

ADOPTION AMENDMENTS

2004 GENERAL SESSION

STATE OF UTAH

Sponsor: Ann W. Hardy

LONG TITLE

General Description:

This bill amends provisions relating to adoption procedures and adoptive evaluations.

Highlighted Provisions:

This bill:

- ▶ amends who may receive a criminal history report;
- ▶ expands which reports and information are confidential;
- ▶ authorizes an agency to provide an adoption report to certain other persons in connection with an adoption;
- ▶ changes the timeliness on conducting a preplacement adoptive evaluation;
- ▶ requires a person or agency conducting an adoption evaluation to provide the prospective adoptive parent with literature to assist them in connection with the adoption;
- ▶ amends the notice of adoption proceedings;
- ▶ requires a putative father's name to appear on a birth certificate before the relinquishment or consent for adoption;
- ▶ revises provisions for an unmarried, biological father to declare an interest in the child;
- ▶ makes explicit the biological father's rights when the child is conceived by conduct that would constitute a sexual offense;
- ▶ changes provisions regarding contested adoptions;
- ▶ changes time frames for consent or relinquishment in connection with a child placed



28 for adoption;

- 29 ▶ clarifies venue for adoption proceedings; and
- 30 ▶ provides for allowance of interested persons to petition the court to determine the
- 31 rights of other persons in connection with a child.

32 **Monies Appropriated in this Bill:**

33 None

34 **Other Special Clauses:**

35 None

36 **Utah Code Sections Affected:**

37 AMENDS:

- 38 **53-10-108**, as last amended by Chapter 13, Laws of Utah 2002
- 39 **62A-4a-412**, as last amended by Chapter 68, Laws of Utah 2003
- 40 **78-30-3.5**, as last amended by Chapter 101, Laws of Utah 2001
- 41 **78-30-4.13**, as last amended by Chapter 171, Laws of Utah 2000
- 42 **78-30-4.14**, as last amended by Chapter 101, Laws of Utah 2001
- 43 **78-30-4.15**, as last amended by Chapter 129, Laws of Utah 1998
- 44 **78-30-4.16**, as last amended by Chapter 255, Laws of Utah 2001
- 45 **78-30-4.18**, as last amended by Chapter 171, Laws of Utah 2000
- 46 **78-30-4.19**, as renumbered and amended by Chapter 168, Laws of Utah 1995
- 47 **78-30-4.23**, as enacted by Chapter 168, Laws of Utah 1995
- 48 **78-30-4.24**, as enacted by Chapter 168, Laws of Utah 1995
- 49 **78-30-7**, as last amended by Chapter 185, Laws of Utah 2002



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

52 Section 1. Section **53-10-108** is amended to read:

53 **53-10-108. Restrictions on access, use, and contents of division records -- Limited**
54 **use of records for employment purposes -- Challenging accuracy of records -- Usage fees**
55 **-- Missing children records.**

56 (1) Dissemination of information from a criminal history record or warrant of arrest
57 information from division files is limited to:

- 58 (a) criminal justice agencies for purposes of administration of criminal justice and for

59 employment screening by criminal justice agencies;

60 (b) noncriminal justice agencies or individuals for any purpose authorized by statute,
61 executive order, court rule, court order, or local ordinance;

62 (c) agencies or individuals for the purpose of obtaining required clearances connected
63 with foreign travel or obtaining citizenship;

64 (d) (i) agencies or individuals pursuant to a specific agreement with a criminal justice
65 agency to provide services required for the administration of criminal justice; and

66 (ii) the agreement shall specifically authorize access to data, limit the use of the data to
67 purposes for which given, and ensure the security and confidentiality of the data;

68 (e) agencies or individuals for the purpose of a preplacement adoptive study, in
69 accordance with the requirements of Section 78-30-3.5;

70 (f) (i) agencies and individuals as the commissioner authorizes for the express purpose
71 of research, evaluative, or statistical activities pursuant to an agreement with a criminal justice
72 agency; and

73 (ii) private security agencies through guidelines established by the commissioner for
74 employment background checks for their own employees and prospective employees;

75 (g) a qualifying entity for employment background checks for their own employees and
76 persons who have applied for employment with the qualifying entity; and

77 (h) other agencies and individuals as the commissioner authorizes and finds necessary
78 for protection of life and property and for offender identification, apprehension, and
79 prosecution pursuant to an agreement.

80 (2) An agreement under Subsection (1)(f) or (1)(h) shall specifically authorize access
81 to data, limit the use of data to research, evaluative, or statistical purposes, preserve the
82 anonymity of individuals to whom the information relates, and ensure the confidentiality and
83 security of the data.

84 (3) (a) Before requesting information under Subsection (1)(g), a qualifying entity must
85 obtain a signed waiver from the person whose information is requested.

86 (b) The waiver must notify the signee:

87 (i) that a criminal history background check will be conducted;

88 (ii) who will see the information; and

89 (iii) how the information will be used.

90 (c) Information received by a qualifying entity under Subsection (1)(g) may only be:

91 (i) available to persons involved in the hiring or background investigation of the
92 employee; and

93 (ii) used for the purpose of assisting in making an employment or promotion decision.

94 (d) A person who disseminates or uses information obtained from the division under
95 Subsection (1)(g) for purposes other than those specified under Subsection (3)(c), in addition to
96 any penalties provided under this section, is subject to civil liability.

97 (e) A qualifying entity that obtains information under Subsection (1)(g) shall provide
98 the employee or employment applicant an opportunity to:

99 (i) review the information received as provided under Subsection (8); and

100 (ii) respond to any information received.

101 (f) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
102 division may make rules to implement this Subsection (3).

103 (g) (i) The applicant fingerprint card fee under Subsection (1)(g) is \$15.

104 (ii) The name check fee under Subsection (1)(g) is \$10.

105 (iii) These fees remain in effect until changed by the division through the process under
106 Section 63-38-3.2.

107 (iv) Funds generated under Subsections (3)(g)(i), (3)(g)(ii), and (8)(b) shall be
108 deposited in the General Fund as a dedicated credit by the department to cover the costs
109 incurred in providing the information.

110 (h) The division or its employees are not liable for defamation, invasion of privacy,
111 negligence, or any other claim in connection with the contents of information disseminated
112 under Subsection (1)(g).

113 (4) Any criminal history record information obtained from division files may be used
114 only for the purposes for which it was provided and may not be further disseminated, except
115 that a criminal history provided to an agency pursuant to Subsection (1)(e) may be provided by
116 the agency to the person who is the subject of the history, another licensed child-placing
117 agency, or the attorney for the adoptive parents for the purpose of facilitating an adoption.

118 (5) If an individual has no prior criminal convictions, criminal history record
119 information contained in the division's computerized criminal history files may not include
120 arrest or disposition data concerning an individual who has been acquitted, his charges

121 dismissed, or when no complaint against him has been filed.

122 (6) (a) This section does not preclude the use of the division's central computing
123 facilities for the storage and retrieval of criminal history record information.

124 (b) This information shall be stored so it cannot be modified, destroyed, or accessed by
125 unauthorized agencies or individuals.

126 (7) Direct access through remote computer terminals to criminal history record
127 information in the division's files is limited to those agencies authorized by the commissioner
128 under procedures designed to prevent unauthorized access to this information.

129 (8) (a) The commissioner shall establish procedures to allow an individual right of
130 access to review and receive a copy of his criminal history report.

131 (b) A processing fee for the right of access service, including obtaining a copy of the
132 individual's criminal history report under Subsection (8)(a) is \$10. This fee remains in effect
133 until changed by the commissioner through the process under Section 63-38-3.2.

134 (c) (i) The commissioner shall establish procedures for an individual to challenge the
135 completeness and accuracy of criminal history record information contained in the division's
136 computerized criminal history files regarding that individual.

137 (ii) These procedures shall include provisions for amending any information found to
138 be inaccurate or incomplete.

139 (9) The private security agencies as provided in Subsection (1)(f)(ii):

140 (a) shall be charged for access; and

141 (b) shall be registered with the division according to rules made by the division under
142 Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

143 (10) Before providing information requested under this section, the division shall give
144 priority to criminal justice agencies needs.

145 (11) (a) Misuse of access to criminal history record information is a class B
146 misdemeanor.

147 (b) The commissioner shall be informed of the misuse.

148 Section 2. Section **62A-4a-412** is amended to read:

149 **62A-4a-412. Reports and information confidential.**

150 (1) Except as otherwise provided in this chapter, reports made pursuant to this part, as
151 well as any other information in the possession of the division obtained as the result of a report

152 are private, protected, or controlled records under Title 63, Chapter 2, Government Records
153 Access and Management Act, and may only be made available to:

154 (a) a police or law enforcement agency investigating a report of known or suspected
155 child abuse or neglect;

156 (b) a physician who reasonably believes that a child may be the subject of abuse or
157 neglect;

158 (c) an agency that has responsibility or authority to care for, treat, or supervise a child
159 who is the subject of a report;

160 (d) a contract provider that has a written contract with the division to render services to
161 a child who is the subject of a report;

162 (e) any subject of the report, the natural parents of the minor, and the guardian ad
163 litem;

164 (f) a court, upon a finding that access to the records may be necessary for the
165 determination of an issue before it, provided that in a divorce, custody, or related proceeding
166 between private parties, the record alone is:

167 (i) limited to objective or undisputed facts that were verified at the time of the
168 investigation; and

169 (ii) devoid of conclusions drawn by the division or any of its workers on the ultimate
170 issue of whether or not a person's acts or omissions constituted any level of abuse or neglect of
171 another person;

172 (g) an office of the public prosecutor or its deputies in performing an official duty;

173 (h) a person authorized by a Children's Justice Center, for the purposes described in
174 Section 67-5b-102;

175 (i) a person engaged in bona fide research, when approved by the director of the
176 division, if the information does not include names and addresses;

177 (j) the State Office of Education, acting on behalf of itself or on behalf of a school
178 district, for the purpose of evaluating whether an individual should be permitted to obtain or
179 retain a license as an educator or serve as an employee or volunteer in a school, limited to
180 information with substantiated findings involving an alleged sexual offense, an alleged felony
181 or class A misdemeanor drug offense, or any alleged offense against the person under Title 76,
182 Chapter 5, Offenses Against the Person, and with the understanding that the office must

183 provide the subject of a report received under Subsection (1)(k) with an opportunity to respond
184 to the report before making a decision concerning licensure or employment;

185 (k) any person identified in the report as a perpetrator or possible perpetrator of child
186 abuse or neglect, after being advised of the screening prohibition in Subsection (2); ~~and~~

187 (l) a person filing a petition for a child protective order on behalf of a minor who is the
188 subject of the report~~[-]; and~~

189 (m) a licensed child-placing agency or person who is performing a preplacement
190 adoptive evaluation in accordance with the requirements of Section 78-30-3.5.

191 (2) (a) No person, unless listed in Subsection (1), may request another person to obtain
192 or release a report or any other information in the possession of the division obtained as a result
193 of the report that is available under Subsection (1)(k) to screen for potential perpetrators of
194 child abuse or neglect.

195 (b) A person who requests information knowing that it is a violation of Subsection
196 (2)(a) to do so is subject to the criminal penalty in Subsection (4).

197 (3) Except as provided in Section 62A-4a-116.3, the division and law enforcement
198 officials shall ensure the anonymity of the person or persons making the initial report and any
199 others involved in its subsequent investigation.

200 (4) Any person who wilfully permits, or aides and abets the release of data or
201 information obtained as a result of this part, in the possession of the division or contained on
202 any part of the Management Information System, in violation of this part or Sections
203 62A-4a-116 through 62A-4a-116.3, is guilty of a class C misdemeanor.

204 (5) The physician-patient privilege is not a ground for excluding evidence regarding a
205 child's injuries or the cause of those injuries, in any proceeding resulting from a report made in
206 good faith pursuant to this part.

207 (6) A child-placing agency or person who receives a report in connection with a
208 preplacement adoptive evaluation pursuant to Section 78-30-3.5:

209 (a) may not provide this report to the person who is the subject of the report; and

210 (b) may provide this report to a person who is performing a preplacement adoptive
211 evaluation in accordance with the requirement of Section 78-30-3.5, or to a licensed
212 child-placing agency or to an attorney seeking to facilitate an adoption.

213 Section 3. Section **78-30-3.5** is amended to read:

214 **78-30-3.5. Preplacement and postplacement adoptive evaluations -- Exceptions.**

215 (1) (a) Except as otherwise provided in this section, a child may not be placed in an
216 adoptive home until a preplacement adoptive evaluation, assessing the prospective adoptive
217 parent and the prospective adoptive home, has been conducted in accordance with the
218 requirements of this section.

219 (b) The court may, at any time, authorize temporary placement of a child in a potential
220 adoptive home pending completion of a preplacement adoptive evaluation described in this
221 section.

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

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

232 (d) The required preplacement adoptive evaluation must be completed or updated
233 within the 12-month period immediately preceding the placement of a child with the
234 prospective adoptive parent. If the prospective adoptive parent has previously received custody
235 of a child for the purpose of adoption, the preplacement adoptive evaluation must be completed
236 or updated within the 12-month period immediately preceding the placement of a child with the
237 prospective adoptive parent and after the placement of the previous child with the prospective
238 adoptive parent.

239 (2) The preplacement adoptive evaluation shall include:

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

245 (b) a report ~~[from]~~ prepared by the Department of Human Services containing all
246 information regarding reports and investigation of child abuse, neglect, and dependency, with
247 respect to each prospective adoptive parent and any other adult living in the prospective home,
248 obtained no earlier than 18 months immediately preceding placement of the child, pursuant to
249 waivers executed by those parties; and

250 (c) an evaluation conducted by an expert in family relations approved by the court or a
251 certified social worker, clinical social worker, marriage and family therapist, psychologist,
252 professional counselor, or other court-determined expert in family relations, who is licensed to
253 practice under the laws of this state or under the laws of the state where the prospective
254 adoptive parent or other person living in the prospective adoptive home resides. The
255 evaluation shall be in a form approved by the Department of Human Services. Neither the
256 Department of Human Services nor any of its divisions may proscribe who qualifies as an
257 expert in family relations or who may conduct evaluations pursuant to this Subsection (2).

258 (3) The person or agency conducting the preplacement adoptive evaluation shall, in
259 connection with the evaluation, provide the prospective adoptive parent or parents with
260 literature approved by the Division of Child and Family Services relating to adoption, and
261 including information relating to the adoption process, developmental issues that may require
262 early intervention, and community resources that are available to the adoptive parent or parents.

263 ~~[(3)]~~ (4) A copy of the preplacement adoptive evaluation shall be filed with the court.

264 ~~[(4)]~~ (5) (a) Except as provided in Subsections ~~[(4)]~~ (5)(b) and (c), a postplacement
265 evaluation shall be conducted and submitted to the court prior to the final hearing in an
266 adoption proceeding. The postplacement evaluation shall include:

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

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

273 (c) Upon the request of the petitioner, the court may waive the postplacement adoptive
274 evaluation, unless it determines that it is in the best interest of the child to require the
275 postplacement evaluation. Except where the child to be adopted and the prospective parent are

276 related as set forth in Subsection (1)(c), the court may not waive the postplacement adoptive
277 evaluation for a child with special needs as defined in Section 62A-4a-902.

278 [~~(5)~~] (6) If the person or agency conducting the evaluation disapproves the adoptive
279 placement, either in the preplacement or postplacement adoptive evaluation, the court may
280 dismiss the petition. However, upon request of a prospective adoptive parent, the court shall
281 order that an additional preplacement or postplacement adoptive evaluation be conducted, and
282 hold a hearing on the suitability of the adoption, including testimony of interested parties.

283 [~~(6)~~] (7) Prior to finalization of a petition for adoption the court shall review and
284 consider the information and recommendations contained in the preplacement and
285 postplacement adoptive studies required by this section.

286 Section 4. Section **78-30-4.13** is amended to read:

287 **78-30-4.13. Notice of adoption proceedings.**

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

293 (2) Notice of an adoption proceeding shall be served on each of the following persons:

294 (a) any person or agency whose consent or relinquishment is required under Section
295 78-30-4.14 unless that right has been terminated by waiver, relinquishment, consent, or judicial
296 action;

297 (b) any person who has initiated a paternity proceeding and filed notice of that action
298 with the state registrar of vital statistics within the Department of Health, in accordance with
299 Subsection (3);

300 (c) any legally appointed custodian or guardian of the adoptee;

301 (d) the petitioner's spouse, if any, only if he has not joined in the petition;

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

303 (f) any person who, prior to the time the mother executes her consent for adoption or
304 relinquishes the child to a licensed child-placing agency, is recorded on the birth certificate as
305 the child's father, with the knowledge and consent of the mother;

306 (g) any person who is openly living in the same household with the child at the time

307 the consent is executed or relinquishment made, and who is holding himself out to be the
308 child's father; and

309 (h) any person who is married to the child's mother at the time she executes her consent
310 to the adoption or relinquishes the child for adoption.

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

316 (b) If the unmarried, biological father does not know the county in which the birth
317 mother resides, he may initiate his action in any county, subject to a change in trial pursuant to
318 Section 78-13-7.

319 (c) The Department of Health shall provide forms for the purpose of filing the notice
320 described in Subsection (3)(a), and make those forms available in the office of the county
321 health department in each county.

322 (4) Notice provided in accordance with this section need not disclose the name of the
323 mother of the child who is the subject of an adoption proceeding.

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

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

332 (b) Any person who fails to file a motion for relief within 30 days after service of
333 notice waives any right to further notice in connection with the adoption, forfeits all rights in
334 relation to the adoptee, and is barred from thereafter bringing or maintaining any action to
335 assert any interest in the adoptee.

336 (7) Service of notice under this section shall be made as follows:

337 (a) With regard to a person whose consent is necessary under Section 78-30-4.14,

338 service shall be in accordance with the provisions of the Utah Rules of Civil Procedure. If
339 service is by publication, the court shall designate the content of the notice regarding the
340 identity of the parties. The notice may not include the name of the person or persons seeking to
341 adopt the adoptee.

342 (b) As to any other person for whom notice is required under this section, service by
343 certified mail, return receipt requested, is sufficient. If that service cannot be completed after
344 two attempts, the court may issue an order providing for service by publication, posting, or by
345 any other manner of service.

346 (c) Notice to a person who has initiated a paternity proceeding and filed notice of that
347 action with the state registrar of vital statistics in the Department of Health in accordance with
348 the requirements of Subsection (3), shall be served by certified mail, return receipt requested, at
349 the last address filed with the registrar.

350 (8) The notice required by this section may be waived in writing by the person entitled
351 to receive notice.

352 (9) Proof of service of notice on all persons for whom notice is required by this section
353 shall be filed with the court before the final dispositional hearing on the adoption.

354 (10) Notwithstanding any other provision of law, neither the notice of an adoption
355 proceeding nor any process in that proceeding is required to contain the name of the person or
356 persons seeking to adopt the adoptee.

357 (11) Except as to those persons whose consent to an adoption is required under Section
358 78-30-4.14, the sole purpose of notice under this section is to enable the person served to
359 intervene in the adoption and present evidence to the court relevant to the best interest of the
360 child.

361 Section 5. Section **78-30-4.14** is amended to read:

362 **78-30-4.14. Necessary consent to adoption or relinquishment for adoption.**

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

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

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

369 (c) the mother of an adoptee born outside of marriage;
370 (d) any biological parent who has been adjudicated to be the child's biological father by
371 a court of competent jurisdiction prior to the mother's execution of consent or her
372 relinquishment to an agency for adoption;
373 (e) any biological parent who has executed and filed a voluntary declaration of
374 paternity with the state registrar of vital statistics within the Department of Health in
375 accordance with Title 78, Chapter 45e, prior to the mother's execution of consent or her
376 relinquishment to an agency for adoption, which voluntary declaration of paternity is
377 considered filed when entered into a database that can be accessed by the Department of
378 Health;
379 (f) an unmarried, biological father of an adoptee, as defined in Section 78-30-4.11, only
380 if the requirements and conditions of Subsection (2)(a) or (b) have been proven; and
381 (g) the licensed child-placing agency to whom an adoptee has been relinquished and
382 that is placing the child for adoption.
383 (2) In accordance with Subsection (1), the consent of an unmarried, biological father is
384 necessary only if the father has strictly complied with the requirements of this section.
385 (a) (i) With regard to a child who is placed with adoptive parents more than six months
386 after birth, an unmarried, biological father shall have developed a substantial relationship with
387 the child, taken some measure of responsibility for the child and the child's future, and
388 demonstrated a full commitment to the responsibilities of parenthood by financial support of
389 the child, of a fair and reasonable sum and in accordance with the father's ability, when not
390 prevented from doing so by the person or authorized agency having lawful custody of the child,
391 and either:
392 (A) visiting the child at least monthly when physically and financially able to do so,
393 and when not prevented from doing so by the person or authorized agency having lawful
394 custody of the child; or
395 (B) regular communication with the child or with the person or agency having the care
396 or custody of the child, when physically and financially unable to visit the child, and when not
397 prevented from doing so by the person or authorized agency having lawful custody of the child.
398 (ii) The subjective intent of an unmarried, biological father, whether expressed or
399 otherwise, unsupported by evidence of acts specified in this Subsection (2) shall not preclude a

400 determination that the father failed to meet the requirements of Subsection (2)(a)(i).

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

406 (b) With regard to a child who is under six months of age at the time he is placed with
407 adoptive parents, an unmarried, biological father shall have manifested a full commitment to
408 his parental responsibilities by performing all of the acts described in this Subsection (2) prior
409 to the time the mother executes her consent for adoption or relinquishes the child to a licensed
410 child-placing agency. The father shall:

411 (i) initiate proceedings to establish paternity under Title 78, Chapter 45a, Uniform Act
412 on Paternity, and file with that court a sworn affidavit stating that he is fully able and willing to
413 have full custody of the child, setting forth his plans for care of the child, and agreeing to a
414 court order of child support and the payment of expenses incurred in connection with the
415 mother's pregnancy and the child's birth;

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

420 (iii) if he had actual knowledge of the pregnancy, paid a fair and reasonable amount of
421 the expenses incurred in connection with the mother's pregnancy and the child's birth, in
422 accordance with his means, and when not prevented from doing so by the person or authorized
423 agency having lawful custody of the child.

424 (3) An unmarried, biological father who resides in another state shall be presumed to
425 know of, and must strictly comply with, the requirements of this section, unless he proves the
426 following:

427 (a) he was not a resident of this state at the time the mother executed her consent for
428 adoption or relinquished the child to a licensed child-placing agency;

429 (b) the child was not conceived in this state;

430 (c) he attempted, through every reasonable means, to locate the mother or child, but did

431 not know or have reason to know, at least 20 days prior to the time the mother executed her
432 consent for adoption or relinquished the child to a licensed child-placing agency, that the
433 mother or child was located in this state; and

434 (d) he manifested a full commitment to his parental responsibilities as follows:

435 (i) he complied with the requirements of Subsections (2)(b)(i) and (ii) no later than 20
436 days from the date that he knew, or through the exercise of reasonable diligence could have
437 known that the mother or child was located in this state, or within 20 days prior to the time the
438 mother executed a consent for adoption or relinquished the child to a licensed child-placing
439 agency, whichever date is later; or

440 (ii) he attempted, through every reasonable means, to locate the mother or child but he
441 did not know or have reason to know, at least 20 days prior to the time the mother executed her
442 consent for adoption or relinquished the child to a licensed child-placing agency, that the
443 mother or child was located in this state; and

444 (A) he complied with the most stringent and complete requirements of the state where
445 the mother resided immediately before coming to this state, in order to protect and preserve his
446 parental interest and his rights in the child in cases of adoption; or

447 (B) if he did not know or have reason to know where the mother resided immediately
448 before coming to this state, he complied with the most stringent and complete requirements of
449 the state where the child was conceived, in order to protect and preserve his parental interest
450 and his rights in the child in cases of adoption.

451 [~~3~~] (4) An unmarried, biological father whose consent is required under Subsection
452 (1) [~~or~~], (2), or (3) may nevertheless lose his right to consent if the court determines, in
453 accordance with the requirements and procedures of Title 78, Chapter 3a, Part 4, Termination
454 of Parental Rights Act, that his rights should be terminated, based on the petition of any
455 interested party.

456 [~~4~~] (5) If there is no showing that an unmarried, biological father has consented to or
457 waived his rights regarding a proposed adoption, the petitioner shall file with the court a
458 certificate from the state registrar of vital statistics within the Department of Health, stating
459 that a diligent search has been made of the registry of notices from unmarried biological fathers
460 described in Subsection (2)(b)(ii), and that no filing has been found pertaining to the father of
461 the child in question, or if a filing is found, stating the name of the putative father and the time

462 and date of filing. That certificate shall be filed with the court prior to entrance of a final
463 decree of adoption.

464 ~~[(5)]~~ (6) An unmarried, biological father who does not fully and strictly comply with
465 each of the conditions provided in this section, is deemed to have waived and surrendered any
466 right in relation to the child, including the right to notice of any judicial proceeding in
467 connection with the adoption of the child, and his consent to the adoption of the child is not
468 required.

469 Section 6. Section **78-30-4.15** is amended to read:

470 **78-30-4.15. Responsibility of each party for own actions -- Fraud or**
471 **misrepresentation -- Statutory compliance.**

472 (1) Each parent of a child conceived or born outside of marriage is responsible for his
473 or her own actions and is not excused from strict compliance with the provisions of this
474 chapter based upon any action, statement, or omission of the other parent or third parties.

475 (2) Any person injured by fraudulent representations or actions in connection with an
476 adoption is entitled to pursue civil or criminal penalties in accordance with existing law. A
477 fraudulent representation is not a defense to strict compliance with the requirements of this
478 chapter, and is not a basis for dismissal of a petition for adoption, vacation of an adoption
479 decree, or an automatic grant of custody to the offended party. Custody determinations shall be
480 based on the best interest of the child, in accordance with the provisions of Section 78-30-4.16.

481 (3) The Legislature finds no practical way to remove all risk of fraud or
482 misrepresentation in adoption proceedings, and has provided a method for absolute protection
483 of an unmarried, biological father's rights by compliance with the provisions of this chapter. In
484 balancing the rights and interests of the state, and of all parties affected by fraud, specifically
485 the child, the adoptive parents, and the unmarried, biological father, the Legislature has
486 determined that the unmarried, biological father is in the best position to prevent or ameliorate
487 the effects of fraud and that, therefore, the burden of fraud shall be borne by him.

488 ~~[(4) The Legislature finds that an unmarried biological father who resides in another~~
489 ~~state may not, in every circumstance, be reasonably presumed to know of, and strictly comply~~
490 ~~with, the requirements of this chapter. Therefore when all of the following requirements have~~
491 ~~been met, that unmarried biological father may contest an adoption, prior to finalization of the~~
492 ~~decree of adoption, and assert his interest in the child; the court may then, in its discretion,~~

493 proceed with an evidentiary hearing under Subsection 78-30-4.16(2):]

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

496 [~~(b) the mother left that state without notifying or informing the unmarried biological~~
497 ~~father that she could be located in the state of Utah;]~~

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

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

504 Section 7. Section **78-30-4.16** is amended to read:

505 **78-30-4.16. Contested adoptions -- Rights of parties -- Determination of custody.**

506 [~~(1) Whenever any party contests an adoption, the court shall first determine whether~~
507 ~~the provisions of this chapter have been complied with. If a party who was entitled to notice~~
508 ~~and consent under the provisions of this chapter, was denied that right, and did not otherwise~~
509 ~~waive or forfeit that right under the terms of this chapter, the court may:]~~

510 [~~(a) enjoin the adoption, or dismiss the adoption petition, and proceed in accordance~~
511 ~~with Subsection (2); or]~~

512 [~~(b) determine whether proper grounds for termination of that parent's rights exist and,~~
513 ~~if so, order that the parent's rights be terminated in accordance with the provisions of this~~
514 ~~chapter or Title 78, Chapter 3a, Part 4, Termination of Parental Rights Act.]~~

515 [~~(2) (a) In any case, and under any circumstance, if a court determines that a petition~~
516 ~~for adoption may not be granted, the court may not automatically grant custody of a child to a~~
517 ~~challenging biological parent, but shall conduct an evidentiary hearing in each case, in order to~~
518 ~~determine who should have custody of the child, in accordance with the child's best interest.]~~

519 [~~(b) Evidence considered at that hearing may include, but is not limited to, evidence of~~
520 ~~psychological or emotional bonds that the child had formed with third parties and any~~
521 ~~detriment that a change in custody may cause to the child. The fact that a person relinquished a~~
522 ~~child to a licensed child placing agency or executed a consent for adoption may not be~~
523 ~~considered by the court as evidence of neglect or abandonment.]~~

524 (1) If a person whose consent for an adoption is required pursuant to Subsection
525 78-30-4.14(1)(b), (c), (d), (e), or (f) refused to consent, the court shall determine whether
526 proper grounds exist for the termination of that person's rights pursuant to the provisions of this
527 chapter or Title 78, Chapter 3a, Part 4, Termination of Parental Rights Act.

528 (2) If there are proper grounds to terminate the person's parental rights, the court shall
529 order that the person's rights be terminated. If there are not proper grounds to terminate the
530 person's parental rights, the court shall:

531 (a) dismiss the adoption petition; and

532 (b) conduct an evidentiary hearing to determine who should have custody of the child
533 and award custody in accordance with the child's best interest.

534 (3) Evidence considered at the custody hearing may include evidence of psychological
535 or emotional bonds that the child has formed with a third person, including the prospective
536 adoptive parent, and any detriment that a change in custody may cause the child.

537 (4) The fact that a person relinquished a child to a licensed child-placing agency or
538 consented to the adoption may not be considered as evidence that the person:

539 (a) is unfit or incompetent to be a parent;

540 (b) has neglected or abandoned the child;

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

542 (d) should not be granted custody because based on any of the above considerations it
543 would not be in the child's best interest.

544 ~~[(e)]~~ (5) Any custody order entered pursuant to this section may also include provisions
545 for parent-time by a biological parent or visitation by an interested third party, and provide for
546 the financial support of the child.

547 (6) If a person or entity whose consent is required for an adoption under Subsection
548 78-30-4.14(1)(a) or (g) refuses to consent, the court shall proceed with an evidentiary hearing
549 and award custody as set forth in Subsection (2). The court may also finalize the adoption if
550 doing so is in the best interest of the child.

551 ~~[(3)]~~ (7) An adoption may not be contested after the final decree of adoption is entered.
552 Section 8. Section 78-30-4.18 is amended to read:

553 **78-30-4.18. Persons who may take consents and relinquishments.**

554 (1) A consent or relinquishment by a birth mother or an adoptee shall be signed before:

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

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

561 (2) If the consent or relinquishment of a birth mother or adoptee is taken out of state it
562 shall be signed before:

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

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

568 (3) The consent or relinquishment of any other person or agency as required by Section
569 78-30-4.14 may be signed before a Notary Public or any person authorized to take a consent or
570 relinquishment under Subsection (1) or (2).

571 (4) A person, authorized by Subsection (1) or (2) to take consents or relinquishments,
572 shall certify to the best of his information and belief that the person executing the consent or
573 relinquishment has read and understands the consent or relinquishment and has signed it freely
574 and voluntarily.

575 (5) A person executing a consent or relinquishment is entitled to receive a copy of the
576 consent or relinquishment.

577 Section 9. Section **78-30-4.19** is amended to read:

578 **78-30-4.19. Time period prior to birth mother's consent.**

579 (1) A birth mother may not consent to the adoption of her child or relinquish control or
580 custody of her child until at least 24 hours after the birth of her child.

581 (2) The consent or relinquishment of any other person as required by Section
582 78-30-4.14 may be executed at any time, including prior to the birth of the child.

583 Section 10. Section **78-30-4.23** is amended to read:

584 **78-30-4.23. Criminal sexual offenses.**

585 [~~The notice and consent provisions of this chapter do not apply in cases where the child~~

586 is conceived as a result of] A biological father is not entitled to notice of an adoption
587 proceeding, nor is the consent of a biological father required in connection with an adoption
588 proceeding, in cases where it is shown that the child who is the subject of the proceeding was
589 conceived as a result of conduct which would constitute any sexual offense described in Title
590 76, Chapter 5, Part 4, regardless of whether the biological father is formally charged with or
591 convicted of a criminal offense.

592 Section 11. Section **78-30-4.24** is amended to read:

593 **78-30-4.24. Determination of rights prior to adoption petition.**

594 Any interested [party] person may petition [the] a court having jurisdiction over
595 adoption proceedings for a determination of the rights and interests of any person who may
596 claim an interest in a child under this chapter, at any time prior to the [filing of a petition for]
597 finalization of the adoption, including any time prior to the child's birth.

598 Section 12. Section **78-30-7** is amended to read:

599 **78-30-7. District court venue -- Jurisdiction of juvenile court -- Jurisdiction over**
600 **nonresidents -- Time for filing.**

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

603 (a) in the district where the person adopting resides, or if the person adopting is not a
604 resident of this state, in the district where the child was born or in which the child-placing
605 agency that has custody of the child is located; or

606 (b) with the juvenile court as provided in Subsection 78-3a-104(1)(o).

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

609 [~~(3)~~] (2) All orders, decrees, agreements, and notices in the proceedings shall be filed
610 with the clerk of the court where the adoption proceedings were commenced under Subsection
611 (1) [~~or (2)~~].

612 [~~(4)~~] (3) A petition for adoption shall be filed within 30 days of the date the adoptee is
613 placed in the home of the petitioners for the purpose of adoption, unless the time for filing has
614 been extended by the court, or unless the adoption is arranged by a licensed child-placing
615 agency in which case the agency may extend the filing time.

616 (4) (a) If a person whose consent for the adoption is required under Section 78-30-4.14

617 cannot be found within the state, the fact of the minor's presence within the state shall confer
618 jurisdiction on the court in proceedings under this chapter as to such absent person, provided
619 that due notice has been given in accordance with the Utah Rules of Civil Procedure.

620 (b) The notice may not include:

621 (i) the name of the person or persons seeking to adopt the adoptee or the name; or

622 (ii) an unmarried mother without that person's consent.

623 (5) Service of notice as provided in Subsection (6) shall vest the court with jurisdiction
624 over the person served in the same manner and to the same extent as if the person served was
625 served personally within the state.

626 (6) In the case of service outside the state, service completed not less than five days
627 before the time set in the notice for appearance of the person served, shall be sufficient to
628 confer jurisdiction.

629 (7) Computation of periods of time not otherwise set forth in this section shall be made
630 in accordance with the Utah Rules of Civil Procedure.

Legislative Review Note

as of 1-28-04 2:26 PM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel

Fiscal Note
Bill Number HB0275

Adoption Amendments

13-Feb-04

10:33 AM

State Impact

Provisions of this legislation can be handled within existing budgets.

Individual and Business Impact

No fiscal impact.

Office of the Legislative Fiscal Analyst