

ADOPTION ACT AMENDMENTS

1998 GENERAL SESSION

STATE OF UTAH

Sponsor: Robert H. M. Killpack

AN ACT RELATING TO ADOPTION; CLARIFYING SPECIFIC PROVISIONS RELATING TO UNMARRIED BIOLOGICAL FATHERS.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

78-30-4.13, as last amended by Chapter 209, Laws of Utah 1997

78-30-4.15, as enacted by Chapter 168, Laws of Utah 1995

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

Section 1. Section **78-30-4.13** is amended to read:

78-30-4.13. Notice of adoption proceedings.

(1) An unmarried biological father, by virtue of the fact that he has engaged in a sexual relationship with a woman, is deemed to be on notice that a pregnancy and an adoption proceeding regarding that child may occur, and has a duty to protect his own rights and interests. He is therefore entitled to actual notice of a birth or an adoption proceeding with regard to that child only as provided in this section.

(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 78-30-4.14 unless that right has been terminated by waiver, relinquishment, consent, or 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 he has not joined in the petition;

(e) the adoptee's spouse, if any;

(f) any person who is recorded on the birth certificate as the child's father, with the

knowledge and consent of the mother;

(g) any person who is openly living in the same household with the child at the time the consent is executed or relinquishment made, and who is 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.

(3) (a) In order to preserve any right to notice and consent, an unmarried biological father may initiate proceedings to establish paternity under Title 78, Chapter 45a, Uniform Act on Paternity, and file a notice of the initiation of those proceedings with the state registrar of vital statistics within the Department of Health prior to the mother's execution of consent or her relinquishment to an agency. That action and notice may also be filed prior to the child's birth.

(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 78-13-7.

~~(b)~~ (c) The Department of Health shall provide forms for the purpose of filing the notice described in Subsection (3)(a), and make those forms available in the office of the county clerk in each county, every health care facility, as defined in Section 26-21-2, and licensed child-placing agency.

(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 may be served immediately after relinquishment or execution of consent, but shall be served at least 30 days prior to the final dispositional hearing. The notice shall specifically state that the person served must respond to the petition within 30 days of service if he intends to intervene in or contest the adoption.

(6) (a) Any person who has been served with notice of an adoption proceeding and who wishes to contest the adoption shall file a motion in the adoption proceeding within 30 days after service. The motion shall set forth specific relief sought and be accompanied by a memorandum specifying the factual and legal grounds upon which the motion is based.

(b) Any person who fails to file a motion for relief within 30 days after service of notice waives any right to further notice in connection with the adoption, forfeits all rights in relation to the adoptee, and 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) With regard to a person whose consent is necessary under Section 78-30-4.14, service shall be in accordance with the provisions of the Utah Rules of Civil Procedure. If service is by publication, the court shall designate the content of the notice regarding the identity of the parties. The notice may not include the name of the person or persons seeking to adopt the adoptee.

(b) As to any other person for whom notice is required under this section, service by certified mail, return receipt requested, is sufficient. If that service 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 78-30-4.14, the sole purpose of notice under this section is to enable the person served to intervene in the adoption and present evidence to the court relevant to the best interest of the child.

Section 2. Section **78-30-4.15** is amended to read:

78-30-4.15. Responsibility of each party for their own actions -- Fraud or misrepresentation -- Statutory compliance.

(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 interest of the child, in accordance with the provisions of Section 78-30-4.16.

(3) 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.

(4) The Legislature finds that an unmarried biological father who resides in another state may not, in every circumstance, be reasonably presumed to know of, and strictly comply with, the requirements of this chapter. Therefore when all of the following requirements have been met, that unmarried biological father may contest an adoption, prior to finalization of the decree of adoption, and assert his interest in the child; the court may then, in its discretion, proceed with an evidentiary hearing under Subsection 78-30-4.16(2):

(a) the unmarried biological father resides and has resided in another state where the unmarried mother was also located or resided;

(b) the mother left that state without ~~[notification or information to]~~ notifying or informing the unmarried biological father ~~[regarding where]~~ that she could be ~~[contacted or]~~ located in the state

of Utah;

(c) the unmarried biological father has, through every reasonable means, attempted to locate the mother but ~~[has been unable to do so]~~ does not know or have reason to know that the mother is residing in the state of Utah; and

(d) the unmarried biological father has complied with the most stringent and complete requirements of the state where the mother previously resided or was located, in order to protect and preserve his parental interest and right in the child in cases of adoption.