

OPEN ADOPTION

2013 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Lyle W. Hillyard

House Sponsor: _____

LONG TITLE

General Description:

This bill amends Title 78B, Chapter 6, Particular Proceedings, by permitting open adoption agreements between prospective adoptive parents and birth parents or other birth relatives of a prospective adoptive child.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ permits a prospective adoptive parent, birth parent, or other birth relative of a prospective adoptive child to enter into an open adoption agreement;
- ▶ requires that an open adoption agreement be approved by the court before becoming legally enforceable;
- ▶ prohibits the enforcement of open adoption agreements that are not in the best interest of the child; and
- ▶ states that violation of an open adoption agreement is not grounds to set aside an adoption.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:



28 ENACTS:

29 **78B-6-146**, Utah Code Annotated 1953



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

32 Section 1. Section **78B-6-146** is enacted to read:

33 **78B-6-146. Open adoption agreements.**

34 (1) As used in this section:

35 (a) "open adoption agreement" means a document, agreed upon prior to the finalization
36 of an adoption, that outlines the relationship between an adoptive parent, birth parent or other
37 biological relative, and adopted child after the finalization of adoption; and

38 (b) "other birth relative" means a grandparent, stepparent, sibling, stepsibling, aunt, or
39 uncle of the prospective adoptive child.

40 (2) (a) Notwithstanding any other provision in this chapter, the prospective adoptive
41 parent and birth parent, or other birth relative, may enter into an open adoption agreement as
42 provided in this section.

43 (b) A birth parent is not required to be a party to an open adoption agreement in order
44 to permit an open adoption agreement between a prospective adoptive parent and another birth
45 relative of the child.

46 (3) An open adoption agreement shall describe:

47 (a) visits, if any, that shall take place between the birth parent, other birth relative,
48 adoptive parent, and adopted child;

49 (b) the degree of supervision, if any, that shall be required during a visit between a
50 birth parent, other birth relative, and adopted child;

51 (c) the information, if any, shall be provided to a birth parent, or other birth relative,
52 about the adopted child and how often that information shall be provided;

53 (d) the grounds, if any, on which the adoptive parent may:

54 (i) decline to permit visits, described in Subsection (3)(a), between the birth parent, or
55 other birth relative, and adopted child; or

56 (ii) cease providing the information described in Subsection (3)(c) to the birth parent or
57 other birth relative; and

58 (e) whether mediation will be required before seeking enforcement of the open

59 adoption agreement in court.

60 (4) In order to be legally enforceable, an open adoption agreement shall be:

61 (a) signed by each party claiming a right or obligation in the agreement; and

62 (b) approved by the court before the finalization of the adoption of the adopted child.

63 (5) In an action seeking enforcement of an open adoption agreement, the court shall

64 consider whether:

65 (a) the parties performed the duties outlined in the open adoption agreement in good

66 faith;

67 (b) there is a reasonable alternative that fulfills the spirit of the open adoption

68 agreement without ordering mandatory compliance with the open adoption agreement; and

69 (c) enforcement of the open adoption agreement is in the best interest of the adopted

70 child.

71 (6) An open adoption agreement that has been found not to be in the best interest of the

72 adopted child shall not be enforced.

73 (7) Violation of an open adoption agreement is not grounds to set aside an adoption.

74 (8) Nothing in this section shall be construed to mean that an open adoption agreement

75 is required before an adoption may be finalized.

Legislative Review Note

as of 1-29-13 12:13 PM

Office of Legislative Research and General Counsel