

SB0101S02 compared with SB0101

~~deleted text~~ shows text that was in SB0101 but was deleted in SB0101S02.

inserted text shows text that was not in SB0101 but was inserted into SB0101S02.

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Senator Todd Weiler proposes the following substitute bill:

ADOPTION AMENDMENTS

2015 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Todd Weiler

House Sponsor: _____

LONG TITLE

General Description:

This bill amends the Utah Adoption Act.

Highlighted Provisions:

This bill:

- ▶ ~~adds a requirement for the consent of~~requires an unmarried biological father to file a petition in district court for an order establishing temporary child support before the unmarried biological father may consent to the adoption of a child who is six months of age or less; and
- ▶ creates a process for the juvenile court to consider multiple petitions for adoption.

Money Appropriated in this Bill:

None

Other Special Clauses:

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None

Utah Code Sections Affected:

AMENDS:

78B-6-121, as last amended by Laws of Utah 2013, Chapters 278 and 458

78B-6-132, as last amended by Laws of Utah 2012, Chapter 281

78B-6-133, as last amended by Laws of Utah 2010, Chapter 237

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

Section 1. Section **78B-6-121** is amended to read:

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

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

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

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

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

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

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

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

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

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

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

and

(ii) openly held himself out to be the father of the child during the six-month period

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described in Subsection (1)(b)(i)(A).

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

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

(3) Except as provided in Subsections (6) and 78B-6-122(1), and subject to Subsection (5), with regard to a child who is six months of age or less at the time the child is placed with prospective adoptive parents, consent of an unmarried biological father is not required unless, prior to the time the mother executes her consent for adoption or relinquishes the child for adoption, the unmarried biological father:

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

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

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

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

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

(c) ~~within 14 days after the day on which the child is born,~~ files a petition in a district court of Utah for a temporary order to establish child support in accordance with Title 78B, Chapter 12, Utah Child Support Act;

~~(d)~~ (d) consistent with Subsection (4), files notice of the commencement of paternity proceedings, described in Subsection (3)(a), with the state registrar of vital statistics within the Department of Health, in a confidential registry established by the department for that purpose; and

~~(e)~~ (e) offered to pay and paid, during the pregnancy and after the child's birth, a fair and reasonable amount of the expenses incurred in connection with the mother's pregnancy and the child's birth, in accordance with his financial ability, unless:

(i) he did not have actual knowledge of the pregnancy;

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(ii) he was prevented from paying the expenses by the person or authorized agency having lawful custody of the child; or

(iii) the mother [~~refuses~~] refused to accept the unmarried biological father's offer to pay the expenses described in this Subsection (3)[~~(d)~~](e).

(4) The notice described in Subsection (3)[~~(c)~~](d) is considered filed when received by the state registrar of vital statistics.

(5) Unless his ability to assert the right to consent has been lost for failure to comply with Section 78B-6-110.1, or lost under another provision of Utah law, an unmarried biological father shall have at least one business day after the child's birth to fully and strictly comply with the requirements of Subsection (3).

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

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

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

(ii) the unmarried biological father fails to comply with Subsection (3) within 10 business days after the day that notice of the rescission described in Subsection (6)(b)(i) is mailed by the Office of Vital Records within the Department of Health as provided in Section 78B-15-306; or

(c) the unmarried biological father is notified under Section 78B-6-110.1 and fails to preserve his rights in accordance with the requirements of that section.

(7) Unless the adoptee is conceived or born within a marriage, the petitioner in an adoption proceeding shall, prior to entrance of a final decree of adoption, file with the court a certificate from the state registrar of vital statistics within the Department of Health, stating:

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

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

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

Section 2. Section **78B-6-132** is amended to read:

78B-6-132. Adoption by married couple.

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~~[(1) In assessing the best interest of a child in the custody of the Division of Child and Family Services whose foster parents have petitioned for adoption, the court shall give special consideration to the relationship of the child with his foster parents, if the child has been in that home for a period of six months or longer.]~~

~~[(2)]~~ Nothing in this section shall be construed as requiring an adoption that would be contrary to the public policy of placing an adoptable child with a married couple whenever possible.

Section 3. Section **78B-6-133** is amended to read:

78B-6-133. Contested adoptions -- Rights of parties -- Determination of custody.

(1) If a person whose consent for an adoption is required pursuant to Subsection 78B-6-120(1)~~[(b), (c), (d), (e), or (f)]~~ refused to consent, the court shall determine whether proper grounds exist for the termination of that person's rights pursuant to the provisions of this chapter or Title 78A, Chapter 6, Part 5, Termination of Parental Rights Act.

(2) (a) If there are proper grounds to terminate the person's parental rights, the court shall order that the person's rights be terminated.

(b) If there are not proper grounds to terminate the person's parental rights, the court shall:

(i) dismiss the adoption petition;

(ii) conduct an evidentiary hearing to determine who should have custody of the child;

and

(iii) award custody of the child in accordance with the child's best interest.

(3) Evidence considered at the custody hearing may include:

(a) evidence of psychological or emotional bonds that the child has formed with a third person, including the prospective adoptive parent; and

(b) any detriment that a change in custody may cause the child.

(4) If the court dismisses the adoption petition, the fact that a person relinquished a child for adoption or consented to the adoption may not be considered as evidence in a custody proceeding described in this section, or in any subsequent custody proceeding, that it is not in the child's best interest for custody to be awarded to such person or that:

(a) the person is unfit or incompetent to be a parent;

(b) the person has neglected or abandoned the child;

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(c) the person is not interested in having custody of the child; or

(d) the person has forfeited the person's parental presumption.

(5) Any custody order entered pursuant to this section may also:

(a) include provisions for:

(i) parent-time; or

(ii) visitation by an interested third party; and

(b) provide for the financial support of the child.

(6) (a) If a person or entity whose consent is required for an adoption under Subsection 78B-6-120(1)[~~(a) or (g)~~] refuses to consent, the court shall proceed with an evidentiary hearing and award custody as set forth in Subsection (2).

(b) The court may also finalize the adoption if doing so is in the best interest of the child.

(7) (a) A person may not contest an adoption after the final decree of adoption is entered, if that person:

(i) was a party to the adoption proceeding;

(ii) was served with notice of the adoption proceeding; or

(iii) executed a consent to the adoption or relinquishment for adoption.

(b) No person may contest an adoption after one year from the day on which the final decree of adoption is entered.

(c) The limitations on contesting an adoption action, described in this Subsection (7), apply to all attempts to contest an adoption:

(i) regardless of whether the adoption is contested directly or collaterally; and

(ii) regardless of the basis for contesting the adoption, including claims of fraud, duress, undue influence, lack of capacity or competency, mistake of law or fact, or lack of jurisdiction.

(d) The limitations on contesting an adoption action, described in this Subsection (7), do not prohibit a timely appeal of:

(i) a final decree of adoption; or

(ii) a decision in an action challenging an adoption, if the action was brought within the time limitations described in Subsections (7)(a) and (b).

(8) A juvenile court that has jurisdiction over a child for whom more than one petition

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for adoption is filed shall grant a hearing only under the following circumstances:

(a) to a petitioner:

(~~f~~a)i with whom the child is placed;

(~~f~~b)ii who has custody or guardianship of the child; or

(~~f~~c)iii who has filed a written statement with the juvenile court within 120 days after the day on which the shelter hearing is held:

(~~f~~i)A requesting immediate placement of the child with the petitioner; and

(~~f~~ii)B expressing the petitioner's intention of adopting the child; or

(~~f~~d)b if the child:

(i) has been in the current placement for less than 90 days before the day on which the petitioner files the petition for adoption; or

(~~f~~e)ii ~~{ if the child }~~ is placed with or is in the custody or guardianship of an individual who previously informed the division or the juvenile court that the individual is unwilling or unable to adopt the child.

(9) ~~{ A juvenile court that has jurisdiction over a child for whom more than one petition for adoption is filed shall:~~

~~— (a) dismiss the petition of the petitioner who is not entitled to a hearing under Subsection (8); and~~

~~— (b) deny that petitioner the right to notice of, appearance in, or intervention in proceedings of any other petitions for adoption.~~

(10) ~~{(a) If {a juvenile}the court grants a hearing on more than one petition for adoption, {it shall consider each petition for adoption separately on its own merits and shall not allow discovery between the petitioners.~~

~~— (b) There;~~ there is a rebuttable presumption that it is in the best interest of the child to be placed for adoption with a petitioner with whom the child has continuously resided for six months or more before the day on which the petition was filed, if that petitioner has fulfilled the other requirements in Title 78B, Chapter 6, Part 1, Utah Adoption Act.

(~~f~~e)b The juvenile court may consider other factors relevant to the best interest of the child to determine whether the presumption is rebutted.

(~~f~~ii)10 Nothing in this section shall be construed to prevent the division or the child's guardian ad litem from appearing or participating in any proceeding for a petition for

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adoption.

~~(12)~~11) Neither the juvenile court nor the division is obligated to inform a petitioner of the petitioner's rights or duties under this section.

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Legislative Review Note

~~as of 1-26-15 11:01 AM~~

~~Office of Legislative Research and General Counsel~~