

Part 1 Utah Adoption Act

78B-6-101 Title.

This part is known as the "Utah Adoption Act."

Enacted by Chapter 3, 2008 General Session

78B-6-102 Legislative intent and findings -- Best interest of child -- Interests of each party.

- (1) It is the intent and desire of the Legislature that in every adoption the best interest of the child should govern and be of foremost concern in the court's determination.
- (2) The court shall make a specific finding regarding the best interest of the child, taking into consideration information provided to the court pursuant to the requirements of this chapter relating to the health, safety, and welfare of the child and the moral climate of the potential adoptive placement.
- (3) The Legislature finds that the rights and interests of all parties affected by an adoption proceeding must be considered and balanced in determining what constitutional protections and processes are necessary and appropriate.
- (4) The Legislature specifically finds that it is not in a child's best interest to be adopted by a person or persons who are cohabiting in a relationship that is not a legally valid and binding marriage under the laws of this state. Nothing in this section limits or prohibits the court's placement of a child with a single adult who is not cohabiting or a person who is a relative of the child or a recognized placement under the Indian Child Welfare Act, 25 U.S.C. Sec. 1901 et seq.
- (5) The Legislature also finds that:
 - (a) the state has a compelling interest in providing stable and permanent homes for adoptive children in a prompt manner, in preventing the disruption of adoptive placements, and in holding parents accountable for meeting the needs of children;
 - (b) an unmarried mother, faced with the responsibility of making crucial decisions about the future of a newborn child, is entitled to privacy, and has the right to make timely and appropriate decisions regarding her future and the future of the child, and is entitled to assurance regarding the permanence of an adoptive placement;
 - (c) adoptive children have a right to permanence and stability in adoptive placements;
 - (d) adoptive parents have a constitutionally protected liberty and privacy interest in retaining custody of an adopted child;
 - (e) an unmarried biological father has an inchoate interest that acquires constitutional protection only when he demonstrates a timely and full commitment to the responsibilities of parenthood, both during pregnancy and upon the child's birth; and
 - (f) the state has a compelling interest in requiring unmarried biological fathers to demonstrate commitment by providing appropriate medical care and financial support and by establishing legal paternity, in accordance with the requirements of this chapter.
- (6)
 - (a) In enacting this chapter, the Legislature has prescribed the conditions for determining whether an unmarried biological father's action is sufficiently prompt and substantial to require constitutional protection.
 - (b) If an unmarried biological father fails to grasp the opportunities to establish a relationship with his child that are available to him, his biological parental interest may be lost entirely, or

greatly diminished in constitutional significance by his failure to timely exercise it, or by his failure to strictly comply with the available legal steps to substantiate it.

- (c) A certain degree of finality is necessary in order to facilitate the state's compelling interest. The Legislature finds that the interests of the state, the mother, the child, and the adoptive parents described in this section outweigh the interest of an unmarried biological father who does not timely grasp the opportunity to establish and demonstrate a relationship with his child in accordance with the requirements of this chapter.
- (d) The Legislature finds no practical way to remove all risk of fraud or misrepresentation in adoption proceedings, and has provided a method for absolute protection of an unmarried biological father's rights by compliance with the provisions of this chapter. In balancing the rights and interests of the state, and of all parties affected by fraud, specifically the child, the adoptive parents, and the unmarried biological father, the Legislature has determined that the unmarried biological father is in the best position to prevent or ameliorate the effects of fraud and that, therefore, the burden of fraud shall be borne by him.
- (e) An unmarried biological father has the primary responsibility to protect his rights.
- (f) An unmarried biological father is presumed to know that the child may be adopted without his consent unless he strictly complies with the provisions of this chapter, manifests a prompt and full commitment to his parental responsibilities, and establishes paternity.
- (7) The Legislature finds that an unmarried mother has a right of privacy with regard to her pregnancy and adoption plan, and therefore has no legal obligation to disclose the identity of an unmarried biological father prior to or during an adoption proceeding, and has no obligation to volunteer information to the court with respect to the father.

Amended by Chapter 335, 2019 General Session

78B-6-103 Definitions.

As used in this part:

- (1) "Adoptee" means a person who:
 - (a) is the subject of an adoption proceeding; or
 - (b) has been legally adopted.
- (2) "Adoption" means the judicial act that:
 - (a) creates the relationship of parent and child where it did not previously exist; and
 - (b) except as provided in Subsections 78B-6-138(2) and (4), terminates the parental rights of any other person with respect to the child.
- (3) "Adoption document" means an adoption-related document filed with the office, a petition for adoption, a decree of adoption, an original birth certificate, or evidence submitted in support of a supplementary birth certificate.
- (4) "Adoption service provider" means:
 - (a) a child-placing agency;
 - (b) a licensed counselor who has at least one year of experience providing professional social work services to:
 - (i) adoptive parents;
 - (ii) prospective adoptive parents; or
 - (iii) birth parents; or
 - (c) the Office of Licensing within the Department of Human Services.
- (5) "Adoptive parent" means an individual who has legally adopted an adoptee.
- (6) "Adult" means an individual who is 18 years of age or older.

- (7) "Adult adoptee" means an adoptee who is 18 years of age or older and was adopted as a minor.
- (8) "Adult sibling" means an adoptee's brother or sister, who is 18 years of age or older and whose birth mother or father is the same as that of the adoptee.
- (9) "Birth mother" means the biological mother of a child.
- (10) "Birth parent" means:
 - (a) a birth mother;
 - (b) a man whose paternity of a child is established;
 - (c) a man who:
 - (i) has been identified as the father of a child by the child's birth mother; and
 - (ii) has not denied paternity; or
 - (d) an unmarried biological father.
- (11) "Child-placing agency" means an agency licensed to place children for adoption under Title 62A, Chapter 4a, Part 6, Child Placing.
- (12) "Cohabiting" means residing with another person and being involved in a sexual relationship with that person.
- (13) "Division" means the Division of Child and Family Services, within the Department of Human Services, created in Section 62A-4a-103.
- (14) "Extra-jurisdictional child-placing agency" means an agency licensed to place children for adoption by a district, territory, or state of the United States, other than Utah.
- (15) "Genetic and social history" means a comprehensive report, when obtainable, that contains the following information on an adoptee's birth parents, aunts, uncles, and grandparents:
 - (a) medical history;
 - (b) health status;
 - (c) cause of and age at death;
 - (d) height, weight, and eye and hair color;
 - (e) ethnic origins;
 - (f) where appropriate, levels of education and professional achievement; and
 - (g) religion, if any.
- (16) "Health history" means a comprehensive report of the adoptee's health status at the time of placement for adoption, and medical history, including neonatal, psychological, physiological, and medical care history.
- (17) "Identifying information" means information that is in the possession of the office and that contains the name and address of a pre-existing parent or an adult adoptee, or other specific information that by itself or in reasonable conjunction with other information may be used to identify a pre-existing parent or an adult adoptee, including information on a birth certificate or in an adoption document.
- (18) "Licensed counselor" means an individual who is licensed by the state, or another state, district, or territory of the United States as a:
 - (a) certified social worker;
 - (b) clinical social worker;
 - (c) psychologist;
 - (d) marriage and family therapist;
 - (e) clinical mental health counselor; or
 - (f) an equivalent licensed professional of another state, district, or territory of the United States.
- (19) "Man" means a male individual, regardless of age.
- (20) "Mature adoptee" means an adoptee who is adopted when the adoptee is an adult.

- (21) "Office" means the Office of Vital Records and Statistics within the Department of Health operating under Title 26, Chapter 2, Utah Vital Statistics Act.
- (22) "Parent," for purposes of Section 78B-6-119, means any person described in Subsections 78B-6-120(1)(b) through (f) from whom consent for adoption or relinquishment for adoption is required under Sections 78B-6-120 through 78B-6-122.
- (23) "Potential birth father" means a man who:
 - (a) is identified by a birth mother as a potential biological father of the birth mother's child, but whose genetic paternity has not been established; and
 - (b) was not married to the biological mother of the child described in Subsection (23)(a) at the time of the child's conception or birth.
- (24) "Pre-existing parent" means:
 - (a) a birth parent; or
 - (b) an individual who, before an adoption decree is entered, is, due to an earlier adoption decree, legally the parent of the child being adopted.
- (25) "Prospective adoptive parent" means an individual who seeks to adopt an adoptee.
- (26) "Relative" means:
 - (a) an adult who is a grandparent, great grandparent, aunt, great aunt, uncle, great uncle, brother-in-law, sister-in-law, stepparent, first cousin, stepsibling, sibling of a child, or first cousin of a child's parent; and
 - (b) in the case of a child defined as an "Indian child" under the Indian Child Welfare Act, 25 U.S.C. Sec. 1903, an "extended family member" as defined by that statute.
- (27) "Unmarried biological father" means a man who:
 - (a) is the biological father of a child; and
 - (b) was not married to the biological mother of the child described in Subsection (27)(a) at the time of the child's conception or birth.

Amended by Chapter 110, 2017 General Session

Amended by Chapter 280, 2017 General Session

Amended by Chapter 417, 2017 General Session

78B-6-104 Limitations.

- (1) Sections 78B-6-143 through 78B-6-145 do not apply to adoptions by a stepparent whose spouse is the adoptee's parent.
- (2) Sections 78B-6-143 through 78B-6-145 apply only to adoptions of adoptees born in this state.

Amended by Chapter 237, 2010 General Session

78B-6-105 District court venue -- Jurisdiction of juvenile court -- Jurisdiction over nonresidents -- Time for filing.

- (1) Adoption proceedings shall be commenced by filing a petition with the clerk of the district court either:
 - (a) in the district where the prospective adoptive parent resides;
 - (b) if the prospective adoptive parent is not a resident of this state, in the district where:
 - (i) the adoptee was born;
 - (ii) the adoptee resides on the day on which the petition is filed; or
 - (iii) a parent of the proposed adoptee resides on the day on which the petition is filed; or
 - (c) with the juvenile court as provided in Subsection 78A-6-103(2).

- (2) All orders, decrees, agreements, and notices in the proceedings shall be filed with the clerk of the court where the adoption proceedings were commenced under Subsection (1).
- (3) A petition for adoption:
 - (a) may be filed before the birth of a child;
 - (b) may be filed before or after the adoptee is placed in the home of the petitioner for the purpose of adoption; and
 - (c) shall be filed no later than 30 days after the day on which the adoptee is placed in the home of the petitioners for the purpose of adoption, unless:
 - (i) the time for filing has been extended by the court; or
 - (ii) the adoption is arranged by a child-placing agency in which case the agency may extend the filing time.
- (4)
 - (a) If a person whose consent for the adoption is required under Section 78B-6-120 or 78B-6-121 cannot be found within the state, the fact of the minor's presence within the state shall confer jurisdiction on the court in proceedings under this chapter as to such absent person, provided that due notice has been given in accordance with the Utah Rules of Civil Procedure.
 - (b) The notice may not include the name of:
 - (i) a prospective adoptive parent; or
 - (ii) an unmarried mother without her consent.
- (5) Service of notice as provided in Subsection (6) shall vest the court with jurisdiction over the person served in the same manner and to the same extent as if the person served was served personally within the state.
- (6) In the case of service outside the state, service completed not less than five days before the time set in the notice for appearance of the person served shall be sufficient to confer jurisdiction.
- (7) Computation of periods of time not otherwise set forth in this section shall be made in accordance with the Utah Rules of Civil Procedure.

Amended by Chapter 214, 2020 General Session

78B-6-106 Responsibility for own actions -- Fraud or misrepresentation.

- (1) Each parent of a child conceived or born outside of marriage is responsible for his or her own actions and is not excused from strict compliance with the provisions of this chapter based upon any action, statement, or omission of the other parent or third parties.
- (2) Any person injured by fraudulent representations or actions in connection with an adoption is entitled to pursue civil or criminal penalties in accordance with existing law. A fraudulent representation is not a defense to strict compliance with the requirements of this chapter and is not a basis for dismissal of a petition for adoption, vacation of an adoption decree, or an automatic grant of custody to the offended party. Custody determinations shall be based on the best interests of the child, in accordance with the provisions of Section 78B-6-133.
- (3) A child-placing agency and the employees of a child-placing agency may not:
 - (a) employ any device, scheme, or artifice to defraud;
 - (b) engage in any act, practice, or course of business that operates or would operate as a fraud or deceit upon any person;
 - (c) materially and intentionally misrepresent facts or information; or
 - (d) request or require a prospective adoptive parent to grant, as a condition of or in connection with entering into an agreement with a child-placing agency, a release of either the

prospective adoptive parent's claims or the adoptive child's claims against the child-placing agency regarding any of the following:

- (i) criminal misconduct;
 - (ii) ethical violations, as established by the Office of Licensing's administrative rules;
 - (iii) bad faith;
 - (iv) intentional torts;
 - (v) fraud;
 - (vi) gross negligence associated with care of the child, as described in Subsection 78B-6-134(3);
 - (vii) future misconduct that may arise before the adoption is finalized;
 - (viii) breach of contract; or
 - (ix) gross negligence.
- (4) Subsection (3) does not prohibit a release of claims against a child-placing agency or a child-placing agency's employees for liability arising from the acts or the failure to act of a third party.

Amended by Chapter 148, 2017 General Session

78B-6-107 Compliance with the Interstate Compact on Placement of Children -- Compliance with the Indian Child Welfare Act.

- (1)
- (a) Subject to Subsection (1)(b), in any adoption proceeding the petition for adoption shall state whether the child was born in another state and, if so, both the petition and the court's final decree of adoption shall state that the requirements of Title 62A, Chapter 4a, Part 7, Interstate Compact on Placement of Children, have been complied with.
 - (b) Subsection (1)(a) does not apply if the prospective adoptive parent is not required to complete a preplacement adoptive evaluation under Section 78B-6-128.
- (2) In any adoption proceeding involving an "Indian child," as defined in 25 U.S.C. Sec. 1903, a child-placing agency and the petitioners shall comply with the Indian Child Welfare Act, Title 25, Chapter 21, of the United States Code.

Amended by Chapter 491, 2019 General Session

78B-6-108 Alien child -- Evidence of lawful admission to United States required.

- (1) As used in this section, "alien child" means a child under 16 years of age who is not considered a citizen or national of the United States by the United States Immigration and Naturalization Service.
- (2) Any person adopting an alien child shall file with the petition for adoption written evidence from the United States Immigration and Naturalization Service that the child was inspected and:
- (a) admitted into the United States for permanent residence;
 - (b) admitted into the United States temporarily in one of the lawful nonimmigrant categories specified in 8 U.S.C. Section 1101(a)(15); or
 - (c) paroled into the United States pursuant to 8 U.S.C. Section 1182(d)(5).
- (3) The 1992 amendments to this section are retroactive to September 1, 1984. Any adoption decree entered after September 1, 1984, is considered valid if the requirements of Subsection (2), as amended, were met.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-109 Determination of rights prior to adoption petition.

- (1)
 - (a) Any interested person may petition a court having jurisdiction over adoption proceedings for a determination of the rights and interests of any person who may claim an interest in a child under this part.
 - (b) The petition described in Subsection (1) may be filed at any time before the finalization of the adoption, including before:
 - (i) the child's birth;
 - (ii) a petition for adoption is filed; or
 - (iii) a petition to terminate parental rights is filed.
- (2) If a petition for adoption or a petition to terminate parental rights has been filed in district court, the petitioner or any interested person may, without filing a separate petition, move the court for a determination of the rights and interests of any person who may claim an interest in a child under this part.

Amended by Chapter 237, 2010 General Session

78B-6-110 Notice of adoption proceedings.

- (1)
 - (a) An unmarried biological father, by virtue of the fact that he has engaged in a sexual relationship with a woman:
 - (i) is considered to be on notice that a pregnancy and an adoption proceeding regarding the child may occur; and
 - (ii) has a duty to protect his own rights and interests.
 - (b) An unmarried biological father is entitled to actual notice of a birth or an adoption proceeding with regard to his child only as provided in this section or Section 78B-6-110.5.
- (2) Notice of an adoption proceeding shall be served on each of the following persons:
 - (a) any person or agency whose consent or relinquishment is required under Section 78B-6-120 or 78B-6-121, unless that right has been terminated by:
 - (i) waiver;
 - (ii) relinquishment;
 - (iii) actual or implied consent; or
 - (iv) judicial action;
 - (b) any person who has initiated a paternity proceeding and filed notice of that action with the state registrar of vital statistics within the Department of Health, in accordance with Subsection (3);
 - (c) any legally appointed custodian or guardian of the adoptee;
 - (d) the petitioner's spouse, if any, only if the petitioner's spouse has not joined in the petition;
 - (e) the adoptee's spouse, if any;
 - (f) any person who, prior to the time the mother executes her consent for adoption or relinquishes the child for adoption, is recorded on the birth certificate as the child's father, with the knowledge and consent of the mother;
 - (g) a person who is:
 - (i) openly living in the same household with the child at the time the consent is executed or relinquishment made; and
 - (ii) holding himself out to be the child's father; and

- (h) any person who is married to the child's mother at the time she executes her consent to the adoption or relinquishes the child for adoption, unless the court finds that the mother's spouse is not the child's father under Section 78B-15-607.
- (3)
- (a) In order to preserve any right to notice, an unmarried biological father shall, consistent with Subsection (3)(d):
 - (i) initiate proceedings in a district court of Utah to establish paternity under Title 78B, Chapter 15, Utah Uniform Parentage Act; and
 - (ii) file a notice of commencement of the proceedings described in Subsection (3)(a)(i) with the office of vital statistics within the Department of Health.
 - (b) If the unmarried, biological father does not know the county in which the birth mother resides, he may initiate his action in any county, subject to a change in trial pursuant to Section 78B-3-307.
 - (c) The Department of Health shall provide forms for the purpose of filing the notice described in Subsection (3)(a)(ii), and make those forms available in the office of the county health department in each county.
 - (d) When the state registrar of vital statistics receives a completed form, the registrar shall:
 - (i) record the date and time the form was received; and
 - (ii) immediately enter the information provided by the unmarried biological father in the confidential registry established by Subsection 78B-6-121(3)(c).
 - (e) The action and notice described in Subsection (3)(a):
 - (i) may be filed before or after the child's birth; and
 - (ii) shall be filed prior to the mother's:
 - (A) execution of consent to adoption of the child; or
 - (B) relinquishment of the child for adoption.
- (4) Notice provided in accordance with this section need not disclose the name of the mother of the child who is the subject of an adoption proceeding.
- (5) The notice required by this section:
- (a) may be served at any time after the petition for adoption is filed, but may not be served on a birth mother before she has given birth to the child who is the subject of the petition for adoption;
 - (b) shall be served at least 30 days prior to the final dispositional hearing;
 - (c) shall specifically state that the person served shall fulfill the requirements of Subsection (6)
 - (a) within 30 days after the day on which the person receives service if the person intends to intervene in or contest the adoption;
 - (d) shall state the consequences, described in Subsection (6)(b), for failure of a person to file a motion for relief within 30 days after the day on which the person is served with notice of an adoption proceeding;
 - (e) is not required to include, nor be accompanied by, a summons or a copy of the petition for adoption;
 - (f) shall state where the person may obtain a copy of the petition for adoption; and
 - (g) shall indicate the right to the appointment of counsel for a party whom the court determines is indigent and at risk of losing the party's parental rights.
- (6)
- (a) A person who has been served with notice of an adoption proceeding and who wishes to contest the adoption shall file a motion to intervene in the adoption proceeding:
 - (i) within 30 days after the day on which the person was served with notice of the adoption proceeding;

- (ii) setting forth specific relief sought; and
 - (iii) accompanied by a memorandum specifying the factual and legal grounds upon which the motion is based.
- (b) A person who fails to fully and strictly comply with all of the requirements described in Subsection (6)(a) within 30 days after the day on which the person was served with notice of the adoption proceeding:
- (i) waives any right to further notice in connection with the adoption;
 - (ii) forfeits all rights in relation to the adoptee; and
 - (iii) is barred from thereafter bringing or maintaining any action to assert any interest in the adoptee.
- (7) Service of notice under this section shall be made as follows:
- (a)
- (i) Subject to Subsection (5)(e), service on a person whose consent is necessary under Section 78B-6-120 or 78B-6-121 shall be in accordance with the provisions of the Utah Rules of Civil Procedure.
 - (ii) If service of a person described in Subsection (7)(a)(i) is by publication, the court shall designate the content of the notice regarding the identity of the parties.
 - (iii) The notice described in this Subsection (7)(a) may not include the name of a person seeking to adopt the adoptee.
- (b)
- (i) Except as provided in Subsection (7)(b)(ii) to any other person for whom notice is required under this section, service by certified mail, return receipt requested, is sufficient.
 - (ii) If the service described in Subsection (7)(b)(i) cannot be completed after two attempts, the court may issue an order providing for service by publication, posting, or by any other manner of service.
- (c) Notice to a person who has initiated a paternity proceeding and filed notice of that action with the state registrar of vital statistics in the Department of Health in accordance with the requirements of Subsection (3), shall be served by certified mail, return receipt requested, at the last address filed with the registrar.
- (8) The notice required by this section may be waived in writing by the person entitled to receive notice.
- (9) Proof of service of notice on all persons for whom notice is required by this section shall be filed with the court before the final dispositional hearing on the adoption.
- (10) Notwithstanding any other provision of law, neither the notice of an adoption proceeding nor any process in that proceeding is required to contain the name of the person or persons seeking to adopt the adoptee.
- (11) Except as to those persons whose consent to an adoption is required under Section 78B-6-120 or 78B-6-121, the sole purpose of notice under this section is to enable the person served to:
- (a) intervene in the adoption; and
 - (b) present evidence to the court relevant to the best interest of the child.

Amended by Chapter 491, 2019 General Session

78B-6-110.1 Prebirth notice to presumed father of intent to place a child for adoption.

- (1) As used in this section, "birth father" means:
- (a) a potential biological father; or
 - (b) an unmarried biological father.

- (2) Before the birth of a child, the following individuals may notify a birth father of the child that the mother of the child is considering an adoptive placement for the child:
 - (a) the child's mother;
 - (b) a licensed child-placing agency;
 - (c) an attorney representing a prospective adoptive parent of the child; or
 - (d) an attorney representing the mother of the child.
- (3) Providing a birth father with notice under Subsection (2) does not obligate the mother of the child to proceed with an adoptive placement of the child.
- (4) The notice described in Subsection (2) shall include the name, address, and telephone number of the person providing the notice, and shall include the following information:
 - (a) the mother's intent to place the child for adoption;
 - (b) that the mother has named the person receiving this notice as a potential birth father of her child;
 - (c) the requirements to contest the adoption, including taking the following steps within 30 days after the day on which the notice is served:
 - (i) initiating proceedings to establish or assert paternity in a district court of Utah within 30 days after the day on which notice is served, including filing an affidavit stating:
 - (A) that the birth father is fully able and willing to have full custody of the child;
 - (B) the birth father's plans to care for the child; and
 - (C) that the birth father agrees to pay for child support and expenses incurred in connection with the pregnancy and birth; and
 - (ii) filing a notice of commencement of paternity proceedings with the state registrar of vital statistics within the Utah Department of Health;
 - (d) the consequences for failure to comply with Subsection (4)(c), including that:
 - (i) the birth father's ability to assert the right, if any, to consent or refuse to consent to the adoption is irrevocably lost;
 - (ii) the birth father will lose the ability to assert the right to contest any future adoption of the child; and
 - (iii) the birth father will lose the right, if any, to notice of any adoption proceedings related to the child;
 - (e) that the birth father may consent to the adoption, if any, within 30 days after the day on which the notice is received, and that his consent is irrevocable; and
 - (f) that no communication between the mother of the child and the birth father changes the rights and responsibilities of the birth father described in the notice.
- (5) If the recipient of the notice described in Subsection (2) does not fully and strictly comply with the requirements of Subsection (4)(c) within 30 days after the day on which he receives the notice, he will lose:
 - (a) the ability to assert the right to consent or refuse to consent to an adoption of the child described in the notice;
 - (b) the ability to assert the right to contest any future adoption of the child described in the notice; and
 - (c) the right to notice of any adoption proceedings relating to the child described in the notice.
- (6) If an individual described in Subsection (2) chooses to notify a birth father under this section, the notice shall be served on a birth father in a manner consistent with the Utah Rules of Civil Procedure or by certified mail.

Amended by Chapter 148, 2017 General Session

78B-6-110.5 Out-of-state birth mothers and adoptive parents -- Declaration regarding potential birth fathers.

The procedural and substantive requirements of this section shall be required only to the extent that they do not exceed the requirements of the state of conception or the birth mother's state of residence.

- (1)
- (a) For a child who is six months of age or less at the time the child is placed with prospective adoptive parents, the birth mother shall sign, and the adoptive parents shall file with the court, a declaration regarding each potential birth father, in accordance with this section, before or at the time a petition for adoption is filed with the court, if, at any point during the time period beginning at the conception of the child and ending at the time the mother executes consent to adoption or relinquishment of the child for adoption, neither the birth mother nor at least one of the adoptive parents has resided in the state for 90 total days or more, as described in Subsection (1)(c).
 - (b) The child-placing agency or prospective adoptive parents shall search the putative father registry of each state where the birth mother believes the child may have been conceived and each state where the birth mother lived during her pregnancy, if the state has a putative father registry, to determine whether a potential birth father registered with the state's putative father registry.
 - (c) In determining whether the 90-day requirement is satisfied, the following apply:
 - (i) the 90 days are not required to be consecutive;
 - (ii) no absence from the state may be for more than seven consecutive days;
 - (iii) any day on which the individual is absent from the state does not count toward the total 90-day period; and
 - (iv) the 90-day period begins and ends during a period that is no more than 120 consecutive days.
- (2) The declaration filed under Subsection (1) regarding a potential birth father shall include, for each potential birth father, the following information:
- (a) if known, the potential birth father's name, date of birth, social security number, and address;
 - (b) with regard to a state's putative father registry in each state described in Subsection (1)(b):
 - (i) whether the state has a putative father registry; and
 - (ii) for each state that has a putative father registry, with the declaration, a certificate or written statement from the state's putative father registry that a search of the state's putative father registry was made and disclosing the results of the search;
 - (c) whether the potential birth father was notified of:
 - (i) the birth mother's pregnancy;
 - (ii) the fact that he is a potential birth father; or
 - (iii) the fact that the birth mother intends to consent to adoption or relinquishment of the child for adoption, in Utah;
 - (d) each state where the birth mother lived during the pregnancy;
 - (e) if known, the state in which the child was conceived;
 - (f) whether the birth mother informed the potential birth father that she was traveling to or planning to reside in Utah;
 - (g) whether the birth mother has contacted the potential birth father while she was located in Utah;
 - (h) whether, and for how long, the potential birth father has ever lived with the child;
 - (i) whether the potential birth father has given the birth mother money or offered to pay for any of her expenses during pregnancy or the child's birth;

- (j) whether the potential birth father has offered to pay child support;
 - (k) if known, whether the potential birth father has taken any legal action to establish paternity of the child, either in Utah or in any other state, and, if known, what action he has taken; and
 - (l) whether the birth mother has ever been involved in a domestic violence matter with the potential birth father.
- (3) Except as provided in Subsection (5), based on the declaration regarding the potential birth father, the court shall order the birth mother to serve a potential birth father notice that she intends to consent or has consented to adoption or relinquishment of the child for adoption, if the court finds that the potential birth father:
- (a) has taken sufficient action to demonstrate an interest in the child;
 - (b) has taken sufficient action to attempt to preserve his legal rights as a birth father, including by filing a legal action to establish paternity or filing with a state's putative father registry; or
 - (c) does not know, and does not have a reason to know, that:
 - (i) the mother or child are present in Utah;
 - (ii) the mother intended to give birth to the child in Utah;
 - (iii) the child was born in Utah; or
 - (iv) the mother intends to consent to adoption or relinquishment of the child for adoption in Utah.
- (4) Notice under this section shall be made in accordance with Subsections 78B-6-110(7) through (11).
- (5) A court may only order the notice requirements in Subsection (3) to the extent that they do not exceed the notice requirements of:
- (a) the state of conception; or
 - (b) the birth mother's state of residence.

Amended by Chapter 491, 2019 General Session

78B-6-111 Criminal sexual offenses.

An unmarried biological father is not entitled to notice of an adoption proceeding, nor is the consent of an unmarried biological father required in connection with an adoption proceeding, in cases where it is shown that the child who is the subject of the proceeding was conceived as a result of conduct that constitutes a sexual offense under Title 76, Chapter 5, Part 4, Sexual Offenses, or under the laws of the state where the child was conceived, regardless of whether the unmarried biological father is formally charged with or convicted of a criminal offense.

Amended by Chapter 194, 2015 General Session

78B-6-112 District court jurisdiction over termination of parental rights proceedings.

- (1) A district court has jurisdiction to terminate parental rights in a child if the party that filed the petition is seeking to terminate parental rights in the child for the purpose of facilitating the adoption of the child.
- (2) A petition to terminate parental rights under this section may be:
 - (a) joined with a proceeding on an adoption petition; or
 - (b) filed as a separate proceeding before or after a petition to adopt the child is filed.
- (3) A court may enter a final order terminating parental rights before a final decree of adoption is entered.
- (4)

- (a) Nothing in this section limits the jurisdiction of a juvenile court relating to proceedings to terminate parental rights as described in Section 78A-6-103.
- (b) This section does not grant jurisdiction to a district court to terminate parental rights in a child if the child is under the jurisdiction of the juvenile court in a pending abuse, neglect, dependency, or termination of parental rights proceeding.
- (5) The district court may terminate an individual's parental rights in a child if:
 - (a) the individual executes a voluntary consent to adoption, or relinquishment for adoption, of the child, in accordance with:
 - (i) the requirements of this chapter; or
 - (ii) the laws of another state or country, if the consent is valid and irrevocable;
 - (b) the individual is an unmarried biological father who is not entitled to consent to adoption, or relinquishment for adoption, under Section 78B-6-120 or 78B-6-121;
 - (c) the individual:
 - (i) received notice of the adoption proceeding relating to the child under Section 78B-6-110; and
 - (ii) failed to file a motion for relief, under Subsection 78B-6-110(6), within 30 days after the day on which the individual was served with notice of the adoption proceeding;
 - (d) the court finds, under Section 78B-15-607, that the individual is not a parent of the child; or
 - (e) the individual's parental rights are terminated on grounds described in Title 78A, Chapter 6, Part 5, Termination of Parental Rights Act, and termination is in the best interests of the child.
- (6) The court shall appoint an indigent defense service provider in accordance with Title 78B, Chapter 22, Indigent Defense Act, to represent an individual who faces any action initiated by a private party under Title 78A, Chapter 6, Part 5, Termination of Parental Rights Act, or whose parental rights are subject to termination under this section.
- (7) If a county incurs expenses in providing indigent defense services to an indigent individual facing any action initiated by a private party under Title 78A, Chapter 6, Part 5, Termination of Parental Rights Act, or termination of parental rights under this section, the county may apply for reimbursement from the Utah Indigent Defense Commission in accordance with Section 78B-22-406.
- (8) A petition filed under this section is subject to the procedural requirements of this chapter.

Amended by Chapter 371, 2020 General Session

Amended by Chapter 392, 2020 General Session

Amended by Chapter 395, 2020 General Session

78B-6-113 Prospective adoptive parent not a resident -- Preplacement requirements.

- (1) When an adoption petition is to be finalized in this state with regard to any prospective adoptive parent who is not a resident of this state at the time a child is placed in that person's home, the prospective adoptive parent shall comply with the provisions of Sections 78B-6-128 and 78B-6-130.
- (2) Except as provided in Subsection 78B-6-131(2), in addition to the other requirements of this section, before a child in state custody is placed with a prospective foster parent or a prospective adoptive parent, the Department of Human Services shall comply with Section 78B-6-131.

Amended by Chapter 280, 2017 General Session

78B-6-114 Adoption by married persons -- Consent.

- (1) A married man who is not lawfully separated from his wife may not adopt a child without the consent of his wife, if his wife is capable of giving consent.
- (2) A married woman who is not lawfully separated from her husband may not adopt a child without his consent, if he is capable of giving his consent.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-115 Who may adopt -- Adoption of minor -- Adoption of adult.

- (1) For purposes of this section, "vulnerable adult" means:
 - (a) a person 65 years of age or older; or
 - (b) an adult, 18 years of age or older, who has a mental or physical impairment which substantially affects that person's ability to:
 - (i) provide personal protection;
 - (ii) provide necessities such as food, shelter, clothing, or medical or other health care;
 - (iii) obtain services necessary for health, safety, or welfare;
 - (iv) carry out the activities of daily living;
 - (v) manage the adult's own resources; or
 - (vi) comprehend the nature and consequences of remaining in a situation of abuse, neglect, or exploitation.
- (2) Subject to this section and Section 78B-6-117, any adult may be adopted by another adult.
- (3) The following provisions of this part apply to the adoption of an adult just as though the person being adopted were a minor:
 - (a)
 - (i) Section 78B-6-108;
 - (ii) Section 78B-6-114;
 - (iii) Section 78B-6-116;
 - (iv) Section 78B-6-118;
 - (v) Section 78B-6-124;
 - (vi) Section 78B-6-136;
 - (vii) Section 78B-6-137;
 - (viii) Section 78B-6-138;
 - (ix) Section 78B-6-139;
 - (x) Section 78B-6-141; and
 - (xi) Section 78B-6-142;
 - (b) Subsections 78B-6-105(1)(a), (1)(b)(i), (1)(b)(ii), (2), and (7), except that the juvenile court does not have jurisdiction over a proceeding for adoption of an adult, unless the adoption arises from a case where the juvenile court has continuing jurisdiction over the mature adoptee; and
 - (c) if the mature adoptee is a vulnerable adult, Sections 78B-6-128 through 78B-6-131, regardless of whether the mature adoptee resides, or will reside, with the adoptors, unless the court, based on a finding of good cause, waives the requirements of those sections.
- (4) Before a court enters a final decree of adoption of a mature adoptee, the mature adoptee and the prospective adoptive parent or parents shall appear before the court presiding over the adoption proceedings and execute consent to the adoption.
- (5) No provision of this part, other than those listed or described in this section or Section 78B-6-117, apply to the adoption of an adult.

Amended by Chapter 137, 2015 General Session

78B-6-116 Notice and consent for adoption of an adult.

- (1)
 - (a) Consent to the adoption of an adult is required from:
 - (i) the mature adoptee;
 - (ii) any person who is adopting the adult;
 - (iii) the spouse of a person adopting the adult; and
 - (iv) any legally appointed guardian or custodian of the adult adoptee.
 - (b) No person, other than a person described in Subsection (1)(a), may consent, or withhold consent, to the adoption of an adult.
- (2)
 - (a) Except as provided in Subsection (2)(b), notice of a proceeding for the adoption of an adult shall be served on each person described in Subsection (1)(a) and the spouse of the mature adoptee.
 - (b) The notice described in Subsection (2)(a) may be waived, in writing, by the person entitled to receive notice.
- (3) The notice described in Subsection (2):
 - (a) shall be served at least 30 days before the day on which the adoption is finalized;
 - (b) shall specifically state that the person served must respond to the petition within 30 days of service if the person intends to intervene in the adoption proceeding;
 - (c) shall state the name of the person to be adopted;
 - (d) may not state the name of a person adopting the mature adoptee, unless the person consents, in writing, to disclosure of the person's name;
 - (e) with regard to a person described in Subsection (1)(a):
 - (i) except as provided in Subsection (2)(b), shall be in accordance with the provisions of the Utah Rules of Civil Procedure; and
 - (ii) may not be made by publication; and
 - (f) with regard to the spouse of the mature adoptee, may be made:
 - (i) in accordance with the provisions of the Utah Rules of Civil Procedure;
 - (ii) by certified mail, return receipt requested; or
 - (iii) by publication, posting, or other means if:
 - (A) the service described in Subsection (3)(f)(ii) cannot be completed after two attempts; and
 - (B) the court issues an order providing for service by publication, posting, or other means.
- (4) Proof of service of the notice on each person to whom notice is required by this section shall be filed with the court before the adoption is finalized.
- (5)
 - (a) Any person who is served with notice of a proceeding for the adoption of an adult and who wishes to intervene in the adoption shall file a motion in the adoption proceeding:
 - (i) within 30 days after the day on which the person is served with notice of the adoption proceeding;
 - (ii) that sets forth the specific relief sought; and
 - (iii) that is accompanied by a memorandum specifying the factual and legal grounds upon which the motion is made.
 - (b) A person who fails to file the motion described in Subsection (5)(a) within the time described in Subsection (5)(a)(i):
 - (i) waives any right to further notice of the adoption proceeding; and
 - (ii) is barred from intervening in, or bringing or maintaining any action challenging, the adoption proceeding.

- (6) Except as provided in Subsection (7), after a court enters a final decree of adoption of an adult, the mature adoptee shall:
 - (a) serve notice of the finalization of the adoption, pursuant to the Utah Rules of Civil Procedure, on each person who was a legal parent of the adult adoptee before the final decree of adoption described in this Subsection (6) was entered; and
 - (b) file with the court proof of service of the notice described in Subsection (6)(a).
- (7) A court may, based on a finding of good cause, waive the notification requirement described in Subsection (6).

Amended by Chapter 137, 2015 General Session

78B-6-117 Who may adopt -- Adoption of minor.

- (1) A minor child may be adopted by an adult individual, in accordance with this section and this part.
- (2) A child may be adopted by:
 - (a) adults who are legally married to each other in accordance with the laws of this state, including adoption by a stepparent; or
 - (b) subject to Subsections (3) and (4), a single adult.
- (3) A child may not be adopted by an individual who is cohabiting in a relationship that is not a legally valid and binding marriage under the laws of this state unless the individual is a relative of the child or a recognized placement under the Indian Child Welfare Act, 25 U.S.C. Sec. 1901 et seq.
- (4) To provide a child who is in the custody of the division with the most beneficial family structure, when a child in the custody of the division is placed for adoption, the division or child-placing agency shall place the child with a married couple, unless:
 - (a) there are no qualified married couples who:
 - (i) have applied to adopt a child;
 - (ii) are willing to adopt the child; and
 - (iii) are an appropriate placement for the child;
 - (b) the child is placed with a relative of the child;
 - (c) the child is placed with an individual who has already developed a substantial relationship with the child;
 - (d) the child is placed with an individual who:
 - (i) is selected by a parent or former parent of the child, if the parent or former parent consented to the adoption of the child; and
 - (ii) the parent or former parent described in Subsection (4)(d)(i):
 - (A) knew the individual with whom the child is placed before the parent consented to the adoption; or
 - (B) became aware of the individual with whom the child is placed through a source other than the division or the child-placing agency that assists with the adoption of the child; or
 - (e) it is in the best interests of the child to place the child with a single adult.
- (5) Except as provided in Subsection (6), an adult may not adopt a child if, before adoption is finalized, the adult has been convicted of, pleaded guilty to, or pleaded no contest to a felony or attempted felony involving conduct that constitutes any of the following:
 - (a) child abuse, as described in Section 76-5-109;
 - (b) child abuse homicide, as described in Section 76-5-208;
 - (c) child kidnapping, as described in Section 76-5-301.1;
 - (d) human trafficking of a child, as described in Section 76-5-308.5;

- (e) sexual abuse of a minor, as described in Section 76-5-401.1;
 - (f) rape of a child, as described in Section 76-5-402.1;
 - (g) object rape of a child, as described in Section 76-5-402.3;
 - (h) sodomy on a child, as described in Section 76-5-403.1;
 - (i) sexual abuse of a child or aggravated sexual abuse of a child, as described in Section 76-5-404.1;
 - (j) sexual exploitation of a minor, as described in Section 76-5b-201; or
 - (k) an offense in another state that, if committed in this state, would constitute an offense described in this Subsection (5).
- (6)
- (a) For purpose of this Subsection (6), "disqualifying offense" means an offense listed in Subsection (5) that prevents a court from considering an individual for adoption of a child except as provided in this Subsection (6).
 - (b) An individual described in Subsection (5) may only be considered for adoption of a child if the following criteria are met by clear and convincing evidence:
 - (i) at least 10 years have elapsed from the day on which the individual is successfully released from prison, jail, parole, or probation related to a disqualifying offense;
 - (ii) during the 10 years before the day on which the individual files a petition with the court seeking adoption, the individual has not been convicted, pleaded guilty, or pleaded no contest to an offense greater than an infraction or traffic violation that would likely impact the health, safety, or well-being of the child;
 - (iii) the individual can provide evidence of successful treatment or rehabilitation directly related to the disqualifying offense;
 - (iv) the court determines that the risk related to the disqualifying offense is unlikely to cause harm, as defined in Section 78A-6-105, or potential harm to the child currently or at any time in the future when considering all of the following:
 - (A) the child's age;
 - (B) the child's gender;
 - (C) the child's development;
 - (D) the nature and seriousness of the disqualifying offense;
 - (E) the preferences of a child 12 years of age or older;
 - (F) any available assessments, including custody evaluations, home studies, pre-placement adoptive evaluations, parenting assessments, psychological or mental health assessments, and bonding assessments; and
 - (G) any other relevant information;
 - (v) the individual can provide evidence of all of the following:
 - (A) the relationship with the child is of long duration;
 - (B) that an emotional bond exists with the child; and
 - (C) that adoption by the individual who has committed the disqualifying offense ensures the best interests of the child are met; and
 - (vi) the adoption is by:
 - (A) a stepparent whose spouse is the adoptee's parent and consents to the adoption; or
 - (B) subject to Subsection (6)(d), a relative of the child as defined in Section 78A-6-307 and there is not another relative without a disqualifying offense filing an adoption petition.
 - (c) The individual with the disqualifying offense bears the burden of proof regarding why adoption with that individual is in the best interest of the child over another responsible relative or equally situated individual who does not have a disqualifying offense.

- (d) If there is an alternative responsible relative who does not have a disqualifying offense filing an adoption petition, the following applies:
 - (i) preference for adoption shall be given to a relative who does not have a disqualifying offense; and
 - (ii) before the court may grant adoption to the individual who has the disqualifying offense over another responsible, willing, and able relative:
 - (A) an impartial custody evaluation shall be completed; and
 - (B) a guardian ad litem shall be assigned.
- (7) Subsections (5) and (6) apply to a case pending on March 25, 2017, for which a final decision on adoption has not been made and to a case filed on or after March 25, 2017.

Amended by Chapter 250, 2020 General Session

78B-6-118 Relative ages.

A person adopting a child must be at least 10 years older than the child adopted, unless the petitioners for adoption are a married couple, one of which is at least 10 years older than the child.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-119 Counseling for parents.

- (1) Subject to Subsection (2)(a), before relinquishing a child to a child-placing agency, or consenting to the adoption of a child, a parent of the child has the right to participate in counseling:
 - (a) by a licensed counselor or an adoption service provider selected by the parent participating in the counseling;
 - (b) for up to three sessions of at least 50 minutes per session; and
 - (c) subject to Subsection (2)(b), at the expense of the:
 - (i) child-placing agency; or
 - (ii) prospective adoptive parents.
- (2)
 - (a) Notwithstanding Subsection (1), a parent who has the right to participate in the counseling described in this section may waive that right.
 - (b) Notwithstanding Subsection (1)(c), the total amount required to be paid by a child-placing agency or the prospective adoptive parents for the counseling described in Subsection (1) may not exceed \$400, unless an agreement for a greater amount is signed by:
 - (i) the parent who receives the counseling; and
 - (ii) the child-placing agency or prospective adoptive parents.
- (3) Before a parent relinquishes a child to a child-placing agency, or consents to the adoption of a child, the parent shall be informed of the right described in Subsection (1) by the:
 - (a) child-placing agency;
 - (b) prospective adoptive parents; or
 - (c) representative of a person described in Subsection (3)(a) or (b).
- (4)
 - (a) Subject to Subsections (4)(b) and (c), before the day on which a final decree of adoption is entered, a statement shall be filed with the court that:
 - (i) is signed by each parent who:
 - (A) relinquishes the parent's parental rights; or
 - (B) consents to the adoption; and

- (ii) states that, before the parent took the action described in Subsection (4)(a)(i)(A) or (B), the parent was advised of the parent's right to participate in the counseling described in this section at the expense of the:
 - (A) child-placing agency; or
 - (B) prospective adoptive parents.
- (b) The statement described in Subsection (4)(a) may be included in the document that:
 - (i) relinquishes the parent's parental rights; or
 - (ii) consents to the adoption.
- (c) Failure by a person to give the notice described in Subsection (3), or pay for the counseling described in this section:
 - (i) shall not constitute grounds for invalidating a:
 - (A) relinquishment of parental rights; or
 - (B) consent to adoption; and
 - (ii) shall give rise to a cause of action for the recovery of damages suffered, if any, by the parent or guardian who took the action described in Subsection (4)(c)(i)(A) or (B) against the person required to:
 - (A) give the notice described in Subsection (3); or
 - (B) pay for the counseling described in this section.

Amended by Chapter 159, 2009 General Session

78B-6-120 Necessary consent to adoption or relinquishment for adoption.

- (1) Except as provided in Subsection (2), consent to adoption of a child, or relinquishment of a child for adoption, is required from:
 - (a) the adoptee, if the adoptee is more than 12 years of age, unless the adoptee does not have the mental capacity to consent;
 - (b) a man or woman who:
 - (i) by operation of law under Section 78B-15-204, is recognized as the father or mother of the proposed adoptee, unless:
 - (A) the presumption is rebutted under Section 78B-15-607; or
 - (B) the man or woman was not married to the mother of the proposed adoptee until after the mother consented to adoption, or relinquishment for adoption, of the proposed adoptee; or
 - (ii) is the father of the adoptee by a previous legal adoption;
 - (c) the mother of the adoptee;
 - (d) a biological parent who has been adjudicated to be the child's biological father by a court of competent jurisdiction prior to the mother's execution of consent to adoption or her relinquishment of the child for adoption;
 - (e) consistent with Subsection (3), a biological parent who has executed and filed a voluntary declaration of paternity with the state registrar of vital statistics within the Department of Health in accordance with Title 78B, Chapter 15, Utah Uniform Parentage Act, prior to the mother's execution of consent to adoption or her relinquishment of the child for adoption;
 - (f) an unmarried biological father, of an adoptee, whose consent is not required under Subsection (1)(d) or (1)(e), only if he fully and strictly complies with the requirements of Sections 78B-6-121 and 78B-6-122; and
 - (g) the person or agency to whom an adoptee has been relinquished and that is placing the child for adoption.
- (2)

- (a) The consent of a person described in Subsections (1)(b) through (g) is not required if the adoptee is 18 years of age or older.
- (b) The consent of a person described in Subsections (1)(b) through (f) is not required if the person's parental rights relating to the adoptee have been terminated.
- (3) For purposes of Subsection (1)(e), a voluntary declaration of paternity is considered filed when it is entered into a database that:
 - (a) can be accessed by the Department of Health; and
 - (b) is designated by the state registrar of vital statistics as the official database for voluntary declarations of paternity.

Amended by Chapter 156, 2017 General Session

78B-6-120.1 Implied consent.

- (1)
 - (a) As used in this section, "abandonment" means failure of a father, with reasonable knowledge of the pregnancy, to offer and provide financial and emotional support to the birth mother for a period of six months before the day on which the adoptee is born.
 - (b) A court may not determine that a father abandoned the birth mother if the father failed to provide financial or emotional support because the birth mother refused to accept support.
- (2)
 - (a) As used in this section, "emotional support" means a pattern of statements or actions that indicate to a reasonable person that a father intends to provide for the physical and emotional well-being of an unborn child.
 - (b) A court may not find that a father failed to provide emotional support if the father's failure was due to impossibility of performance.
- (3) Consent or relinquishment, as required by Subsection 78B-6-120(1), may be implied by any of the following acts:
 - (a) abandonment;
 - (b) leaving the adoptee with a third party, without providing the third party with the parent's identification, for 30 consecutive days;
 - (c) knowingly leaving the adoptee with another person, without providing for support, communicating, or otherwise maintaining a substantial relationship with the adoptee, for six consecutive months; or
 - (d) receiving notification of a pending adoption proceeding under Subsection 78B-6-110(6) or of a termination proceeding under Section 78B-6-112 and failing to respond as required.
- (4) Implied consent under Subsection (3)(a) may not be withdrawn.
- (5) Nothing in this section negates the requirements of Section 78B-6-121 or 78B-6-122 for an unmarried biological father.

Enacted by Chapter 458, 2013 General Session

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 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) 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
 - (d) 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;
 - (ii) he was prevented from paying the expenses by the person or authorized agency having lawful custody of the child; or
 - (iii) the mother refused to accept the unmarried biological father's offer to pay the expenses described in this Subsection (3)(d).

- (4)
 - (a) The notice described in Subsection (3)(c) is considered filed when received by the state registrar of vital statistics.
 - (b) If the unmarried biological father fully complies with the requirements of Subsection (3), and an adoption of the child is not completed, the unmarried biological father shall, without any order of the court, be legally obligated for a reasonable amount of child support, pregnancy expenses, and child birth expenses, in accordance with his financial ability.
- (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)(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.

Amended by Chapter 194, 2015 General Session

78B-6-121.5 Compact for Interstate Sharing of Putative Father Registry Information -- Severability clause.

COMPACT FOR INTERSTATE SHARING
OF PUTATIVE FATHER REGISTRY INFORMATION
ARTICLE I
PURPOSE

This compact enables the sharing of putative father registry information collected by a state that is a party to the compact with all other states that are parties to the compact.

ARTICLE II
DEFINITIONS

(1) "Putative father" means a man who may be the biological father of a child because the man had a sexual relationship with a woman to whom he is not married.

(2) "Putative father registry" mean a registry of putative fathers maintained and used by a state as part of its legal process for protecting a putative father's rights.

(3) "State" includes a state, district, or territory of the United States.

ARTICLE III

ENTRY, WITHDRAWAL, AND AMENDMENTS

(1) A state is a party to this compact upon enactment of this compact by the state into state law.

(2) Upon providing at least 60 days' notice of withdrawal from this compact to each party to the compact and repealing the compact from state law, a state is no longer party to this compact.

(3) This compact is amended upon enactment of the amendment into state law by each party to the compact.

ARTICLE IV

INTERSTATE SHARING OF PUTATIVE FATHER REGISTRY INFORMATION

(1) A party to this compact shall communicate information in its putative father registry about a specific putative father to any other party to this compact in a timely manner upon request by the other party.

(2) A party to this compact is not required to have a putative father registry in order to request putative father registry information from another party to the compact.

(3) Putative father registry information requested by a party to this compact from another party to this compact is subject to the laws of the requesting party governing the privacy, retention, and authorized uses of putative father information or, if the requesting party does not have a putative father registry, the laws of the party supplying the information governing the privacy, retention, and authorized uses of putative father information.

(4) Notwithstanding Article IV, Subsection (3) of this compact, the request for or receipt of putative father registry information by a party to this compact from another party to this compact does not affect the application of the requesting party's laws, including laws regarding adoption or the protection of a putative father's rights, except as explicitly provided by the requesting party's laws.

(5) Failure by a party to this compact to provide accurate putative father registry information in a timely manner to another party to this compact upon request does not affect application of the requesting party's laws, including laws governing adoption and the protection of a putative father's rights, except as explicitly provided by the requesting party's laws.

(6) Each party to this compact shall work with every other party to this compact to facilitate the timely communication of putative father registry information between compact parties upon request.

ARTICLE V SEVERABILITY

The provisions of this compact are severable. If any provision of this compact or the application of any provision of this compact to any person or circumstance is held invalid by a final decision of a court of competent jurisdiction for a state that is a member of this compact, the remainder of this compact shall be given effect within that state without the invalid provision or application. If a provision of this compact is severed in one or more states as a result of one or more court decisions, the provision shall remain in force in all other states that are parties to this compact.

Enacted by Chapter 183, 2015 General Session

78B-6-122 Qualifying circumstance.

- (1)
- (a) For purposes of this section, "qualifying circumstance" means that, at any point during the time period beginning at the conception of the child and ending at the time the mother executed a consent to adoption or relinquishment of the child for adoption:
- (i) the child or the child's mother resided on a permanent basis, or a temporary basis of no less than 30 consecutive days, in the state;
 - (ii) the mother intended to give birth to the child in the state;
 - (iii) the child was born in the state; or
 - (iv) the mother intended to execute a consent to adoption or relinquishment of the child for adoption:
 - (A) in the state; or
 - (B) under the laws of the state.
- (b) For purposes of Subsection (1)(c)(i)(C) only, when determining whether an unmarried biological father has demonstrated a full commitment to his parental responsibilities, a court shall consider the totality of the circumstances, including, if applicable:
- (i) efforts he has taken to discover the location of the child or the child's mother;
 - (ii) whether he has expressed or demonstrated an interest in taking responsibility for the child;
 - (iii) whether, and to what extent, he has developed, or attempted to develop, a relationship with the child;
 - (iv) whether he offered to provide and, if the offer was accepted, did provide, financial support for the child or the child's mother;
 - (v) whether, and to what extent, he has communicated, or attempted to communicate, with the child or the child's mother;
 - (vi) whether he has filed legal proceedings to establish his paternity of, and take responsibility for, the child;
 - (vii) whether he has filed a notice with a public official or agency relating to:
 - (A) his paternity of the child; or
 - (B) legal proceedings to establish his paternity of the child; or
 - (viii) other evidence that demonstrates that he has demonstrated a full commitment to his parental responsibilities.
- (c) Notwithstanding the provisions of Section 78B-6-121, the consent of an unmarried biological father is required with respect to an adoptee who is under the age of 18 if:
- (i)
 - (A) the unmarried biological father did not know, and through the exercise of reasonable diligence could not have known, before the time the mother executed a consent to adoption or relinquishment of the child for adoption, that a qualifying circumstance existed;
 - (B) before the mother executed a consent to adoption or relinquishment of the child for adoption, the unmarried biological father fully complied with the requirements to establish parental rights in the child, and to preserve the right to notice of a proceeding in connection with the adoption of the child, imposed by:
 - (I) the last state where the unmarried biological father knew, or through the exercise of reasonable diligence should have known, that the mother resided in before the mother executed the consent to adoption or relinquishment of the child for adoption; or
 - (II) the state where the child was conceived; and
 - (C) the unmarried biological father has demonstrated, based on the totality of the circumstances, a full commitment to his parental responsibilities, as described in Subsection (1)(b); or
 - (ii)

- (A) the unmarried biological father knew, or through the exercise of reasonable diligence should have known, before the time the mother executed a consent to adoption or relinquishment of the child for adoption, that a qualifying circumstance existed; and
- (B) the unmarried biological father complied with the requirements of Section 78B-6-121 before the later of:
 - (I) 20 days after the day that the unmarried biological father knew, or through the exercise of reasonable diligence should have known, that a qualifying circumstance existed; or
 - (II) the time that the mother executed a consent to adoption or relinquishment of the child for adoption.
- (2) An unmarried biological father who does not fully and strictly comply with the requirements of Section 78B-6-121 and this section is considered to have waived and surrendered any right in relation to the child, including the right to:
 - (a) notice of any judicial proceeding in connection with the adoption of the child; and
 - (b) consent, or refuse to consent, to the adoption of the child.

Amended by Chapter 474, 2013 General Session

78B-6-122.5 Effect of out-of-state paternity adjudication, declaration, or acknowledgment.

Unless a person who is an unmarried biological father has fully and strictly complied with the requirements of Sections 78B-6-120 through 78B-6-122, an out-of-state order that adjudicates paternity, or an out-of-state declaration or acknowledgment of paternity:

- (1) only has the effect of establishing that the person is an unmarried biological father of the child to whom the order, declaration, or acknowledgment relates; and
- (2) does not entitle the person to:
 - (a) notice of any judicial proceeding related to the adoption of the child;
 - (b) the right to consent, or refuse to consent, to the adoption of the child; or
 - (c) the right to custody of, control over, or visitation with the child.

Enacted by Chapter 237, 2010 General Session

78B-6-123 Power of a minor to consent or relinquish.

- (1) A minor parent has the power to:
 - (a) consent to the adoption of the minor's child; and
 - (b) relinquish the minor's control or custody of the child for adoption.
- (2) The consent or relinquishment described in Subsection (1) is valid and has the same force and effect as a consent or relinquishment executed by an adult parent.
- (3) A minor parent, having executed a consent or relinquishment, cannot revoke that consent upon reaching the age of majority or otherwise becoming emancipated.

Renumbered and Amended by Chapter 3, 2008 General Session

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

- (1) A consent or relinquishment by a birth mother or an adoptee shall be signed before:
 - (a) a judge of any court that has jurisdiction over adoption proceedings;
 - (b) subject to Subsection (6), a person appointed by the judge described in Subsection (1)(a) to take consents or relinquishments; or

- (c) subject to Subsection (6), a person who is authorized by a child-placing agency to take consents or relinquishments, if the consent or relinquishment grants legal custody of the child to a child-placing agency or an extra-jurisdictional child-placing agency.
- (2) If the consent or relinquishment of a birth mother or adoptee is taken out of state it shall be signed before:
 - (a) subject to Subsection (6), a person who is authorized by a child-placing agency to take consents or relinquishments, if the consent or relinquishment grants legal custody of the child to a child-placing agency or an extra-jurisdictional child-placing agency;
 - (b) subject to Subsection (6), a person authorized or appointed to take consents or relinquishments by a court of this state that has jurisdiction over adoption proceedings;
 - (c) a court that has jurisdiction over adoption proceedings in the state where the consent or relinquishment is taken; or
 - (d) a person authorized, under the laws of the state where the consent or relinquishment is taken, to take consents or relinquishments of a birth mother or adoptee.
- (3) The consent or relinquishment of any other person or agency as required by Section 78B-6-120 may be signed before a Notary Public or any person authorized to take a consent or relinquishment under Subsection (1) or (2).
- (4) A person, authorized by Subsection (1) or (2) to take consents or relinquishments, shall certify to the best of his information and belief that the person executing the consent or relinquishment has read and understands the consent or relinquishment and has signed it freely and voluntarily.
- (5) A person executing a consent or relinquishment is entitled to receive a copy of the consent or relinquishment.
- (6) A signature described in Subsection (1)(b), (1)(c), (2)(a), or (2)(b), shall be:
 - (a) notarized; or
 - (b) witnessed by two individuals who are not members of the birth mother's or the adoptee's immediate family.
- (7) Except as provided in Subsection 62A-4a-602(2), a transfer of relinquishment from one child-placing agency to another child-placing agency shall be signed before a Notary Public.

Amended by Chapter 354, 2019 General Session

78B-6-125 Time period prior to birth mother's consent.

- (1) A birth mother may not consent to the adoption of her child or relinquish control or custody of her child until at least 24 hours after the birth of her child.
- (2) The consent or relinquishment of any other person as required by Sections 78B-6-120 and 78B-6-121 may be executed at any time, including prior to the birth of the child.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-126 When consent or relinquishment effective.

A consent or relinquishment is effective when it is signed and may not be revoked.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-127 Parents whose rights have been terminated.

Neither notice nor consent to adoption or relinquishment for adoption is required from a parent whose rights with regard to an adoptee have been terminated by a court.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-128 Preplacement adoptive evaluations -- Exceptions.

- (1)
 - (a) Except as otherwise provided in this section, a child may not be placed in an adoptive home until a preplacement adoptive evaluation, assessing the prospective adoptive parent and the prospective adoptive home, has been conducted in accordance with the requirements of this section.
 - (b) Except as provided in Section 78B-6-131, the court may, at any time, authorize temporary placement of a child in a prospective adoptive home pending completion of a preplacement adoptive evaluation described in this section.
 - (c)
 - (i) Subsection (1)(a) does not apply if a pre-existing parent has legal custody of the child to be adopted and the prospective adoptive parent is related to that child or the pre-existing parent as a stepparent, sibling by half or whole blood or by adoption, grandparent, aunt, uncle, or first cousin, unless the court otherwise requests the preplacement adoption.
 - (ii) The prospective adoptive parent described in this Subsection (1)(c) shall obtain the information described in Subsections (2)(a) and (b), and file that documentation with the court prior to finalization of the adoption.
 - (d)
 - (i) The preplacement adoptive evaluation shall be completed or updated within the 12-month period immediately preceding the placement of a child with the prospective adoptive parent.
 - (ii) If the prospective adoptive parent has previously received custody of a child for the purpose of adoption, the preplacement adoptive evaluation shall be completed or updated within the 12-month period immediately preceding the placement of a child with the prospective adoptive parent and after the placement of the previous child with the prospective adoptive parent.
- (2) The preplacement adoptive evaluation shall include:
 - (a) a criminal history background check regarding each prospective adoptive parent and any other adult living in the prospective home, prepared no earlier than 18 months immediately preceding placement of the child in accordance with the following:
 - (i) if the child is in state custody, each prospective adoptive parent and any other adult living in the prospective home shall submit fingerprints to the Department of Human Services, which shall perform a criminal history background check in accordance with Section 62A-2-120; or
 - (ii) subject to Subsection (3), if the child is not in state custody, an adoption service provider or an attorney representing a prospective adoptive parent shall submit fingerprints from the prospective adoptive parent and any other adult living in the prospective home to the Criminal and Technical Services Division of Public Safety for a regional and nationwide background check, to the Office of Licensing within the Department of Human Services for a background check in accordance with Section 62A-2-120, or to the Federal Bureau of Investigation;
 - (b) a report containing all information regarding reports and investigations of child abuse, neglect, and dependency, with respect to each prospective adoptive parent and any other adult living in the prospective home, obtained no earlier than 18 months immediately preceding the day on which the child is placed in the prospective home, pursuant to waivers executed by each prospective adoptive parent and any other adult living in the prospective home, that:

- (i) if the prospective adoptive parent or the adult living in the prospective adoptive parent's home is a resident of Utah, is prepared by the Department of Human Services from the records of the Department of Human Services; or
 - (ii) if the prospective adoptive parent or the adult living in the prospective adoptive parent's home is not a resident of Utah, prepared by the Department of Human Services, or a similar agency in another state, district, or territory of the United States, where each prospective adoptive parent and any other adult living in the prospective home resided in the five years immediately preceding the day on which the child is placed in the prospective adoptive home;
- (c) in accordance with Subsection (6), a home study conducted by an adoption service provider that is:
- (i) an expert in family relations approved by the court;
 - (ii) a certified social worker;
 - (iii) a clinical social worker;
 - (iv) a marriage and family therapist;
 - (v) a psychologist;
 - (vi) a social service worker, if supervised by a certified or clinical social worker;
 - (vii) a clinical mental health counselor; or
 - (viii) an Office of Licensing employee within the Department of Human Services who is trained to perform a home study; and
- (d) in accordance with Subsection (7), if the child to be adopted is a child who is in the custody of any public child welfare agency, and is a child who has a special need as defined in Section 62A-4a-902, the preplacement adoptive evaluation shall be conducted by the Department of Human Services or a child-placing agency that has entered into a contract with the department to conduct the preplacement adoptive evaluations for children with special needs.
- (3) For purposes of Subsection (2)(a)(ii), subject to Subsection (4), the criminal history background check described in Subsection (2)(a)(ii) shall be submitted in a manner acceptable to the court that will:
- (a) preserve the chain of custody of the results; and
 - (b) not permit tampering with the results by a prospective adoptive parent or other interested party.
- (4) In order to comply with Subsection (3), the manner in which the criminal history background check is submitted shall be approved by the court.
- (5) Except as provided in Subsection 78B-6-131(2), in addition to the other requirements of this section, before a child in state custody is placed with a prospective foster parent or a prospective adoptive parent, the Department of Human Services shall comply with Section 78B-6-131.
- (6)
- (a) An individual described in Subsections (2)(c)(i) through (vii) shall be licensed to practice under the laws of:
 - (i) this state; or
 - (ii) the state, district, or territory of the United States where the prospective adoptive parent or other person living in the prospective adoptive home resides.
 - (b) Neither the Department of Human Services nor any of the department's divisions may proscribe who qualifies as an expert in family relations or who may conduct a home study under Subsection (2)(c).
 - (c) The home study described in Subsection (2)(c) shall be a written document that contains the following:

- (i) a recommendation to the court regarding the suitability of the prospective adoptive parent for placement of a child;
 - (ii) a description of in-person interviews with the prospective adoptive parent, the prospective adoptive parent's children, and other individuals living in the home;
 - (iii) a description of character and suitability references from at least two individuals who are not related to the prospective adoptive parent and with at least one individual who is related to the prospective adoptive parent;
 - (iv) a medical history and a doctor's report, based upon a doctor's physical examination of the prospective adoptive parent, made within two years before the date of the application; and
 - (v) a description of an inspection of the home to determine whether sufficient space and facilities exist to meet the needs of the child and whether basic health and safety standards are maintained.
- (7) Any fee assessed by the evaluating agency described in Subsection (2)(d) is the responsibility of the adopting parent.
- (8) The person conducting the preplacement adoptive evaluation shall, in connection with the preplacement adoptive evaluation, provide the prospective adoptive parent with literature approved by the Division of Child and Family Services relating to adoption, including information relating to:
- (a) the adoption process;
 - (b) developmental issues that may require early intervention; and
 - (c) community resources that are available to the prospective adoptive parent.
- (9) A copy of the preplacement adoptive evaluation shall be filed with the court.

Amended by Chapter 491, 2019 General Session

78B-6-129 Postplacement adoptive evaluations.

- (1) Except as provided in Subsections (2) and (3), a postplacement evaluation shall be conducted and submitted to the court prior to the final hearing in an adoption proceeding. The postplacement evaluation shall include:
- (a) verification of the allegations of fact contained in the petition for adoption;
 - (b) an evaluation of the progress of the child's placement in the adoptive home; and
 - (c) a recommendation regarding whether the adoption is in the best interest of the child.
- (2) The exemptions from and requirements for evaluations, described in Subsections 78B-6-128(1)(c), (2)(c), (6), and (8), also apply to postplacement adoptive evaluations.
- (3) Upon the request of the petitioner, the court may waive the postplacement adoptive evaluation, unless it determines that it is in the best interest of the child to require the postplacement evaluation.

Amended by Chapter 340, 2012 General Session

78B-6-130 Preplacement and postplacement adoptive evaluations -- Review by court.

- (1)
- (a) If the person conducting the preplacement adoptive evaluation or postplacement adoptive evaluation disapproves the adoptive placement, the court may dismiss the petition for adoption.
 - (b) Upon request by a prospective adoptive parent, the court shall order that an additional preplacement adoptive evaluation or postplacement adoptive evaluation be conducted, and shall hold a hearing on the suitability of the adoption, including testimony of interested parties.

- (2) Before finalization of a petition for adoption the court shall review and consider the information and recommendations contained in the preplacement adoptive evaluation and postplacement adoptive evaluation described in Sections 78B-6-128 and 78B-6-129.
- (3) With respect to the home study required as part of the preplacement adoptive evaluation described in Subsection 78B-6-128(2)(c), a court may review and consider information other than the information contained in the home study described in Subsection 78B-6-128(6)(c).

Amended by Chapter 280, 2017 General Session

78B-6-131 Child in custody of state -- Placement.

- (1) Notwithstanding Sections 78B-6-128 through 78B-6-130, and except as provided in Subsection (2), a child who is in the legal custody of the state may not be placed with a prospective foster parent or a prospective adoptive parent, unless, before the child is placed with the prospective foster parent or the prospective adoptive parent:
 - (a) a fingerprint based FBI national criminal history records check is conducted on the prospective foster parent, prospective adoptive parent, and any other adult residing in the household;
 - (b) the Department of Human Services conducts a check of the child abuse and neglect registry in each state where the prospective foster parent or prospective adoptive parent resided in the five years immediately preceding the day on which the prospective foster parent or prospective adoptive parent applied to be a foster parent or adoptive parent, to determine whether the prospective foster parent or prospective adoptive parent is listed in the registry as having a substantiated or supported finding of child abuse or neglect;
 - (c) the Department of Human Services conducts a check of the child abuse and neglect registry of each state where each adult living in the home of the prospective foster parent or prospective adoptive parent described in Subsection (1)(b) resided in the five years immediately preceding the day on which the prospective foster parent or prospective adoptive parent applied to be a foster parent or adoptive parent, to determine whether the adult is listed in the registry as having a substantiated or supported finding of child abuse or neglect; and
 - (d) each person required to undergo a background check described in this section passes the background check, pursuant to the provisions of Section 62A-2-120.
- (2) The requirements under Subsection (1) do not apply to the extent that:
 - (a) federal law or rule permits otherwise; or
 - (b) the requirements would prohibit the division or a court from placing a child with:
 - (i) a noncustodial parent, under Section 62A-4a-209, 78A-6-307, or 78A-6-307.5; or
 - (ii) a relative, under Section 62A-4a-209, 78A-6-307, or 78A-6-307.5, pending completion of the background check described in Subsection (1).

Amended by Chapter 293, 2012 General Session

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.
 - (c) Termination of a person's parental rights does not terminate the right of a relative of the parent to seek adoption of the child.
- (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;
 - (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 court that has jurisdiction over a child for whom more than one petition for adoption is filed shall grant a hearing only under the following circumstances:
- (a) to a petitioner:
 - (i) with whom the child is placed;
 - (ii) who has custody or guardianship of the child;
 - (iii) who has filed a written statement with the court within 120 days after the day on which the shelter hearing is held:
 - (A) requesting immediate placement of the child with the petitioner; and
 - (B) expressing the petitioner's intention of adopting the child;
 - (iv) who is a relative with whom the child has a significant and substantial relationship and who was unaware, within the first 120 days after the day on which the shelter hearing is held, of the child's removal from the child's parent; or
 - (v) who is a relative with whom the child has a significant and substantial relationship and, in a case where the child is not placed with a relative or is placed with a relative that is unable or unwilling to adopt the child:
 - (A) was actively involved in the child's child welfare case with the division or the juvenile court while the child's parent engaged in reunification services; and
 - (B) filed a written statement with the court that includes the information described in Subsections (8)(a)(iii)(A) and (B) within 30 days after the day on which the court terminated reunification services; or
 - (b) if the child:
 - (i) has been in the current placement for less than 180 days before the day on which the petitioner files the petition for adoption; or
 - (ii) is placed with, or is in the custody or guardianship of, an individual who previously informed the division or the court that the individual is unwilling or unable to adopt the child.
- (9)
- (a) If the court grants a hearing on more than one petition for adoption, there is a rebuttable presumption that it is in the best interest of a child to be placed for adoption with a petitioner:
 - (i) who has fulfilled the requirements described in Title 78B, Chapter 6, Part 1, Utah Adoption Act; and
 - (ii)
 - (A) with whom the child has continuously resided for six months;
 - (B) who has filed a written statement with the court within 120 days after the day on which the shelter hearing is held, as described in Subsection (8)(a)(iii); or
 - (C) who is a relative described in Subsection (8)(a)(iv).
 - (b) The court may consider other factors relevant to the best interest of the child to determine whether the presumption is rebutted.
 - (c) The court shall weigh the best interest of the child uniformly between petitioners if more than one petitioner satisfies a rebuttable presumption condition described in Subsection (9)(a).
- (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 adoption.
- (11) The division shall use best efforts to provide a known relative with timely information relating to the relative's rights or duties under this section.

Amended by Chapter 354, 2020 General Session

78B-6-134 Custody pending final decree.

(1)

- (a) A licensed child-placing agency, or a petitioner if the petition for adoption is filed before a child's birth, may seek an order establishing that the agency or petitioner shall have temporary custody of the child from the time of birth.
 - (b) The court shall grant an order for temporary custody under Subsection (1)(a) upon determining that:
 - (i) the birth mother or both birth parents consent to the order;
 - (ii) the agency or petitioner is willing and able to take custody of the child; and
 - (iii) an order will be in the best interest of the child.
 - (c) The court shall vacate an order if, prior to the child's birth, the birth mother or birth parents withdraw their consent.
- (2) Except as otherwise provided by the court, once a petitioner has received the adoptee into his home and a petition for adoption has been filed, the petitioner is entitled to the custody and control of the adoptee and is responsible for the care, maintenance, and support of the adoptee, including any necessary medical or surgical treatment, pending further order of the court.
- (3) Once a child has been placed with, relinquished to, or ordered into the custody of a child-placing agency for purposes of adoption, the agency shall have custody and control of the child and is responsible for his care, maintenance, and support. The agency may delegate the responsibility for care, maintenance, and support, including any necessary medical or surgical treatment, to the petitioner once the petitioner has received the child into his home. However, until the final decree of adoption is entered by the court, the agency has the right to the custody and control of the child.

Amended by Chapter 148, 2017 General Session

78B-6-136 Final decree of adoption -- Agreement by adoptive parent or parents.

- (1) Except as provided in Subsection (2), before the court enters a final decree of adoption:
- (a) the prospective adoptive parent or parents and the child being adopted shall appear before the appropriate court; and
 - (b) the prospective adoptive parent or parents shall execute an agreement stating that the child shall be adopted and treated in all respects as the adoptive parent's or parents' own lawful child.
- (2) Except as provided in Subsection 78B-6-115(4), a court may waive the requirement described in Subsection (1)(a) if:
- (a) the adoption is not contested;
 - (b) the prospective adoptive parent or parents:
 - (i) execute an agreement stating that the child shall be adopted and treated in all respects as the parent's or parents' own lawful child;
 - (ii) have the agreement described in Subsection (2)(b)(i) notarized; and
 - (iii) file the agreement described in Subsection (2)(b)(i) with the court; and
 - (c) all requirements of this chapter to obtain a final decree of adoption are otherwise complied with.

Amended by Chapter 340, 2012 General Session

78B-6-136.5 Timing of entry of final decree of adoption -- Posthumous adoption.

- (1) Except as provided in Subsection (2), a final decree of adoption may not be entered until the earlier of:

- (a) when the child has lived in the home of the prospective adoptive parent for six months; or
 - (b) when the child has been placed for adoption with the prospective adoptive parent for six months.
- (2)
- (a) If the prospective adoptive parent is the spouse of the pre-existing parent, a final decree of adoption may not be entered until the child has lived in the home of that prospective adoptive parent for one year, unless, based on a finding of good cause, the court orders that the final decree of adoption may be entered at an earlier time.
 - (b) The court may, based on a finding of good cause, order that the final decree of adoption be entered at an earlier time than described in Subsection (1).
- (3) If the child dies during the time that the child is placed in the home of a prospective adoptive parent or parents for the purpose of adoption, the court has authority to enter a final decree of adoption after the child's death upon the request of the prospective adoptive parents.
- (4) The court may enter a final decree of adoption declaring that a child is adopted by both a deceased and a surviving adoptive parent if, after the child is placed in the home of the child's prospective adoptive parents:
- (a) one of the prospective adoptive parents dies;
 - (b) the surviving prospective adoptive parent requests that the court enter the decree; and
 - (c) the decree is entered after the child has lived in the home of the surviving prospective adoptive parent for at least six months.
- (5) Upon request of a surviving pre-existing parent, or a surviving parent for whom adoption of a child has been finalized, the court may enter a final decree of adoption declaring that a child is adopted by a deceased adoptive parent who was the spouse of the surviving parent at the time of the prospective adoptive parent's death.
- (6) The court may enter a final decree of adoption declaring that a child is adopted by both deceased prospective adoptive parents if:
- (a) both of the prospective adoptive parents die after the child is placed in the prospective adoptive parents' home; and
 - (b) it is in the best interests of the child to enter the decree.
- (7) Nothing in this section shall be construed to grant any rights to the pre-existing parents of a child to assert any interest in the child during the six-month or one-year periods described in this section.

Amended by Chapter 340, 2012 General Session

78B-6-137 Decree of adoption -- Best interest of child -- Legislative findings.

The court shall examine each person appearing before it in accordance with this chapter, separately, and, if satisfied that the interests of the child will be promoted by the adoption, it shall enter a final decree of adoption declaring that the child is adopted by the adoptive parent or parents and shall be regarded and treated in all respects as the child of the adoptive parent or parents.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-138 Pre-existing parent's rights and duties dissolved.

- (1) A pre-existing parent of an adopted child is released from all parental rights and duties toward and all responsibilities for the adopted child, including residual parental rights and duties as

defined in Section 78A-6-105, and has no further parental rights or duties with regard to that adopted child at the earlier of:

- (a) the time the pre-existing parent's parental rights are terminated; or
 - (b) except as provided in Subsection (2), and subject to Subsections (3) and (4), the time the final decree of adoption is entered.
- (2) The parental rights and duties of a pre-existing parent who, at the time the child is adopted, is lawfully married to the person adopting the child are not released under Subsection (1)(b).
- (3) The parental rights and duties of a pre-existing parent who, at the time the child is adopted, is not lawfully married to the person adopting the child are released under Subsection (1)(b).
- (4)
- (a) Notwithstanding the provisions of this section, the court may allow a prospective adoptive parent to adopt a child without releasing the pre-existing parent from parental rights and duties under Subsection (1)(b), if:
 - (i) the pre-existing parent and the prospective adoptive parent were lawfully married at some time during the child's life;
 - (ii) the pre-existing parent consents to the prospective adoptive parent's adoption of the child, or is unable to consent because the pre-existing parent is deceased or incapacitated;
 - (iii) notice of the adoption proceeding is provided in accordance with Section 78B-6-110;
 - (iv) consent to the adoption is provided in accordance with Section 78B-6-120; and
 - (v) the court finds that it is in the best interest of the child to grant the adoption without releasing the pre-existing parent from parental rights and duties.
 - (b) This Subsection (4) does not permit a child to have more than two natural parents, as that term is defined in Section 78A-6-105.
- (5) This section may not be construed as terminating any child support obligation of a parent incurred before the adoption.

Amended by Chapter 43, 2018 General Session

78B-6-139 Name and status of adopted child.

When a final decree of adoption is entered under Section 78B-6-137, a child may take the family name of the adoptive parent or parents. After that decree of adoption is entered, the adoptive parent or parents and the child shall sustain the legal relationship of parent and child, and have all the rights and be subject to all the duties of that relationship.

Renumbered and Amended by Chapter 3, 2008 General Session

78B-6-140 Itemization of fees and expenses.

- (1) Except as provided in Subsection (4), prior to the date that a final decree of adoption is entered, an affidavit regarding fees and expenses, signed by the prospective adoptive parent or parents and the person or agency placing the child, shall be filed with the court.
- (2) The affidavit described in Subsection (1) shall itemize the following items in connection with the adoption:
 - (a) all legal expenses, maternity expenses, medical or hospital expenses, and living expenses that have been or will be paid to or on behalf of the pre-existing parents of the child, including the source of payment;
 - (b) fees paid by the prospective adoptive parent or parents in connection with the adoption;
 - (c) all gifts, property, or other items that have been or will be provided to the pre-existing parents, including the source of the gifts, property, or other items;

- (d) all public funds used for any medical or hospital costs in connection with the:
 - (i) pregnancy;
 - (ii) delivery of the child; or
 - (iii) care of the child;
 - (e) the state of residence of the:
 - (i) birth mother or the pre-existing parents; and
 - (ii) prospective adoptive parent or parents;
 - (f) a description of services provided to the prospective adoptive parents or pre-existing parents in connection with the adoption; and
 - (g) that Section 76-7-203 has not been violated.
- (3) A copy of the affidavit described in Subsection (1) shall be provided to the Office of Licensing within the Department of Human Services.
- (4) This section does not apply if the prospective adoptive parent is the legal spouse of a pre-existing parent.

Amended by Chapter 340, 2012 General Session

Superseded 11/1/2021

78B-6-141 Court hearings may be closed -- Petition and documents sealed -- Exceptions.

- (1) Notwithstanding Section 78A-6-114, court hearings in adoption cases may be closed to the public upon request of a party to the adoption petition and upon court approval. In a closed hearing, only the following individuals may be admitted:
- (a) a party to the proceeding;
 - (b) the adoptee;
 - (c) a representative of an agency having custody of the adoptee;
 - (d) in a hearing to relinquish parental rights, the individual whose rights are to be relinquished and invitees of that individual to provide emotional support;
 - (e) in a hearing on the termination of parental rights, the individual whose rights may be terminated;
 - (f) in a hearing on a petition to intervene, the proposed intervenor;
 - (g) in a hearing to finalize an adoption, invitees of the petitioner; and
 - (h) other individuals for good cause, upon order of the court.
- (2) An adoption document and any other documents filed in connection with a petition for adoption are sealed.
- (3) The documents described in Subsection (2) may only be open to inspection and copying:
- (a) in accordance with Subsection (5)(a), by a party to the adoption proceeding:
 - (i) while the proceeding is pending; or
 - (ii) within six months after the day on which the adoption decree is entered;
 - (b) subject to Subsection (5)(b), if a court enters an order permitting access to the documents by an individual who has appealed the denial of that individual's motion to intervene;
 - (c) upon order of the court expressly permitting inspection or copying, after good cause has been shown;
 - (d) as provided under Section 78B-6-144;
 - (e) when the adoption document becomes public on the one hundredth anniversary of the date the final decree of adoption was entered;
 - (f) when the birth certificate becomes public on the one hundredth anniversary of the date of birth;

- (g) to a mature adoptee or a parent who adopted the mature adoptee, without a court order, unless the final decree of adoption is entered by the juvenile court under Subsection 78B-6-115(3)(b); or
 - (h) to an adult adoptee, to the extent permitted under Subsection (4).
- (4)
- (a) For an adoption finalized on or after January 1, 2016, a birth parent may elect, on a written consent form provided by the office, to permit identifying information about the birth parent to be made available for inspection by an adult adoptee.
 - (b) A birth parent may, at any time, file a written document with the office to:
 - (i) change the election described in Subsection (4)(a); or
 - (ii) elect to make other information about the birth parent, including an updated medical history, available for inspection by an adult adoptee.
 - (c) A birth parent may not access any identifying information or an adoption document under this Subsection (4).
- (5)
- (a) An individual who files a motion to intervene in an adoption proceeding:
 - (i) is not a party to the adoption proceeding, unless the motion to intervene is granted; and
 - (ii) may not be granted access to the documents described in Subsection (2), unless the motion to intervene is granted.
 - (b) An order described in Subsection (3)(b) shall:
 - (i) prohibit the individual described in Subsection (3)(b) from inspecting a document described in Subsection (2) that contains identifying information of the adoptive or prospective adoptive parent; and
 - (ii) permit the individual described in Subsection (5)(b)(i) to review a copy of a document described in Subsection (5)(b)(i) after the identifying information described in Subsection (5)(b)(i) is redacted from the document.

Amended by Chapter 30, 2018 General Session

Effective 11/1/2021

78B-6-141 Court hearings may be closed -- Petition and documents sealed -- Exceptions.

- (1)
- (a) Notwithstanding Section 78A-6-114, court hearings in adoption cases may be closed to the public upon request of a party to the adoption petition and upon court approval.
 - (b) In a closed hearing, only the following individuals may be admitted:
 - (i) a party to the proceeding;
 - (ii) the adoptee;
 - (iii) a representative of an agency having custody of the adoptee;
 - (iv) in a hearing to relinquish parental rights, the individual whose rights are to be relinquished and invitees of that individual to provide emotional support;
 - (v) in a hearing on the termination of parental rights, the individual whose rights may be terminated;
 - (vi) in a hearing on a petition to intervene, the proposed intervenor;
 - (vii) in a hearing to finalize an adoption, invitees of the petitioner; and
 - (viii) other individuals for good cause, upon order of the court.
- (2) An adoption document and any other documents filed in connection with a petition for adoption are sealed.
- (3) The documents described in Subsection (2) may only be open to inspection and copying:

- (a) in accordance with Subsection (5)(a), by a party to the adoption proceeding:
 - (i) while the proceeding is pending; or
 - (ii) within six months after the day on which the adoption decree is entered;
 - (b) subject to Subsection (5)(b), if a court enters an order permitting access to the documents by an individual who has appealed the denial of that individual's motion to intervene;
 - (c) upon order of the court expressly permitting inspection or copying, after good cause has been shown;
 - (d) as provided under Section 78B-6-144;
 - (e) when the adoption document becomes public on the one hundredth anniversary of the date the final decree of adoption was entered;
 - (f) when the birth certificate becomes public on the one hundredth anniversary of the date of birth;
 - (g) to a mature adoptee or a parent who adopted the mature adoptee, without a court order, unless the final decree of adoption is entered by the juvenile court under Subsection 78B-6-115(3)(b); or
 - (h) to an adult adoptee, to the extent permitted under Subsection (4).
- (4)
- (a) An adult adoptee that was born in the state may access an adoption document associated with the adult adoptee's adoption without a court order:
 - (i) to the extent that a birth parent consents under Subsection (4)(b); or
 - (ii) if the birth parents listed on the original birth certificate are deceased.
 - (b) A birth parent may:
 - (i) provide consent to allow the access described in Subsection (4)(a) by electing, electronically or on a written form provided by the office, allowing the birth parent to elect to:
 - (A) allow the office to provide the adult adoptee with the contact information of the birth parent that the birth parent indicates;
 - (B) allow the office to provide the adult adoptee with the contact information of an intermediary that the birth parent indicates;
 - (C) prohibit the office from providing any contact information to the adult adoptee;
 - (D) allow the office to provide the adult adoptee with a noncertified copy of the original birth certificate; and
 - (ii) at any time, file, electronically or on a written document with the office, to:
 - (A) change the election described in Subsection (4)(b); or
 - (B) elect to make other information about the birth parent, including an updated medical history, available for inspection by an adult adoptee.
 - (c) A birth parent may not access any identifying information or an adoption document under this Subsection (4).
 - (d) If two birth parents are listed on the original birth certificate and only one birth parent consents under Subsection (4)(b) or is deceased, the office may redact the name of the other birth parent.
- (5)
- (a) An individual who files a motion to intervene in an adoption proceeding:
 - (i) is not a party to the adoption proceeding, unless the motion to intervene is granted; and
 - (ii) may not be granted access to the documents described in Subsection (2), unless the motion to intervene is granted.
 - (b) An order described in Subsection (3)(b) shall:

- (i) prohibit the individual described in Subsection (3)(b) from inspecting a document described in Subsection (2) that contains identifying information of the adoptive or prospective adoptive parent; and
- (ii) permit the individual described in Subsection (5)(b)(i) to review a copy of a document described in Subsection (5)(b)(i) after the identifying information described in Subsection (5)(b)(i) is redacted from the document.

Amended by Chapter 323, 2020 General Session

78B-6-142 Adoption order from foreign country.

- (1) Except as otherwise provided by federal law, an adoption order rendered to a resident of this state that is made by a foreign country shall be recognized by the courts of this state and enforced as if the order were rendered by a court in this state.
- (2) A person who adopts a child in a foreign country may register the order in this state. A petition for registration of a foreign adoption order may be combined with a petition for a name change. If the court finds that the foreign adoption order meets the requirements of Subsection (1), the court shall order the state registrar to:
 - (a) file the order pursuant to Section 78B-6-137; and
 - (b) file a certificate of birth for the child pursuant to Section 26-2-28.
- (3) If a clerk of the court is unable to establish the fact, time, and place of birth from the documentation provided, a person holding a direct, tangible, and legitimate interest as described in Subsection 26-2-22(3)(a) or (b) may petition for a court order establishing the fact, time, and place of a birth pursuant to Subsection 26-2-15(1).

Amended by Chapter 201, 2020 General Session

78B-6-143 Nonidentifying health history of adoptee filed with office -- Limited availability.

- (1)
 - (a) Upon finalization of an adoption in this state, the person who proceeded on behalf of the petitioner for adoption, or a child-placing agency if an agency is involved in the adoption, shall file a report with the office, in the form established by the office.
 - (b) The report described in Subsection (1)(a) shall include a detailed health history, and a genetic and social history of the adoptee.
- (2) The report described in Subsection (1)(a) may not contain identifying information or any information that identifies the adoptee's birth parents or members of their families.
- (3) When the report described in Subsection (1)(a) is filed, a duplicate report shall be provided to the adoptive parents.
- (4) The report described in Subsection (1)(a) shall only be available upon request, and upon presentation of positive identification, to the following persons:
 - (a) the adoptive parents;
 - (b) in the event of the death of the adoptive parents, the adoptee's legal guardian;
 - (c) the adoptee;
 - (d) in the event of the death of the adoptee, the adoptee's spouse, if the spouse is the parent or guardian of the adoptee's child;
 - (e) the adoptee's child or descendant;
 - (f) the adoptee's birth parent; and
 - (g) the adoptee's adult sibling.

- (5) No identifying information or information that identifies a birth parent or the birth parent's family may be disclosed under this section.
- (6) The actual cost of providing information under this section shall be paid by the person requesting the information.
- (7) A child-placing agency may provide a copy of the report described in Subsection (1)(a) and information in the child-placing agency's files, except identifying information, to an adult adoptee, a birth parent, or an adoptive parent.
- (8) Notwithstanding Subsection (7), identifying information may be released to the extent that the individual who is the subject of the information provides written authorization of the information's release.

Amended by Chapter 417, 2017 General Session

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

- (1) The office shall establish a mutual-consent, voluntary adoption registry.
 - (a) An adult adoptee or a birth parent of an adult adoptee, upon presentation of positive identification, may request identifying information from the office, in the form established by the office. A court of competent jurisdiction or a child-placing agency may accept that request from the adult adoptee or birth parent, in the form provided by the office, and transfer that request to the office. The adult adoptee or birth parent is responsible for notifying the office of any change in information contained in the request.
 - (b) Except as otherwise provided in this part, the office may only release identifying information to an adult adoptee or birth parent when it receives requests from both the adoptee and the adoptee's birth parent.
 - (c) After matching the request of an adult adoptee with that of at least one of the adoptee's birth parents, the office shall notify both the adult adoptee and the birth parent that the requests have been matched, and disclose the identifying information to those parties. However, if that adult adoptee has a sibling of the same birth parent who is under the age of 18 years, and who was raised in the same family setting as the adult adoptee, the office may not disclose the requested identifying information to that adult adoptee or the adoptee's birth parent.
- (2)
 - (a) Adult adoptees and adult siblings of adult adoptees, upon presentation of positive identification, may request identifying information from the office, in the form established by the office. A court of competent jurisdiction or a child-placing agency may accept that request from the adult adoptee or adult sibling, in the form provided by the office, and transfer that request to the office. The adult adoptee or adult sibling is responsible for notifying the office of any change in information contained in the request.
 - (b) The office may only release identifying information to an adult adoptee or adult sibling when it receives requests from both the adult adoptee and the adult adoptee's adult sibling.
 - (c) After matching the request of an adult adoptee with that of the adoptee's adult sibling, if the office determines that the office has sufficient information to make that match, the office shall notify both the adult adoptee and the adult sibling that the requests have been matched, and disclose the identifying information to those parties.
 - (d) After receiving a request for information from an adult adoptee and a birth parent under this section, the office shall:
 - (i) search the office's vital records for the adult adoptee's birth parent; and

- (ii) if the search described in Subsection (2)(d)(i) reveals that the birth parent who had requested information under this section is dead, inform the adult adoptee that the birth parent is dead and disclose the identity of the birth parent.
- (e) The office shall attempt to notify an individual who requests information under this section:
 - (i) of the results of the initial search for a match; and
 - (ii) if the initial search does not produce a match, that the office will keep the request on file and will attempt to notify the individual in the event of a match.
- (3) Information registered with the office under this section is available only to a registered adult adoptee and the adoptee's registered birth parent or registered adult sibling, under the terms of this section.
- (4) Except as provided in Section 78B-6-141, the office may not disclose information regarding a birth parent who has not registered a request with the office.
- (5) Nothing in this section limits the disclosure of information in accordance with Section 78B-6-141.

Amended by Chapter 137, 2015 General Session

78B-6-144.5 Adoption records fees.

- (1)
 - (a) The office shall, in accordance with Section 63J-1-504, establish a fee to be paid by an individual who requests information or other services under Section 78B-6-141 or Section 78B-6-144, and to cover the costs related to providing the information, services, and improvements described in Subsection (2).
 - (b) The office may accept donations or grants from public or private entities to cover the costs related to providing the information, services, and improvements described in Subsection (2).
- (2) The office shall deposit fees and donations collected under Subsection (1) into the General Fund as dedicated credits and may be used only to:
 - (a) fund, automate, and improve the provision of services described in Sections 78B-6-141 and 78B-6-144; or
 - (b) implement means of maximizing potential matches for the services described in Sections 78B-6-141 and 78B-6-144, including the use of broad search terms and methods.

Enacted by Chapter 137, 2015 General Session

78B-6-145 Restrictions on disclosure of information -- Violations -- Penalty.

- (1) Information maintained or filed with the office under this chapter may not be disclosed except as provided by this chapter, or pursuant to a court order.
- (2) Any person who discloses information obtained from the office's voluntary adoption registry in violation of this part, or knowingly allows that information to be disclosed in violation of this chapter is guilty of a class A misdemeanor.

Amended by Chapter 340, 2012 General Session

78B-6-146 Postadoption contact agreements.

- (1) As used in this section:
 - (a) "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 birth relative, and an adopted child after the finalization of adoption.

(b) "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 a postadoption contact agreement as provided in this section.
 - (b) A birth parent is not required to be a party to 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) In order to be legally enforceable, 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;
 - (b) signed by each party claiming a right or obligation in the agreement; and
 - (c) if the adopted child 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, 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 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:
 - (i) the parties performed the duties outlined in the open adoption agreement in good faith;
 - (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
 - (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.

- (8) An open adoption agreement that has been found not to be in the best interest of the adopted child shall not be enforced.
- (9) Violation of an open adoption agreement is not grounds:
 - (a) to set aside an adoption; or
 - (b) for an award of money damages.
- (10) Nothing in this section shall be construed to mean that an open adoption agreement is required before an adoption may be finalized.
- (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.

Enacted by Chapter 438, 2013 General Session