ii) subject to the requirements of Subsection (12), he is not a resident of Utah.
- 70 (3) (a) In order to preserve any right to notice, an unmarried, biological father may,
71 consistent with Subsection (3)(d):
- 72 (i) initiate proceedings in a district court of ~~[the state of]~~ Utah to establish paternity
73 under Title 78B, Chapter 15, Utah Uniform Parentage Act; and
- 74 (ii) file a notice of ~~[commencement of]~~ intent to commence the proceedings described
75 in Subsection (3)(a)(i) with the state registrar of vital statistics within the Department of
76 Health.
- 77 (b) If the unmarried, biological father does not know the county in which the birth
78 mother resides, he may initiate his action in any county, subject to a change in trial pursuant to
79 Section 78B-3-307.
- 80 (c) The Department of Health shall provide forms for the purpose of filing the notice
81 described in Subsection (3)(a)(ii), and make those forms available in the office of the county
82 health department in each county.
- 83 (d) The ~~[action and]~~ notice described in Subsection (3)(a)(ii):
- 84 (i) may be filed before or after the child's birth; and
- 85 (ii) shall be filed prior to the mother's:
- 86 (A) execution of consent to adoption of the child; or
- 87 (B) relinquishment of the child for adoption.

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

90 (5) The notice required by this section:

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

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

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

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

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

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

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

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

105 (ii) setting forth specific relief sought; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

139 (11) Except as to those persons whose consent to an adoption is required under Section
140 78B-6-120 or 78B-6-121, the sole purpose of notice under this section is to enable the person
141 served to:

142 (a) intervene in the adoption; and

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

144 (12) If an unmarried biological father is not a resident of Utah:

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

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

148 (ii) published in a newspaper of general circulation subject to Subsection (13), in the
149 area where the unmarried biological father was last known or believed to reside if his address is

150 not known or reasonably ascertainable; and

151 (b) shall include a statement indicating that:

152 (i) if the unmarried biological father desires to assert or preserve his parental rights, he
153 must comply with Sections 78B-6-121 and 78B-6-122 within 30 days of the later of the day on
154 which the notice is served or the day on which the mother executes her consent to the adoption
155 or relinquishes the child for adoption;

156 (ii) if the unmarried biological father fails to comply with Sections 78B-6-121 and
157 78B-6-122, he shall:

158 (A) irrevocably lose the ability to assert the right to consent or refuse to consent to the
159 adoption;

160 (B) lose the ability to assert the right to contest any future adoption of the child; and

161 (C) lose the right to notice of any adoption proceedings related to the child; and

162 (iii) if the unmarried biological father wishes to consent to the adoption:

163 (A) he is under no obligation to respond to the notice described in this Subsection (12)

164 and his consent shall be implied after the time limit described in Subsection (12)(a) expires;

165 and

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

167 (13) If the notice described in Subsection (12)(a) is published in a newspaper under
168 Subsection (12)(a)(ii), it:

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

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

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

174 and

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

176 Section 2. Section **78B-6-121** is amended to read:

177 **78B-6-121. Consent of unmarried biological father.**

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

181 unmarried biological father:

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

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

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

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

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

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

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

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

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

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

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

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

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

210 (a) before the mother executes her consent for adoption or relinquishes the child for
211 adoption, the unmarried biological father:

212 ~~[(a) initiates proceedings in a district court of Utah to establish paternity under Title~~
213 ~~78B, Chapter 15, Utah Uniform Parentage Act;]~~

214 ~~[(b) files with the court that is presiding over the paternity proceeding a sworn~~
215 ~~affidavit:]~~

216 ~~[(i) stating that he is fully able and willing to have full custody of the child;]~~

217 ~~[(ii) setting forth his plans for care of the child; and]~~

218 ~~[(iii) agreeing to a court order of child support and the payment of expenses incurred in~~
219 ~~connection with the mother's pregnancy and the child's birth;]~~

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

224 ~~[(d)]~~ (ii) offered to pay and paid a fair and reasonable amount of the expenses incurred
225 in connection with the mother's pregnancy and the child's birth, in accordance with his financial
226 ability, unless:

227 ~~[(i)]~~ (A) he did not have actual knowledge of the pregnancy;

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

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

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

234 (i) initiates proceedings in a district court of Utah to establish paternity under Title
235 78B, Chapter 15, Utah Uniform Parentage Act; and

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

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

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

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

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

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

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

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

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

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

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

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

257 (ii) the unmarried biological father fails to comply with Subsection (3) within 10
258 business days after the day that notice of the rescission described in Subsection (5)~~[(b)]~~(d)(i) is
259 mailed by the Office of Vital Records within the Department of Health as provided in Section
260 78B-15-306.

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

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

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

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

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

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

274 **78B-6-126. When consent or relinquishment effective.**

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

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

279 (a) successfully asserts his parental rights by fully and strictly complying with Sections
280 78B-6-120 through 78B-6-122;

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

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

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

285 **78B-15-401. Maintenance of records.**

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

288 (a) all declarations of paternity;

289 (b) all judicial and administrative determinations of paternity; and

290 (c) all notices of proceedings to establish paternity which are filed pursuant to Sections
291 78B-6-110, 78B-6-120, 78B-6-121, and 78B-6-122.

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

295 ~~[(3)]~~ (2) A notice of ~~[initiation of]~~ intent to initiate paternity proceedings may not be
296 filed if another man is the adjudicated or declarant father.