

## SB0155S01 compared with SB0155

~~{deleted text}~~ shows text that was in SB0155 but was deleted in SB0155S01.

inserted text shows text that was not in SB0155 but was inserted into SB0155S01.

**DISCLAIMER:** This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

~~{OPEN ADOPTION}~~ Senator Lyle W. Hillyard proposes the following substitute bill:

### POSTADOPTION CONTACT AGREEMENTS

2013 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Lyle W. Hillyard**

House Sponsor: \_\_\_\_\_

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#### LONG TITLE

##### General Description:

This bill ~~{amends}~~ modifies Title 62A, Chapter 4a, Child and Family Services, and Title 78B, Chapter 6, Particular Proceedings, by permitting ~~{open adoption}~~ postadoption contact agreements between prospective adoptive parents and birth parents or other birth relatives of a prospective adoptive child in the custody of the Division of Child and Family Services.

##### Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ permits a prospective adoptive parent, birth parent, or other birth relative of a prospective adoptive child in the custody of the Division of Child and Family Services to enter into ~~{an open adoption}~~ a postadoption contact agreement;

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- ▶ describes the requirements for a valid postadoption contact agreement;
- ▶ requires that ~~{an open adoption}~~ a postadoption contact agreement be approved by the court ~~{before becoming legally enforceable}~~ and found to be in the best interest of the child;
- ▶ prohibits the enforcement of ~~{open adoption agreements}~~ a postadoption contact agreement that ~~{are}~~ is not in the best interest of the child; ~~{and}~~
- ▶ states that violation of ~~{an open adoption}~~ a postadoption contact agreement is not grounds to set aside an adoption ~~{~~

{ or for money damages;

- ▶ prohibits the Division of Child and Family Services from considering a prospective adoptive parent's willingness, or unwillingness, to enter into a postadoption contact agreement before placing the prospective adoptive child for adoption; and
- ▶ makes technical changes.

### Money Appropriated in this Bill:

None

### Other Special Clauses:

None

### Utah Code Sections Affected:

#### AMENDS:

62A-4a-205.6, as last amended by Laws of Utah 2008, Chapter 3

#### ENACTS:

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

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

Section 1. Section 62A-4a-205.6 is amended to read:

**62A-4a-205.6. Adoptive placement time frame -- Contracting with agencies.**

(1) With regard to a child who has a primary permanency goal of adoption or for whom a final plan for pursuing termination of parental rights has been approved in accordance with Section 78A-6-314, the division shall make intensive efforts to place the child in an adoptive home within 30 days of the earlier of:

- (a) approval of the final plan; or

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(b) establishment of the primary permanency goal.

(2) If within the time periods described in Subsection (1) the division is unable to locate a suitable adoptive home, it shall contract with licensed child placing agencies to search for an appropriate adoptive home for the child, and to place the child for adoption. The division shall comply with the requirements of Section 62A-4a-607 and contract with a variety of child placing agencies licensed under Part 6. In accordance with federal law, the division shall develop plans for the effective use of cross-jurisdictional resources to facilitate timely adoptive or permanent placements for waiting children.

(3) The division shall ensure that children who are adopted and were previously in its custody, continue to receive the medical and mental health coverage that they are entitled to under state and federal law.

(4) The division may not consider a prospective adoptive parent's willingness or unwillingness to enter a postadoption contact agreement under Section 78B-6-146 as a condition of placing a child with the prospective adoptive parent.

Section ~~{+}~~2. Section **78B-6-146** is enacted to read:

**78B-6-146.** ~~{ Open adoption}~~ **Postadoption contact** agreements.

(1) As used in this section:

(a) "~~{open adoption}~~**Postadoption contact** agreement" means a document, agreed upon prior to the finalization of an adoption of a child in the custody of the division, that outlines the relationship between an adoptive parent, birth parent, or other ~~{biological}~~**birth** relative, and an adopted child after the finalization of adoption~~{, and}~~.

(b) "~~{other}~~**Other** birth relative" means a grandparent, stepparent, sibling, stepsibling, aunt, or uncle of the prospective adoptive child.

(2) (a) Notwithstanding any other provision in this chapter, if a child in the custody of the division is placed for adoption, the prospective adoptive parent and birth parent, or other birth relative, may enter into ~~{an open adoption}~~**a postadoption contact** agreement as provided in this section.

(b) A birth parent is not required to be a party to ~~{an open adoption}~~**a postadoption contact** agreement in order to permit an open adoption agreement between a prospective adoptive parent and another birth relative of the child.

~~{~~ (3) An open adoption agreement shall describe:

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

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

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

~~\_\_\_\_\_ (d) the grounds, if any, on which the adoptive parent may:~~

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

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

~~\_\_\_\_\_ (e) whether mediation will be required before seeking enforcement of the open adoption agreement in court.~~

‡ ~~(~~4~~)3~~ In order to be legally enforceable, ~~an open adoption~~ a postadoption contact agreement shall be:

(a) approved by the court before the finalization of the adoption, with the court making a specific finding that the agreement is in the best interest of the child;

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

~~(~~b~~)c~~ ~~approved by the court before the finalization of the adoption of;~~ if the adopted child;

~~\_\_\_\_\_ (~~5~~) is 12 years old or older, approved by the child.~~

(4) A postadoption contact agreement shall:

(a) describe:

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

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

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

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

(A) decline to permit visits, described in Subsection (4)(a)(i), between the birth parent,

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or other birth relative, and adopted child; or

(B) cease providing the information described in Subsection (4)(a)(iii) to the birth parent or other birth relative; and

(b) state that following the adoption, the court shall presume that the adoptive parent's judgment about the best interest of the child is correct in any action seeking to enforce, modify, or terminate the agreement.

(5) A postadoption contact agreement may not limit the adoptive parent's ability to move out of state.

(6) A postadoption contact agreement may only be modified with the consent of the adoptive parent.

(7) In an action seeking enforcement of ~~an open adoption agreement;~~ a postadoption contact agreement:

(a) an adoptive parent's judgment about the best interest of the child is entitled to a presumption of correctness;

(b) if the party seeking to enforce the postadoption contact agreement successfully rebuts the presumption described in Subsection (7)(a), the court shall consider whether:

~~(a) i~~ the parties performed the duties outlined in the open adoption agreement in good faith;

~~(b) ii~~ there is a reasonable alternative that fulfills the spirit of the open adoption agreement without ordering mandatory compliance with the open adoption agreement; and

~~(c) iii~~ enforcement of the open adoption agreement is in the best interest of the adopted child; and

(c) the court shall order the parties to attend mediation, if the presumption in Subsection (7)(a) is successfully rebutted and mediation is in the child's best interest.

~~(6) 8~~ An open adoption agreement that has been found not to be in the best interest of the adopted child shall not be enforced.

~~(7) 9~~ Violation of an open adoption agreement is not grounds:

(a) to set aside an adoption; or

(b) for an award of money damages.

~~(8) 10~~ Nothing in this section shall be construed to mean that an open adoption agreement is required before an adoption may be finalized.

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### **Legislative Review Note**

~~as of 1-29-13 12:13 PM~~

~~Office of Legislative Research and General Counsel;~~ (11) Refusal or failure to agree to a postadoption contact agreement is not admissible in any adoption proceeding.

(12) The court that approves a postadoption contact agreement retains jurisdiction over modification, termination, and enforcement of an approved postadoption contact agreement.