

Representative Jim Nielson proposes the following substitute bill:

ADOPTION RECORDS ACCESS AMENDMENTS

2014 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jim Nielson

Senate Sponsor: Todd Weiler

LONG TITLE

General Description:

This bill modifies Title 78B, Chapter 6, Part 1, Utah Adoption Act, by amending provisions relating to disclosing information in an adoption record and by requiring the Office of Vital Records and Statistics to establish a fee relating to requesting adoption information.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ establishes procedures and requirements for the Office of Vital Records and Statistics (the office) to make the original birth certificate, for an adoption finalized before March 22, 1941, available for inspection;
- ▶ provides that copies of adoption documents, relating to an adoption finalized on or after January 1, 2015, shall be made available for inspection:
 - by an adult ~~H~~→ adoptee or a ←~~H~~ party to the adoption proceeding, unless the birth mother specifies otherwise; or
 - as otherwise provided in Title 78B, Chapter 6, Part 1, Utah Adoption Act;
- ▶ provides that a birth mother may elect to make additional information, including an updated medical history, available for inspection by ~~H~~→ an adult adoptee or ←~~H~~ a party to the adoption



26 proceeding;

27 ▶ provides for the establishment of fees relating to use of a mutual-consent, voluntary
28 adoption registry (the registry) and other requests for adoption records;

29 ▶ provides for the release of information from the registry if the birth parent dies;

30 ▶ provides for funding, automating, improving, and advertising the services described
31 in this bill;

32 ▶ requires the office to establish a fee relating to requesting adoption information and
33 describes the funding and use of the fee; and

34 ▶ makes technical changes.

35 **Money Appropriated in this Bill:**

36 This bill appropriates:

37 ▶ to the Department of Health - Adoption Records Access:

38 • from the General Fund, \$50,000, subject to intent language that the
39 appropriation shall be used for the purposes described in Subsection

40 [78B-6-144.5\(2\)](#); and

41 • from Dedicated Credits Revenue, \$26,200, subject to intent language that the
42 appropriation shall be used for the purposes described in Subsection

43 [78B-6-144.5\(2\)](#).

44 **Other Special Clauses:**

45 None

46 **Utah Code Sections Affected:**

47 AMENDS:

48 [26-2-10](#), as last amended by Laws of Utah 2008, Chapter 3

49 [26-2-15](#), as last amended by Laws of Utah 2008, Chapter 3

50 [26-2-22](#), as last amended by Laws of Utah 2012, Chapter 391

51 [63J-1-602.5](#), as last amended by Laws of Utah 2011, Chapters 208, 303, and 342

52 [78B-6-103](#), as last amended by Laws of Utah 2012, Chapter 340

53 [78B-6-115](#), as last amended by Laws of Utah 2012, Chapter 340

54 [78B-6-116](#), as renumbered and amended by Laws of Utah 2008, Chapter 3

54a **Ĥ→ 78B-6-124, as last amended by Laws of Utah 2008, Chapter 137 and renumbered**
54b **and amended by Laws of Utah 2008, Chapter 3 ←Ĥ**

55 [78B-6-141](#), as last amended by Laws of Utah 2012, Chapter 340

56 [78B-6-144](#), as last amended by Laws of Utah 2012, Chapter 340

119 ~~[(e)]~~ (2) A custodian of vital records may permit inspection of a vital record or issue a
 120 certified copy of a record or a part of a record when the custodian is satisfied that the applicant
 121 has demonstrated a direct, tangible, and legitimate interest.

122 (3) (a) For purposes of this Subsection (3), "adoption documents" is as defined in
 123 Section 78B-6-103.

124 (b) Only the Office of Vital Records and Statistics or a ~~H~~→ [Utah district] ←~~H~~
 124a court may issue
 125 adoption documents.

126 (c) The Office of Vital Records and Statistics shall issue adoption documents pursuant
 127 to Sections 78B-6-141 and 78B-6-144, and to this section, to the extent that this section does
 128 not conflict with Sections 78B-6-141 and 78B-6-144.

129 (d) A parent, or an immediate family member of a parent, who does not have legal or
 130 physical custody of or visitation or parent-time rights for a child because of the termination of
 131 parental rights to the child pursuant to Title 78A, Chapter 6, Juvenile Court Act, may not
 132 obtain adoption documents.

133 (e) The Office of Vital Records and Statistics shall make rules in accordance with Title
 134 63G, Chapter 3, Utah Administrative Rulemaking Act, related to the content of any forms and
 135 the procedures required by Subsections 78B-6-141(1) through (4), and Sections 78B-6-144 and
 136 78B-6-144.5.

137 ~~[(2)]~~ (4) A direct, tangible, and legitimate interest in a vital record is present only if:

138 (a) the request is from:

139 (i) the subject;

140 (ii) a member of the subject's immediate family;

141 (iii) the guardian of the subject;

142 (iv) a designated legal representative of the subject; or

143 (v) a person, including a child-placing agency as defined in Section 78B-6-103, with
 144 whom a child has been placed pending finalization of an adoption of the child;

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

146 (c) the request is for official purposes of a public health authority or a state, local, or
 147 federal governmental agency;

148 (d) the request is for a statistical or medical research program and prior consent has
 149 been obtained from the state registrar; or

212 (2) "Adoption" means the judicial act that:

213 (a) creates the relationship of parent and child where it did not previously exist; and

214 (b) except as provided in Subsection [78B-6-138\(2\)](#), terminates the parental rights of
215 any other person with respect to the child.

216 (3) "Adoption documents" means adoption-related documents filed with a

216a **H→ [Utah district] ←H**

217 court or with the office, including a petition for adoption, the written report described in

218 Section [78B-6-135](#), any other documents filed in connection with the petition, and a decree of

219 adoption.

220 [~~3~~] (4) "Adoption service provider" means a:

221 (a) child-placing agency; or

222 (b) licensed counselor who has at least one year of experience providing professional
223 social work services to:

224 (i) adoptive parents;

225 (ii) prospective adoptive parents; or

226 (iii) birth parents.

227 [~~4~~] (5) "Adoptive parent" means a person who has legally adopted an adoptee.

228 [~~5~~] (6) "Adult" means a person who is 18 years of age or older.

229 [~~6~~] (7) "Adult adoptee" means an adoptee who is 18 years of age or older and was
230 adopted as a minor.

231 [~~7~~] (8) "Adult sibling" means a brother or sister of the adoptee, who is 18 years of age
232 or older and whose birth mother or father is the same as that of the adoptee.

233 [~~8~~] (9) "Birth mother" means the biological mother of a child.

234 [~~9~~] (10) "Birth parent" means:

235 (a) a birth mother;

236 (b) a man whose paternity of a child is established;

237 (c) a man who:

238 (i) has been identified as the father of a child by the child's birth mother; and

239 (ii) has not denied paternity; or

240 (d) an unmarried biological father.

241 [~~10~~] (11) "Child-placing agency" means an agency licensed to place children for
242 adoption under Title 62A, Chapter 4a, Part 6, Child Placing.

367 attempts; and

368 (B) the court issues an order providing for service by publication, posting, or other
369 means.

370 (4) Proof of service of the notice on each person to whom notice is required by this
371 section shall be filed with the court before the adoption is finalized.

372 (5) (a) Any person who is served with notice of a proceeding for the adoption of an
373 adult and who wishes to intervene in the adoption shall file a motion in the adoption
374 proceeding:

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

377 (ii) that sets forth the specific relief sought; and

378 (iii) that is accompanied by a memorandum specifying the factual and legal grounds
379 upon which the motion is made.

380 (b) A person who fails to file the motion described in Subsection (5)(a) within the time
381 described in Subsection (5)(a)(i):

382 (i) waives any right to further notice of the adoption proceeding; and

383 (ii) is barred from intervening in, or bringing or maintaining any action challenging, the
384 adoption proceeding.

385 (6) Except as provided in Subsection (7), after a court enters a final decree of adoption
386 of an adult, the mature adult adoptee shall:

387 (a) serve notice of the finalization of the adoption, pursuant to the Utah Rules of Civil
388 Procedure, on each person who was a legal parent of the adult adoptee before the final decree
389 of adoption described in this Subsection (6) was entered; and

390 (b) file with the court proof of service of the notice described in Subsection (6)(a).

391 (7) A court may, based on a finding of good cause, waive the notification requirement
392 described in Subsection (6).

392a **H→ Section 8. Section 78B-6-124 is amended to read:**

392b **78B-6-124. Persons who may take consents and relinquishments.**

392c **(1) A consent or relinquishment by a birth mother or an adoptee shall be signed before:**

392d **(a) a judge of any court that has jurisdiction over adoption proceedings;**

392e **(b) subject to Subsection (6), a person appointed by the judge described in Subsection (1)(a) to**
392f **take consents or relinquishments; or**

392g **(c) subject to Subsection (6), a person who is authorized by a child-placing agency to take**
392h **consents or relinquishments, if the consent or relinquishment grants legal custody of the child to a**
392i **child-placing agency or an extra-jurisdictional child-placing agency.**

392j **(2) If the consent or relinquishment of a birth mother or adoptee is taken out of state it shall**
392k **be signed before:**

392l **(a) subject to Subsection (6), a person who is authorized by a child-placing agency to take**

392m consents or relinquishments, if the consent or relinquishment grants legal custody of the child to a
 392n child-placing agency or an extra-jurisdictional child-placing agency;

392o (b) subject to Subsection (6), a person authorized or appointed to take consents or
 392p relinquishments by a court of this state that has jurisdiction over adoption proceedings;

392q (c) a court that has jurisdiction over adoption proceedings in the state where the consent or
 392r relinquishment is taken; or

392s (d) a person authorized, under the laws of the state where the consent or relinquishment is
 392t taken, to take consents or relinquishments of a birth mother or adoptee.

392u (3) The consent or relinquishment of any other person or agency as required by Section
 392v 78B-6-120 may be signed before a Notary Public or any person authorized to take a consent or
 392w relinquishment under Subsection (1) or (2).

392x (4) (a) At the time of a birth mother's consent to adoption of a child, or relinquishment of a
 392y child for adoption, a person authorized by Subsection (1) or (2) to take consents or relinquishments
 392z shall notify the birth mother that ~~§~~ :

392z1 (i) ~~§~~ adoption documents shall be made available for inspection and
 392aa copying in accordance with Subsection 78B-6-141(3), unless the birth mother declines to permit
 392ab identifying information to be made available for inspection and copying ~~§~~ ; and

392ab1 (ii) the birth mother may decline to permit identifying information to be made available for
 392ab2 inspection and copying ~~§~~ .

392ac (b) ~~§~~ [H] After determining that ~~§~~ the birth mother declines to permit identifying
 392ad information to be made available for
 392ad inspection and copying, the person authorized by Subsection (1) or (2) to take consents or
 392ae relinquishments shall assist the birth mother with filing a written document that states the birth
 392af mother's refusal in accordance with Subsection 78B-6-141(3).

392af1 ~~H~~ (c) This Subsection (4) does not apply to a parent or a parent's designee who safely
 392af2 relinquishes a newborn child pursuant to Section 62A-4a-802. ~~H~~

392ag [(4)] (5) A person, authorized by Subsection (1) or (2) to take consents or relinquishments,
 392ah shall certify to the best of his information and belief that the person executing the consent or
 392ai relinquishment has read and understands the consent or relinquishment and has signed it freely and
 392aj voluntarily.

392ak [(5)] (6) A person executing a consent or relinquishment is entitled to receive a copy of the
 392al consent or relinquishment.

392am [(6)] (7) A signature described in Subsection (1)(b), (1)(c), (2)(a), or (2)(b), shall be:

392an (a) notarized; or

392ao (b) witnessed by two individuals who are not members of the birth mother's or the signatory's
 392ap immediate family.

392aq ~~§~~ (8) (a) At the beginning of the adoption process, a person authorized by a child-placing
 392ar agency to take consents or relinquishments under Subsection (1)(c) or (2)(a) shall notify the
 392as birth mother that:~~§~~

392at §→(i) adoption documents shall be made available for inspection and copying in
 392au accordance with Subsection 78B-6-141(3), unless the birth mother declines to permit
 392av identifying information to be made available for inspection and copying; and (ii) the birth
 392aw mother may decline to permit identifying information to be made available for inspection and
 392ax copying.

392ay (b) After determining that the birth mother declines to permit identifying information
 392az to be made available for inspection and copying, the person authorized by a child-placing
 392ba agency to take consents or relinquishments under Subsection (1)(c) or (2)(a) shall assist the
 392bb birth mother with filing a written document that states the birth mother's refusal in
 392bc accordance with Subsection 78B-6-141(3). ←§

393 [Section 8.] Section 9. ←~~§~~ Section 78B-6-141 is amended to read:

394 78B-6-141. Petition, report, and documents sealed -- Exceptions.

395 [(1) A petition for adoption, the written report described in Section 78B-6-135, and any
 396 other documents filed in connection with the petition are sealed.]

397 (1) For an adoption finalized before March 22, 1941, the office shall make the

398 information on the birth certificate, if any exists, available to an adoptee or an adoptee's
 399 designated legal representative, for inspection and copying pursuant to Subsections 26-2-22(1),
 400 (3), and (6).

401 (2) Except as provided in Subsection (3), for an adoption finalized on or after March
 402 22, 1941, the adoption documents are sealed, and the office may make the adoption documents
 403 available for inspection and copying only in accordance with Subsection (4) or Section
 404 78B-6-144.

405 (3) (a) Except as provided in Subsection (3)(b), for an adoption finalized on or after
 406 January 1, 2015, the office shall make the adoption documents available for inspection and
 407 copying to ~~H~~→ **an adult adoptee or** ←~~H~~ a party to the adoption proceeding if the
 407a ~~H~~→ **adult adoptee or** ←~~H~~ party who requests the documents ~~H~~→ [:

408 —— (i) **is an adult at the time of the request; and**

409 —— (ii) ←~~H~~ makes the request on a form designated by the office.

410 (b) Subject to ~~H~~→ [Subsections] Subsection ←~~H~~ (3)(d) ~~H~~→ [and (e)] ←~~H~~ , for an
 410a adoption finalized on or after January

411 1, 2015, a birth mother may, at or after the time of finalization, file a written document with the
 412 office stating that she ~~H~~→ [refuses] declines ←~~H~~ to permit identifying information about the
 412a birth mother to be
 413 made available for inspection or copying.

414 (c) Subject to ~~H~~→ [Subsections] Subsection ←~~H~~ (3)(d) ~~H~~→ [and (e)] ←~~H~~ , if a birth
 414a mother elects, under Subsection
 415 (3)(b), to ~~H~~→ [refuse] decline ←~~H~~ to permit identifying information about the birth mother
 415a to be made available
 416 for inspection or copying, the office shall, before providing copies of the adoption documents
 417 to an individual other than the birth mother, redact all identifying information about the birth
 418 mother.

419 (d) ~~H~~→ [Subject to Subsection (3)(e), a] A ←~~H~~ birth mother may, at any time, file a written
 420 document with the office to:

421 (i) change the election described in Subsection (3)(b); or

422 (ii) elect to make other information about herself, including an updated medical
 423 history, available for inspection and copying by ~~H~~→ **an adult adoptee or** ←~~H~~ a party to the
 423a adoption proceeding ~~H~~→ [if the party
 424 who requests the information is an adult at the time of the request] ←~~H~~ .

425 ~~H~~→ [(e) (i) **If the birth mother is a minor at the time of finalization, only the birth mother's**
 426 **parent or legal guardian may consent to and sign the birth mother's written refusal under**
 427 **Subsection (3)(b):**

428 —— (ii) **If the birth mother is a minor at the time she decides to change the election or make**

429 ~~other information about herself available under Subsection (3)(d), only the birth mother's~~
 430 ~~parent or legal guardian may consent to and sign the birth mother's written election under~~
 431 ~~Subsection (3)(d).]~~ ←H

432 ~~[(2) The]~~ (4) Except as otherwise provided in this section, the adoption documents
 433 ~~[described in Subsection (1)]~~ may only be open to inspection and copying as follows:

434 (a) in accordance with Subsection ~~[(3)]~~ (5)(a), by a party to the adoption proceeding:

435 (i) while the proceeding is pending; or

436 (ii) within six months after the day on which the adoption decree is entered;

437 (b) subject to Subsection ~~[(3)]~~ (5)(b), a court enters an order permitting access to the
 438 documents by a person who has appealed the denial of that person's motion to intervene;

439 (c) upon order of the court expressly permitting inspection or copying, after good cause
 440 has been shown;

441 (d) as provided under Section 78B-6-144;

442 (e) those records shall become public on the one hundredth anniversary of the date the
 443 final decree of adoption was entered; or

444 (f) if the adoptee is an adult at the time the final decree of adoption is entered, the
 445 adoption documents ~~[described in this section]~~ are open to inspection and copying without a
 446 court order by the mature adoptee or a parent who adopted the mature adoptee, unless the final
 447 decree of adoption is entered by the juvenile court under Subsection 78B-6-115(3)(b).

448 ~~[(3)]~~ (5) (a) A person who files a motion to intervene in an adoption proceeding:

449 (i) is not a party to the adoption proceeding, unless the motion to intervene is granted;
 450 and

451 (ii) may not be granted access to the adoption documents ~~[described in Subsection (1)]~~,
 452 unless the motion to intervene is granted.

453 (b) An order described in Subsection ~~[(2)]~~ (4)(b) shall:

454 (i) prohibit the person described in Subsection ~~[(2)]~~ (4)(b) from inspecting ~~[a document~~
 455 ~~described in Subsection (1) that contains]~~ the adoption documents that contain identifying
 456 information ~~[of]~~ regarding the adoptive or prospective adoptive parent; and

457 (ii) permit the person described in Subsection ~~[(3)]~~ (4)(b)~~[(i)]~~ to review a copy of ~~[a~~
 458 ~~document described in Subsection (3)(b)(i)]~~ the adoption documents after the identifying
 459 information ~~[described in Subsection (3)(b)(i)]~~ is redacted from the ~~[document]~~ documents.

460 ~~Ĥ~~→ [Section 9:] Section 10. ←Ĥ Section 78B-6-144 is amended to read:

461 **78B-6-144. Mutual-consent, voluntary adoption registry -- Procedures -- Fees.**

462 (1) The office shall establish a mutual-consent, voluntary adoption registry.

463 (a) [~~Adult adoptees and birth parents of adult adoptees~~] An adult adoptee or a birth
464 parent of an adult adoptee, upon presentation of positive identification, may request identifying
465 information from the office, in the form established by the office. A court of competent
466 jurisdiction or a child-placing agency may accept that request from the adult adoptee or birth
467 parent, in the form provided by the office, and transfer that request to the office. The adult
468 adoptee or birth parent is responsible for notifying the office of any change in information
469 contained in the request.

470 (b) [~~The~~] Except as otherwise provided in this part, the office may only release
471 identifying information to an adult adoptee or birth parent when it receives requests from both
472 the adoptee and the adoptee's birth parent.

473 (c) After matching the request of an adult adoptee with that of at least one of the
474 adoptee's birth parents, the office shall notify both the adult adoptee and the birth parent that
475 the requests have been matched, and disclose the identifying information to those parties.
476 However, if that adult adoptee has a sibling of the same birth parent who is under the age of 18
477 years, and who was raised in the same family setting as the adult adoptee, the office [~~shall~~] may
478 not disclose the requested identifying information to that adult adoptee or the adoptee's birth
479 parent.

480 (2) (a) Adult adoptees and adult siblings of adult adoptees, upon presentation of
481 positive identification, may request identifying information from the office, in the form
482 established by the office. A court of competent jurisdiction or a child-placing agency may
483 accept that request from the adult adoptee or adult sibling, in the form provided by the office,
484 and transfer that request to the office. The adult adoptee or adult sibling is responsible for
485 notifying the office of any change in information contained in the request.

486 (b) The office may only release identifying information to an adult adoptee or adult
487 sibling when it receives requests from both the adult adoptee and the adult adoptee's adult
488 sibling.

489 (c) After matching the request of an adult adoptee with that of the adoptee's adult
490 sibling, if the office [~~has been provided with~~] determines that the office has sufficient

522 **H→ [Section 10:] Section 11. ←H** Section 78B-6-144.5 is enacted to read:

523 **78B-6-144.5. Adoption records fees.**

524 (1) (a) The office shall, in accordance with Section 63J-1-504, establish a fee to be paid
 525 by an individual who requests information or other services under Section 78B-6-141 or
 526 78B-6-144 to cover the costs related to providing the information or services, including
 527 improvements described in Subsection (2).

528 (b) The office may accept donations or grants from public or private entities to cover
 529 the costs related to providing the information or services, including improvements described in
 530 Subsection (2).

531 (2) Fees and donations collected in Subsection (1) shall be deposited into the General
 532 Fund as dedicated credits and may be used only to:

533 (a) fund, automate, and improve the provision of services described in Sections
 534 78B-6-141 and 78B-6-144;

535 (b) implement means of maximizing potential matches for the services described in
 536 Sections 78B-6-141 and 78B-6-144, including the use of broad search terms and methods; and

537 (c) advertise the services provided by the mutual-consent, voluntary adoption registry
 538 pursuant to Section 78B-6-144.

539 **H→ [Section 11:] Section 12. ←H Appropriation.**

540 Under the terms and conditions of Title 63J, Chapter 1, Budgetary Procedures Act, for
 541 the fiscal year beginning July 1, 2014, and ending June 30, 2015, the following sums of money
 542 are appropriated from resources not otherwise appropriated, or reduced from amounts
 543 previously appropriated, out of the funds or accounts indicated. These sums of money are in
 544 addition to any amounts previously appropriated for fiscal year 2015.

545 <u>To Department of Health, Adoption Records Access</u>	
546 <u>From General Fund</u>	<u>\$50,000</u>
547 <u>From Dedicated Credits Revenue</u>	<u>\$26,200</u>
548 <u>Schedule of Programs:</u>	
549 <u>Adoption Records Access</u>	<u>\$76,200</u>

550 The Legislature intends that appropriations provided under this section be used by the
 551 office for the purposes described in Subsection 78B-6-144.5(2). Under Section 63J-1-603, the
 552 Legislature intends that appropriations provided under this section not lapse at the close of