

**Senator Todd Weiler** proposes the following substitute bill:

**ADOPTION ACT AMENDMENTS**

2014 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Todd Weiler**

House Sponsor: Brad R. Wilson

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**LONG TITLE**

**General Description:**

This bill amends provisions of Title 78B, Chapter 6, Part 1, Utah Adoption Act, relating to the rights and obligations of individuals in relation to the adoption of a child.

**Highlighted Provisions:**

This bill:

- ▶ amends the definition of a "qualifying circumstance";
- ▶ modifies provisions relating to the rights and obligations of an unmarried biological father;
- ▶ extends, from 20 days to 30 days, the period of time during which an unmarried biological father is required to take certain action in relation to a child; and
- ▶ provides that a birth mother may not consent to the adoption of her child or relinquish her child for adoption, if the child is six months of age or less, unless:
  - at any point during the time period beginning at the conception of the child and ending at the time the mother executes a consent to adoption or relinquishment of the child for adoption, the birth mother or one of the adoptive parents resided in the state no less than 90 total days on a permanent or temporary basis; or
  - the birth mother serves the unmarried biological father with at least 30 days written notice that she intends to consent to the adoption or relinquishment of



26 the child for adoption, in Utah.

27 **Money Appropriated in this Bill:**

28 None

29 **Other Special Clauses:**

30 None

31 **Utah Code Sections Affected:**

32 AMENDS:

33 **78B-6-110**, as last amended by Laws of Utah 2013, Chapter 458

34 **78B-6-122**, as last amended by Laws of Utah 2013, Chapter 474

35 **78B-6-125**, as renumbered and amended by Laws of Utah 2008, Chapter 3



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

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

39 **78B-6-110. Notice of adoption proceedings.**

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

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

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

45 (b) An unmarried biological father is entitled to actual notice of a birth or an adoption  
46 proceeding with regard to his child only as provided in this section or Section **78B-6-125**.

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

48 (a) any person or agency whose consent or relinquishment is required under Section  
49 **78B-6-120** or **78B-6-121**, unless that right has been terminated by:

50 (i) waiver;

51 (ii) relinquishment;

52 (iii) actual consent, as described in Subsection (12); or

53 (iv) judicial action;

54 (b) any person who has initiated a paternity proceeding and filed notice of that action  
55 with the state registrar of vital statistics within the Department of Health, in accordance with  
56 Subsection (3);

- 57 (c) any legally appointed custodian or guardian of the adoptee;
- 58 (d) the petitioner's spouse, if any, only if the petitioner's spouse has not joined in the  
59 petition;
- 60 (e) the adoptee's spouse, if any;
- 61 (f) any person who, prior to the time the mother executes her consent for adoption or  
62 relinquishes the child for adoption, is recorded on the birth certificate as the child's father, with  
63 the knowledge and consent of the mother;
- 64 (g) a person who is:
  - 65 (i) openly living in the same household with the child at the time the consent is  
66 executed or relinquishment made; and
  - 67 (ii) holding himself out to be the child's father; and
- 68 (h) any person who is married to the child's mother at the time she executes her consent  
69 to the adoption or relinquishes the child for adoption, unless the court finds that the mother's  
70 spouse is not the child's father under Section [78B-15-607](#).
- 71 (3) (a) In order to preserve any right to notice, an unmarried biological father shall,  
72 consistent with Subsection (3)(d):
  - 73 (i) initiate proceedings in a district court of Utah to establish paternity under Title 78B,  
74 Chapter 15, Utah Uniform Parentage Act; and
  - 75 (ii) file a notice of commencement of the proceedings described in Subsection (3)(a)(i)  
76 with the office of vital statistics within the Department of 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) When the state registrar of vital statistics receives a completed form, the registrar  
84 shall:
  - 85 (i) record the date and time the form was received; and
  - 86 (ii) immediately enter the information provided by the unmarried biological father in  
87 the confidential registry established by Subsection [78B-6-121\(3\)\(c\)](#).

88 (e) The action and notice described in Subsection (3)(a):  
89 (i) may be filed before or after the child's birth; and  
90 (ii) shall be filed prior to the mother's:  
91 (A) execution of consent to adoption of the child; or  
92 (B) relinquishment of the child for adoption.  
93 (4) Notice provided in accordance with this section need not disclose the name of the  
94 mother of the child who is the subject of an adoption proceeding.  
95 (5) The notice required by this section:  
96 (a) may be served at any time after the petition for adoption is filed, but may not be  
97 served on a birth mother before she has given birth to the child who is the subject of the  
98 petition for adoption;  
99 (b) shall be served at least 30 days prior to the final dispositional hearing;  
100 (c) shall specifically state that the person served shall fulfill the requirements of  
101 Subsection (6)(a), within 30 days after the day on which the person receives service if the  
102 person intends to intervene in or contest the adoption;  
103 (d) shall state the consequences, described in Subsection (6)(b), for failure of a person  
104 to file a motion for relief within 30 days after the day on which the person is served with notice  
105 of an adoption proceeding;  
106 (e) is not required to include, nor be accompanied by, a summons or a copy of the  
107 petition for adoption; and  
108 (f) shall state where the person may obtain a copy of the petition for adoption.  
109 (6) (a) A person who has been served with notice of an adoption proceeding and who  
110 wishes to contest the adoption shall file a motion to intervene in the adoption proceeding:  
111 (i) within 30 days after the day on which the person was served with notice of the  
112 adoption proceeding;  
113 (ii) setting forth specific relief sought; and  
114 (iii) accompanied by a memorandum specifying the factual and legal grounds upon  
115 which the motion is based.  
116 (b) A person who fails to fully and strictly comply with all of the requirements  
117 described in Subsection (6)(a) within 30 days after the day on which the person was served  
118 with notice of the adoption proceeding:

119 (i) waives any right to further notice in connection with the adoption;  
120 (ii) forfeits all rights in relation to the adoptee; and  
121 (iii) is barred from thereafter bringing or maintaining any action to assert any interest in  
122 the adoptee.

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

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

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

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

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

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

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

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

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

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

147 (11) Except as to those persons whose consent to an adoption is required under Section  
148 78B-6-120 or 78B-6-121, the sole purpose of notice under this section is to enable the person  
149 served to:

150 (a) intervene in the adoption; and

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

152 (12) In order to be excused from the requirement to provide notice as described in  
153 Subsection (2)(a) on the grounds that the person has provided consent to the adoption  
154 proceeding under Subsection (2)(a)(iii), the consent may not be implied consent, as described  
155 in Section [78B-6-120.1](#).

156 Section 2. Section **78B-6-122** is amended to read:

157 **78B-6-122. Qualifying circumstance.**

158 (1) (a) For purposes of this section, "qualifying circumstance" means that, at any point  
159 during the time period beginning at the conception of the child and ending at the time the  
160 mother executed a consent to adoption or relinquishment of the child for adoption:

161 (i) the child or the child's mother resided in the state no less than 90 total days, as  
162 described in Subsection (1)(b), on a permanent [basis,] or [a] temporary basis [of no less than  
163 30 consecutive days, in the state]; or

164 (ii) two or more of the following circumstances existed:

165 [(ii)] (A) the mother intended to give birth to the child in the state;

166 [(iii)] (B) the child was born in the state; or

167 [(iv)] (C) the mother intended to execute a consent to adoption or relinquishment of the  
168 child for adoption[;-(A)] in the state[;] or [(B)] under the laws of the state.

169 (b) In determining, under Subsection (1)(a)(i), whether the 90-day requirement is  
170 satisfied, the following apply:

171 (i) the 90 days are not required to be consecutive;

172 (ii) no absence from the state may be for more than seven consecutive days;

173 (iii) any day on which the individual is absent from the state does not count toward the  
174 total 90-day period; and

175 (iv) the 90-day period begins and ends during a period that is no more than 120  
176 consecutive days.

177 [(b)] (c) For purposes of Subsection (1)[(e)](d)(i)(C) only, when determining whether  
178 an unmarried biological father has demonstrated a full commitment to his parental  
179 responsibilities, a court shall consider the totality of the circumstances, including, if applicable:

180 (i) efforts he has taken to discover the location of the child or the child's mother;

181 (ii) whether he has expressed or demonstrated an interest in taking responsibility for  
182 the child;

183 (iii) whether, and to what extent, he has developed, or attempted to develop, a  
184 relationship with the child;

185 (iv) whether he offered to provide and, if the offer was accepted, did provide, financial  
186 support for the child or the child's mother;

187 (v) whether, and to what extent, he has communicated, or attempted to communicate,  
188 with the child or the child's mother;

189 (vi) whether he has filed legal proceedings to establish his paternity of, and take  
190 responsibility for, the child;

191 (vii) whether he has filed a notice with a public official or agency relating to:

192 (A) his paternity of the child; or

193 (B) legal proceedings to establish his paternity of the child; or

194 (viii) other evidence that demonstrates that he has demonstrated a full commitment to  
195 his parental responsibilities.

196 ~~(c)~~ (d) Notwithstanding the provisions of Section 78B-6-121, the consent of an  
197 unmarried biological father is required with respect to an adoptee who is under the age of 18 if:

198 (i) (A) the unmarried biological father did not know, and through the exercise of  
199 reasonable diligence could not have known, before the time the mother executed a consent to  
200 adoption or relinquishment of the child for adoption, that a qualifying circumstance existed;

201 (B) before the mother executed a consent to adoption or relinquishment of the child for  
202 adoption, the unmarried biological father fully complied with the requirements to establish  
203 parental rights in the child, and to preserve the right to notice of a proceeding in connection  
204 with the adoption of the child, imposed by:

205 (I) the last state where the unmarried biological father knew, or through the exercise of  
206 reasonable diligence should have known, that the mother resided in before the mother executed  
207 the consent to adoption or relinquishment of the child for adoption; or

208 (II) the state where the child was conceived; and

209 (C) the unmarried biological father has demonstrated, based on the totality of the  
210 circumstances, a full commitment to his parental responsibilities, as described in Subsection

211 (1)~~(b)~~(c); or

212 (ii) (A) the unmarried biological father knew, or through the exercise of reasonable  
213 diligence should have known, before the time the mother executed a consent to adoption or  
214 relinquishment of the child for adoption, that a qualifying circumstance existed; and

215 (B) the unmarried biological father complied with the requirements of Section  
216 78B-6-121 before the later of:

217 (I) [20] 30 days after the day that the unmarried biological father knew, or through the  
218 exercise of reasonable diligence should have known, that a qualifying circumstance existed; or

219 (II) the time that the mother executed a consent to adoption or relinquishment of the  
220 child for adoption.

221 (2) An unmarried biological father who does not fully and strictly comply with the  
222 requirements of Section 78B-6-121 and this section is considered to have waived and  
223 surrendered any right in relation to the child, including the right to:

- 224 (a) notice of any judicial proceeding in connection with the adoption of the child; and
- 225 (b) consent, or refuse to consent, to the adoption of the child.

226 Section 3. Section 78B-6-125 is amended to read:

227 **78B-6-125. Birth mother's consent.**

228 (1) A birth mother may not consent to the adoption of her child or relinquish ~~[control~~  
229 ~~or custody of]~~ her child for adoption until at least 24 hours after the birth of her child.

230 (2) The consent or relinquishment of any other person as required by Sections  
231 78B-6-120 and 78B-6-121 may be executed at any time, including ~~[prior to]~~ before the birth of  
232 the child.

233 (3) Notwithstanding any provision of this section or chapter, a birth mother may not  
234 consent to the adoption of her child or relinquish her child for adoption, if the child is six  
235 months of age or less, unless:

236 (a) at any point during the time period beginning at the conception of the child and  
237 ending at the time the mother executes a consent to adoption or relinquishment of the child for  
238 adoption, the birth mother or one of the adoptive parents resided in the state no less than 90  
239 total days, as described in Subsection (4), on a permanent or temporary basis; or

240 (b) the birth mother serves the unmarried biological father with at least 30 days written  
241 notice that she intends to consent to the adoption of the child, or relinquishment of the child for  
242 adoption, in Utah.



243           (4) In determining, under Subsection (3)(a), whether the 90-day requirement is  
244 satisfied, the following apply:  
245           (a) the 90 days are not required to be consecutive;  
246           (b) no absence from the state may be for more than seven consecutive days;  
247           (c) any day on which the individual is absent from the state does not count toward the  
248 total 90-day period; and  
249           (d) the 90-day period begins and ends during a period that is no more than 120  
250 consecutive days.