

ADOPTION ACT AMENDMENTS

2000 GENERAL SESSION

STATE OF UTAH

Sponsor: Lyle W. Hillyard

AN ACT RELATING TO ADOPTION; EXPANDING WHO IS AUTHORIZED TO TAKE CONSENTS OR RELINQUISHMENTS FROM A BIRTH MOTHER; AND LIMITING LOCATIONS OF FORMS FOR NOTICE OF PATERNITY ACTION.

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

AMENDS:

78-30-4.13, as last amended by Chapter 129, Laws of Utah 1998

78-30-4.18, as renumbered and amended 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.

(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~~ health department 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 **78-30-4.18** is amended to read:

78-30-4.18. Persons who may take consents and relinquishments.

(1) A consent or relinquishment by a birth mother or an adoptee shall be signed ~~[or confirmed under oath]~~ before:

(a) a judge of any court that has jurisdiction over adoption proceedings, or a public officer appointed by that judge for the purpose of taking consents or relinquishments; or

(b) a person who is authorized by a licensed child-placing agency to take consents or relinquishments so long as the signature is notarized or witnessed by two individuals who are not members of the birth mother's immediate family ~~[and who are not affiliated with the licensed child-placing agency]~~.

(2) If the consent or relinquishment of a birth mother or adoptee is taken out of state it shall be signed ~~[or confirmed under oath]~~ before:

(a) a person who is authorized by a child-placing agency licensed by that state to take consents or relinquishments; or

(b) a person authorized or appointed to take consents or relinquishments by a court of this state that has jurisdiction over adoption proceedings, or a court of that state that has jurisdiction over adoption proceedings.

(3) The consent or relinquishment of any other person or agency as required by Section 78-30-4.14 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 a copy of the consent or relinquishment.