

ADOPTION LAW AMENDMENTS

2001 GENERAL SESSION

STATE OF UTAH

Sponsor: Terry R. Spencer

This act modifies the Termination of Parental Rights Act and the Adoption Act. The act modifies those who are authorized to take consents or relinquishments. The act amends the Adoption Act to require a father to file an executed voluntary declaration of paternity with the state registrar of vital statistics as required by the Voluntary Declaration of Paternity Act. The act clarifies that a notice of the commencement of paternity proceedings is considered filed when the notice is entered in the registry of notices from unmarried biological fathers. The act designates background check requirements for prospective adoptive parents who are not residents of Utah. The act provides that licensed experts in family relations of the state where prospective adoptive parents reside may conduct preplacement evaluations. The act expands the jurisdiction of Utah courts to allow a family to finalize an adoption in the Utah district court where a child was born. The act makes technical changes. This act contains a coordination clause.

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

AMENDS:

78-3a-414, as last amended by Chapter 161, Laws of Utah 2000

78-30-3.5, as last amended by Chapter 21, Laws of Utah 1999

78-30-4.14, as enacted by Chapter 168, Laws of Utah 1995

78-30-7, as last amended by Chapter 10, Laws of Utah 1997

ENACTS:

78-30-3.6, Utah Code Annotated 1953

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

Section 1. Section **78-3a-414** is amended to read:

78-3a-414. Voluntary relinquishment -- Irrevocable.

(1) Voluntary relinquishment or consent for termination of parental rights shall be signed or confirmed under oath either:

(a) before a judge of any court that has jurisdiction over proceedings for termination of parental rights in this state or any other state, or a public officer appointed by that court for the purpose of taking consents or relinquishments[-]; or

(b) except as provided in Subsection (2), any person authorized to take consents or relinquishments under Subsections 78-30-4.18(1) and (2).

(2) Only the juvenile court is authorized to take consents or relinquishments from a parent who has any child who is in the custody of a state agency or who has a child who is otherwise under the jurisdiction of the juvenile court.

~~[(2)]~~ (3) The court [or], appointed officer, or other authorized person shall certify to the best of that person's 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.

~~[(3)]~~ (4) A voluntary relinquishment or consent for termination of parental rights is effective when it is signed and may not be revoked.

~~[(4)]~~ (5) The requirements and processes described in Sections 78-3a-402 through 78-3a-410 do not apply to a voluntary relinquishment or consent for termination of parental rights. The court need only find that the relinquishment or termination is in the child's best interest.

~~[(5)]~~ (6) There is a presumption that voluntary relinquishment or consent for termination of parental rights is not in the child's best interest where it appears to the court that the primary purpose is to avoid a financial support obligation. The presumption may be rebutted, however, if the court finds the relinquishment or consent to termination of parental rights will facilitate the establishment of stability and permanency for the child.

~~[(6)]~~ (7) Upon granting a voluntary relinquishment the court may make orders relating to the child's care and welfare that the court considers to be in the child's best interest.

Section 2. Section **78-30-3.5** is amended to read:

78-30-3.5. Preplacement and postplacement 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) The court may, at any time, authorize temporary placement of a child in a potential adoptive home pending completion of a preplacement adoptive evaluation described in this section.

(c) Subsection (1)(a) does not apply if a birth parent has legal custody of the child to be adopted and the prospective adoptive parent is related to that child as a step-parent, sibling by half or whole blood or by adoption, grandparent, aunt, uncle, or first cousin, unless the evaluation is otherwise requested by the court. The prospective adoptive parent described in this Subsection (1)(c) shall, however, obtain the information described in Subsections (2)(a) and (b), and file that documentation with the court prior to finalization of the adoption.

(d) The requirements of Subsection (1)(a) are satisfied by a previous preplacement adoptive evaluation conducted within three years prior to placement of the child, or an annual updated adoptive evaluation conducted after that three-year period or within one year after finalization of a previous adoption.

(2) The preplacement adoptive evaluation shall include:

(a) criminal history record information regarding each prospective adoptive parent and any other adult living in the prospective home, received from the Criminal Investigations and Technical Services Division of the Department of Public Safety, in accordance with Section 53-10-108, no earlier than 18 months immediately preceding placement of the child;

(b) a report from the Department of Human Services containing all information regarding reports and investigation 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 placement of the child, pursuant to waivers executed by those parties; and

(c) an evaluation conducted by an expert in family relations approved by the court or a certified social worker, clinical social worker, marriage and family therapist, psychologist, professional counselor, or other court-determined expert in family relations, who is licensed to practice under the laws of this state or under the laws of the state where the prospective adoptive parent or other person living in the prospective adoptive home resides. The evaluation shall be in a form approved by the Department of Human Services. Neither the Department of Human Services

nor any of its divisions may proscribe who qualifies as an expert in family relations or who may conduct evaluations pursuant to this Subsection (2).

(3) A copy of the preplacement adoptive evaluation shall be filed with the court.

(4) (a) Except as provided in Subsections (4)(b) and (c), 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:

- (i) verification of the allegations of fact contained in the petition for adoption;
- (ii) an evaluation of the progress of the child's placement in the adoptive home; and
- (iii) a recommendation regarding whether the adoption is in the best interest of the child.

(b) The exemptions from and requirements for evaluations, described in Subsections (1)(c), (2)(c), and (3), also apply to postplacement adoptive evaluations.

(c) 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.

(5) If the person or agency conducting the evaluation disapproves the adoptive placement, either in the preplacement or postplacement adoptive evaluation, the court may dismiss the petition. However, upon request of a prospective adoptive parent, the court shall order that an additional preplacement or postplacement adoptive evaluation be conducted, and hold a hearing on the suitability of the adoption, including testimony of interested parties.

(6) Prior to finalization of a petition for adoption the court shall review and consider the information and recommendations contained in the preplacement and postplacement adoptive studies required by this section.

Section 3. Section **78-30-3.6** is enacted to read:

78-30-3.6. Prospective 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 potential adoptive parent shall:

- (a) comply with the provisions of Section 78-30-3.5; and

(b) submit fingerprints for a Federal Bureau of Investigation national criminal history record check.

(2) The fingerprints referenced in Subsection (1)(b) shall be submitted to the Federal Bureau of Investigation either:

(a) through the Criminal Investigations and Technical Services Division of the Department of Public Safety in accordance with the provisions of Section 62A-2-120; or

(b) if the prospective adoptive parent is pursuing the adoption with a private attorney, the request shall be submitted to the Federal Bureau of Investigation as a personal records check, in accordance with procedures established by the Criminal Investigations and Technical Services Division of the Department of Public Safety.

Section 4. Section **78-30-4.14** is amended to read:

78-30-4.14. Necessary consent to adoption or relinquishment for adoption.

(1) Either relinquishment for adoption to a licensed child-placing agency or consent to adoption is required from:

(a) the adoptee, if he is more than 12 years of age, unless he does not have the mental capacity to consent;

(b) both parents or the surviving parent of an adoptee who was conceived or born within a marriage, unless the adoptee is 18 years of age or older;

(c) the mother of an adoptee born outside of marriage;

(d) any 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 or her relinquishment to an agency for adoption;

(e) any 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 78, Chapter 45e, prior to the mother's execution of consent or her relinquishment to an agency for adoption, which voluntary declaration of paternity is considered filed when entered into a database that can be accessed by the Department of Health;

(f) an unmarried biological father of an adoptee, as defined in Section 78-30-4.11, only if

the requirements and conditions of Subsection (2)(a) or (b) have been proven; and

(g) the licensed child-placing agency to whom an adoptee has been relinquished and that is placing the child for adoption.

(2) In accordance with Subsection (1), the consent of an unmarried biological father is necessary only if the father has strictly complied with the requirements of this section.

(a) (i) With regard to a child who is placed with adoptive parents more than six months after birth, an unmarried biological father shall have developed a substantial relationship with the child, taken some measure of responsibility for the child and the child's future, and demonstrated a full commitment to the responsibilities of parenthood by financial support of the child, of a fair and reasonable sum and in accordance with the father's ability, when not prevented from doing so by the person or authorized agency having lawful custody of the child, and either:

(A) visiting the child at least monthly when physically and financially able to do so, and when not prevented from doing so by the person or authorized agency having lawful custody of the child; or

(B) regular communication with the child or with the person or agency having the care or custody of the child, when physically and financially unable to visit the child, and when not prevented from doing so by the person or authorized agency having lawful custody of the child.

(ii) The subjective intent of an unmarried biological father, whether expressed or otherwise, unsupported by evidence of acts specified in this subsection shall not preclude a determination that the father failed to meet the requirements of ~~[this]~~ Subsection (2)(a)(i).

(iii) An unmarried biological father who openly lived with the child for a period of six months within the one-year period after the birth of the child and immediately preceding placement of the child with adoptive parents, and openly held himself out to be the father of the child during that period, shall be deemed to have developed a substantial relationship with the child and to have otherwise met the requirements of ~~[this]~~ Subsection (2)(a)(i).

(b) With regard to a child who is under six months of age at the time he is placed with adoptive parents, an unmarried biological father shall have manifested a full commitment to his parental responsibilities by performing all of the acts described in this subsection prior to the time

the mother executes her consent for adoption or relinquishes the child to a licensed child-placing agency. The father shall:

(i) initiate proceedings to establish paternity under Title 78, Chapter 45a, Uniform Act on Paternity, and file with that court a sworn affidavit stating that he is fully able and willing to have full custody of the child, setting forth his plans for care of the child, and 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;

(ii) file notice of the commencement of paternity proceedings with the state registrar of vital statistics within the Department of Health, in a confidential registry established by the department for that purpose, which notice is considered filed when the notice is entered in the registry of notices from unmarried biological fathers; and

(iii) if he had actual knowledge of the pregnancy, paid 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 means, and when not prevented from doing so by the person or authorized agency having lawful custody of the child.

(3) An unmarried biological father whose consent is required under Subsection (1) or (2) may nevertheless lose his right to consent if the court determines, in accordance with the requirements and procedures of Title 78, Chapter 3a, Part 4, Termination of Parental Rights Act, that his rights should be terminated, based on the petition of any interested party.

(4) If there is no showing that an unmarried biological father has consented to or waived his rights regarding a proposed adoption, the petitioner shall file with the court a certificate from the state registrar of vital statistics within the Department of Health, stating that a diligent search has been made of the registry of notices from unmarried biological fathers described in Subsection (2)(b)(ii), and that no filing has been found pertaining to the father of the child in question, or if a filing is found, stating the name of the putative father and the time and date of filing. That certificate shall be filed with the court prior to entrance of a final decree of adoption.

(5) An unmarried biological father who does not fully and strictly comply with each of the conditions provided in this section, is deemed to have waived and surrendered any right in relation

to the child, including the right to notice of any judicial proceeding in connection with the adoption of the child, and his consent to the adoption of the child is not required.

Section 5. Section **78-30-7** is amended to read:

78-30-7. Jurisdiction of district and juvenile court -- 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 person adopting resides[;]; or

(b) with the juvenile court as provided in Section 78-3a-105.

(2) If a child is conceived in Utah, adoption proceedings may be commenced by filing a petition with the clerk of a court in the district court where the child was born.

(3) All orders, decrees, agreements, and notices in the proceedings shall be filed with the clerk of [that] the court where the adoption proceedings were commenced under Subsection (1) or (2).

~~(2)~~ (4) A petition for adoption shall be filed within 30 days of the date the adoptee is placed in the home of the petitioners for the purpose of adoption, unless the time for filing has been extended by the court, or unless the adoption is arranged by a licensed child-placing agency in which case the agency may extend the filing time.

Section 6. **Coordination clause.**

If this bill and H.B. 269 both pass, it is the intent of the Legislature that in preparing the Utah Code database for publication, the Office of Legislative Research and General Counsel shall revise Section 78-30-7 to read:

"(1) Adoption proceedings shall be commenced by filing a petition with the clerk of the district court either:

(a) in the district where the person adopting resides[;]; or

(b) with the juvenile court as provided in [~~Section 78-3a-105~~] Subsection 78-3a-104(1)(o).

(2) If a child is conceived in Utah, adoption proceedings may be commenced by filing a petition with the clerk of a court in the district court where the child was born.

(3) All orders, decrees, agreements, and notices in the proceedings shall be filed with the

clerk of [~~that~~] the court where the adoption proceedings were commenced under Subsection (1) or (2).

[~~(2)~~] (4) A petition for adoption shall be filed within 30 days of the date the adoptee is placed in the home of the petitioners for the purpose of adoption, unless the time for filing has been extended by the court, or unless the adoption is arranged by a licensed child-placing agency in which case the agency may extend the filing time."