

**ADOPTION AMENDMENTS**

2005 GENERAL SESSION

STATE OF UTAH

**Sponsor: Ann W. Hardy**

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**LONG TITLE**

**General Description:**

This bill makes changes to the procedures, rights, and requirements of the chapter of the Judicial Code relating to adoption.

**Highlighted Provisions:**

This bill:

- ▶ defines terms;
- ▶ describes the rights and duties of a parent and a guardian with respect to a minor for whom a guardian is appointed;
- ▶ provides that the payment of certain adoption related expenses does not constitute the crime of sale of a child;
- ▶ provides that before a parent consents to the adoption of the parent's child or relinquishes the parent's child to a child-placing agency, the parent has the right to participate in counseling at the expense of the adoptive parents or the child-placing agency;
- ▶ establishes procedures and requirements for preplacement and postplacement adoptive evaluations;
- ▶ describes who may conduct preplacement and postplacement adoptive evaluations;
- ▶ describes the persons who are entitled to notice of adoption proceedings;
- ▶ describes the persons from whom consent for adoption or relinquishment of a child for adoption is required;
- ▶ provides that a person's relinquishment of a child for adoption may not be



- 28 considered as evidence that custody of the child should not be awarded to the person;
- 29       ▶ provides that a minor has the power to relinquish the minor's child for adoption; and
- 30       ▶ makes technical changes.

31 **Monies Appropriated in this Bill:**

32       None

33 **Other Special Clauses:**

34       None

35 **Utah Code Sections Affected:**

36 AMENDS:

- 37       **75-5-209**, as last amended by Chapter 30, Laws of Utah 1992
- 38       **76-7-203**, as last amended by Chapter 245, Laws of Utah 1990
- 39       **78-30-1.1**, as last amended by Chapter 20, Laws of Utah 1995
- 40       **78-30-3.5**, as last amended by Chapters 121 and 122, Laws of Utah 2004
- 41       **78-30-4.12**, as enacted by Chapter 168, Laws of Utah 1995
- 42       **78-30-4.13**, as last amended by Chapter 122, Laws of Utah 2004
- 43       **78-30-4.14**, as last amended by Chapter 122, Laws of Utah 2004
- 44       **78-30-4.16**, as last amended by Chapter 122, Laws of Utah 2004
- 45       **78-30-4.21**, as renumbered and amended by Chapter 168, Laws of Utah 1995

46 ENACTS:

47       **78-30-3.3**, Utah Code Annotated 1953

48 REPEALS:

49       **78-30-4.11**, as enacted by Chapter 168, Laws of Utah 1995



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

52       Section 1. Section **75-5-209** is amended to read:

53       **75-5-209. Powers and duties of guardian of minor -- Residual parental rights and**  
54 **duties -- Adoption of a ward.**

55       ~~[A]~~ (1) For purposes of this section, "residual parental rights and duties" is as defined  
56 in Section 78-3a-103.

57       (2) Except as provided in Subsection (4)(a), a guardian of a minor has the powers and  
58 responsibilities of a parent who has not been deprived of custody of [his] the parent's

59 unemancipated minor [~~and unemancipated child, except that a guardian is not legally obligated~~  
 60 ~~to provide from his own funds for the ward and is not liable to third persons by reason of the~~  
 61 ~~parental relationship for acts of the ward. In particular, and without qualifying the foregoing, a~~  
 62 ~~guardian has the following powers and duties:]; including the powers and responsibilities  
 63 described in Subsection (3).~~

64 [~~(1) He~~] (3) A guardian of a minor:

65 (a) must take reasonable care of [~~his ward's~~] the personal effects [~~and~~] of the guardian's  
 66 ward;

67 (b) must commence protective proceedings if necessary to protect other property of the  
 68 guardian's ward[-];

69 [~~(2) He~~] (c) subject to Subsection (4)(b), may receive money payable for the support of  
 70 the ward to the ward's parent, guardian, or custodian under the terms of [~~any~~] a:

71 (i) statutory benefit or insurance system[~~, or any~~];

72 (ii) private contract[-];

73 (iii) devise[-];

74 (iv) trust[-];

75 (v) conservatorship; or

76 (vi) custodianship[~~-He also~~];

77 (d) subject to Subsection (4)(b), may receive money or property of the ward paid or  
 78 delivered by virtue of Section 75-5-102[~~- Any sums so received shall be applied to the ward's~~  
 79 ~~current needs for support, care and education. He~~];

80 (e) except as provided in Subsection (4)(c), must exercise due care to conserve any  
 81 excess money or property described in Subsection (3)(d) for the ward's future needs [~~unless a~~  
 82 ~~conservator has been appointed for the estate of the ward, in which case the excess shall be~~  
 83 ~~paid over at least annually to the conservator. Sums so received by the guardian are not to be~~  
 84 ~~used for compensation for his services except as approved by order of court or as determined~~  
 85 ~~by a duly appointed conservator other than the guardian. Unless~~];

86 (f) unless otherwise provided by statute, [~~a guardian~~] may institute proceedings to  
 87 compel the performance by any person of a duty to:

88 (i) support the ward; or [~~to~~]

89 (ii) pay sums for the welfare of the ward[-];

90 ~~[(3) The guardian]~~  
91 (g) is empowered to:  
92 (i) facilitate the ward's education, social, or other activities; and [to]  
93 (ii) subject to Subsection (4)(d), authorize medical or other professional care,  
94 ~~treatment, or advice[. A guardian is not liable by reason of this consent for injury to the ward~~  
95 ~~resulting from the negligence or acts of third persons unless it would have been illegal for a~~  
96 ~~parent to have consented. A guardian];~~  
97 (h) may consent to the:  
98 (i) marriage of the guardian's ward, if specifically authorized by a court to give this  
99 consent; or  
100 (ii) adoption of [his] the guardian's ward[-] if the:  
101 (A) guardian of the ward is specifically authorized by a court to give this consent; and  
102 (B) parental rights of the ward's parents have been terminated; and  
103 ~~[(4) A guardian]~~ (i) must report the condition of [his ward] the minor and of [the  
104 ~~ward's] the minor's estate [which] that has been subject to [his] the guardian's possession or~~  
105 ~~control[-];~~  
106 (i) as ordered by court on petition of any person interested in the minor's welfare; or  
107 (ii) as required by court rule.  
108 (4) (a) Notwithstanding Subsection (2), a guardian of a minor is not:  
109 (i) legally obligated to provide from the guardian's own funds for the ward; and  
110 (ii) liable to third persons by reason of the guardian's relationship for acts of the ward.  
111 (b) Sums received under Subsection (3)(c) or (d):  
112 (i) may not be used for compensation for the services of a guardian, except as:  
113 (A) approved by court order; or  
114 (B) determined by a duly appointed conservator other than the guardian; and  
115 (ii) shall be applied to the ward's current needs for support, care, and education.  
116 (c) Notwithstanding Subsection (3)(e), if a conservator is appointed for the estate of the  
117 ward, the excess shall be paid over at least annually to the conservator.  
118 (d) A guardian of a minor is not, by reason of giving the authorization described in  
119 Subsection (3)(g)(ii), liable for injury to the minor resulting from the negligence or acts of third  
120 persons, unless it would have been illegal for a parent to have given the authorization.

121 (5) A parent of a minor for whom a guardian is appointed retains residual parental  
122 rights and duties.

123 (6) If a parent of a minor for whom a guardian is appointed consents to the adoption of  
124 the minor, the guardian is entitled to:

125 (a) receive notice of the adoption proceeding pursuant to Section 78-30-4.13;

126 (b) intervene in the adoption; and

127 (c) present evidence to the court relevant to the best interest of the child pursuant to  
128 Subsection 78-30-4.13(11).

129 (7) If a minor for whom a guardian is appointed is adopted subsequent to the  
130 appointment, the guardianship shall terminate when the adoption is finalized.

131 Section 2. Section **76-7-203** is amended to read:

132 **76-7-203. Sale of child -- Felony -- Payment of adoption related expenses.**

133 [~~Any person~~]

134 (1) For purposes of this section:

135 (a) "adoption related expenses" means expenses that:

136 (i) are reasonably related to the adoption of a child;

137 (ii) are incurred for a reasonable amount; and

138 (iii) may include expenses:

139 (A) of the mother or father of the child being adopted, including:

140 (I) legal expenses;

141 (II) maternity expenses;

142 (III) medical expenses;

143 (IV) hospital expenses;

144 (V) counseling expenses;

145 (VI) temporary living expenses during the pregnancy or confinement of the mother; or

146 (VII) expenses for travel between the mother's or father's home and the location where  
147 the child will be born or placed for adoption; or

148 (B) of a directly affected person for:

149 (I) travel between the directly affected person's home and the location where the child  
150 will be born or placed for adoption; or

151 (II) temporary living expenses during the pregnancy or confinement of the mother;

152 (b) "directly affected person" means a person who is:  
 153 (i) a parent or guardian of a minor when the minor is the mother or father of the child  
 154 being adopted; or  
 155 (ii) a dependant of:  
 156 (A) the mother or father of the child being adopted; or  
 157 (B) the parent or guardian described in Subsection (1)(b)(i).  
 158 (2) Except as provided in Subsection (3), a person is guilty of a third degree felony if  
 159 the person, while having custody, care, control, or possession of [any] a child, [who] sells, or  
 160 disposes of, or attempts to sell or dispose of, [any] the child for and in consideration of the  
 161 payment of money or other thing of value [is guilty of a felony of the third degree. However,  
 162 this section does not prohibit any person, agency, or corporation from paying the actual and  
 163 reasonable legal expenses, maternity expenses, related medical or hospital, and necessary living  
 164 expenses of the mother preceding and during confinement].  
 165 (3) A person does not violate this section by paying adoption related expenses:  
 166 (a) as an act of charity[; so long as]; and  
 167 (b) if the payment is not made for the purpose of inducing the mother, parent, or legal  
 168 guardian of a child to:  
 169 (i) place the child for adoption[;];  
 170 (ii) consent to an adoption[;]; or  
 171 (iii) cooperate in the completion of an adoption.  
 172 Section 3. Section **78-30-1.1** is amended to read:  
 173 **78-30-1.1. Definitions.**  
 174 As used in this chapter [~~the term "licensed child placing~~]:  
 175 (1) "Adoption service provider" means a:  
 176 (a) child-placing agency; or  
 177 (b) licensed counselor who has at least one year of experience providing professional  
 178 social work services to:  
 179 (i) adoptive parents; or  
 180 (ii) birth parents.  
 181 (2) "Child-placing agency" means an agency licensed to place children for adoption  
 182 under Title 62A, Chapter 4a, Part 6, Child and Family Services.

183 (3) "Licensed counselor" means a person who is licensed by the state, or another state,  
184 district, or territory of the United States as a:

185 (a) certified social worker;

186 (b) clinical social worker;

187 (c) psychologist;

188 (d) marriage and family therapist;

189 (e) professional counselor; or

190 (f) an equivalent licensed professional of another state, district, or territory of the  
191 United States.

192 (4) "Parent," for purposes of Section 78-30-3.3, means any person described in  
193 Subsections 78-30-4.14 (1)(b) through (f) from whom consent for adoption or relinquishment  
194 for adoption is required under Section 78-30-4.14.

195 (5) "Unmarried biological father" means a person who:

196 (a) is the biological father of a child; and

197 (b) was not married to the biological mother of the child described in Subsection (5)(a)  
198 at the time of the child's:

199 (i) conception; or

200 (ii) birth.

201 Section 4. Section **78-30-3.3** is enacted to read:

202 **78-30-3.3. Counseling for parents.**

203 (1) Subject to Subsection (2)(a), before relinquishing a child to a child-placing agency,  
204 or consenting to the adoption of a child, a parent of the child has the right to participate in  
205 counseling:

206 (a) by a licensed counselor or an adoption service provider selected by the parent  
207 participating in the counseling;

208 (b) for up to three sessions of at least 50 minutes per session; and

209 (c) subject to Subsection (2)(b), at the expense of the:

210 (i) child-placing agency; or

211 (ii) prospective adoptive parents.

212 (2) (a) Notwithstanding Subsection (1), a parent who has the right to participate in the  
213 counseling described in this section may waive that right.

214 (b) Notwithstanding Subsection (1)(c), the total amount required to be paid by a  
215 child-placing agency or the prospective adoptive parents for the counseling described in  
216 Subsection (1) may not exceed \$250.

217 (3) Before a parent relinquishes a child to a child-placing agency, or consents to the  
218 adoption of a child, the parent shall be informed of the right described in Subsection (1) by the:

219 (a) child-placing agency;

220 (b) prospective adoptive parents; or

221 (c) representative of a person described in Subsection (3)(a) or (b).

222 (4) (a) Subject to Subsections (4)(b) and (c), before the day on which a final decree of  
223 adoption is entered, a statement shall be filed with the court that:

224 (i) is signed by each parent who:

225 (A) relinquishes the parent's parental rights; or

226 (B) consents to the adoption; and

227 (ii) states that, before the parent took the action described in Subsection (4)(a)(i)(A) or  
228 (B), the parent was advised of the parent's right to participate in the counseling described in this  
229 section at the expense of the:

230 (A) child-placing agency; or

231 (B) prospective adoptive parents.

232 (b) The statement described in Subsection (4)(a) may be included in the document that:

233 (i) relinquishes the parent's parental rights; or

234 (ii) consents to the adoption.

235 (c) Failure by a person to give the notice described in Subsection (3), or pay for the  
236 counseling described in this section:

237 (i) shall not constitute grounds for invalidating a:

238 (A) relinquishment of parental rights; or

239 (B) consent to adoption; and

240 (ii) shall give rise to a cause of action for the recovery of damages suffered, if any, by  
241 the parent or guardian who took the action described in Subsection (4)(c)(i)(A) or (B) against  
242 the person required to:

243 (A) give the notice described in Subsection (3); or

244 (B) pay for the counseling described in this section.



245 Section 5. Section **78-30-3.5** is amended to read:

246 **78-30-3.5. Preplacement and postplacement adoptive evaluations -- Exceptions.**

247 (1) (a) Except as [~~otherwise provided in this section~~] provided in Subsection (1)(b),  
248 (3)(a), (3)(b), or (8), a child may not be placed in an adoptive home until an adoption service  
249 provider or a person authorized to conduct a preplacement adoption evaluation by the state,  
250 district, or territory of the United States where a prospective adoptive parent resides:

251 (i) conducts a preplacement adoptive evaluation[~~; assessing the prospective adoptive~~  
252 ~~parent and the prospective adoptive home, has been conducted~~] in accordance with the  
253 requirements of this section[~~;~~]; and

254 (ii) determines, based on the evaluation described in Subsection (1)(a)(i), that the  
255 prospective adoptive parents and the prospective adoptive home are a suitable placement for  
256 the child.

257 (b) [~~The~~] Notwithstanding Subsection (1)(a), the court may, at any time, authorize  
258 temporary placement of a child in a potential adoptive home pending completion of a  
259 preplacement adoptive evaluation described in this section.

260 [~~(c) Subsection (1)(a) does not apply if a birth parent has legal custody of the child to~~  
261 ~~be adopted and the prospective adoptive parent is related to that child as a step-parent, sibling~~  
262 ~~by half or whole blood or by adoption, grandparent, aunt, uncle, or first cousin, unless the~~  
263 ~~evaluation is otherwise requested by the court. The~~]

264 (c) If a preplacement adoptive evaluation is not required under this section, a  
265 prospective adoptive parent [~~described in this Subsection (1)(c) shall, however,~~] shall:

266 (i) obtain the information described in [~~Subsections (2)(a) and (b), and file that~~  
267 ~~documentation~~] Subsection (2); and

268 (ii) file documents containing the information described in Subsection (1)(c)(i) with the  
269 court prior to finalization of the adoption.

270 (d) [~~The required~~] A preplacement adoptive evaluation required by this Subsection (1)  
271 must be completed or updated;

272 (i) within the 12-month period immediately preceding the placement of a child with the  
273 prospective adoptive parent[~~If the prospective adoptive parent has previously received~~  
274 ~~custody of a child for the purpose of adoption, the preplacement adoptive evaluation must be~~  
275 ~~completed or updated within the 12-month period immediately preceding the placement of a~~

276 ~~child with the prospective adoptive parent and after the placement of the previous child]; and~~  
277 (ii) after the day on which a child was previously placed with the prospective adoptive  
278 parent for the purpose of adoption.

279 (2) ~~[The]~~ A preplacement adoptive evaluation shall include:

280 (a) criminal history record information regarding each prospective adoptive parent and  
281 any other adult living in the prospective home, prepared no earlier than 18 months immediately  
282 preceding placement of the child by:

283 (i) the Criminal Investigations and Technical Services Division of the Department of  
284 Public Safety, in accordance with Section 53-10-108[; no earlier than 18 months immediately  
285 preceding placement of the child;]; or

286 (ii) an agency of the state, district, or territory of the United States where a prospective  
287 adoptive parent resides that has authority to conduct a criminal history check equivalent to the  
288 criminal history check described in Subsection (2)(a)(i);

289 (b) a report prepared by the Department of Human Services or the equivalent agency in  
290 the state, district, or territory of the United States where a prospective adoptive parent resides:

291 (i) containing all information regarding reports and investigation of child abuse,  
292 neglect, and dependency, with respect to each:

293 (A) prospective adoptive parent; and [any other]

294 (B) adult living in the prospective home[;]; and

295 (ii) obtained:

296 (A) no earlier than 18 months immediately preceding placement of the child[;]; and

297 (B) pursuant to waivers executed by [those parties;] the persons described in

298 Subsections (2)(b)(i)(A) and (B).

299 ~~[(c) an evaluation conducted by an expert in family relations approved by the court or a~~  
300 ~~certified social worker, clinical social worker, marriage and family therapist, psychologist,~~  
301 ~~professional counselor, or other court-determined expert in family relations, who is licensed to~~  
302 ~~practice under the laws of this state or under the laws of the state where the prospective~~  
303 ~~adoptive parent or other person living in the prospective adoptive home resides. The~~  
304 ~~evaluation shall be in a form approved by the Department of Human Services. Neither the~~  
305 ~~Department of Human Services nor any of its divisions may proscribe who qualifies as an~~  
306 ~~expert in family relations or who may conduct evaluations pursuant to this Subsection (2); and]~~

307 ~~[(d)]~~ (3) (a) Notwithstanding Subsection (1)(a), if the child to be adopted is ~~[a child~~  
 308 ~~who is]~~ in the custody of any public child welfare agency, and is a child with special needs as  
 309 defined in Subsection 62A-4a-902(2), the preplacement adoptive evaluation must be conducted  
 310 by:

311 (i) the Department of Human Services ~~[or]~~;  
 312 (ii) a ~~[licensed]~~ child-placing agency ~~[which] that~~ has ~~[entered into a contract]~~  
 313 contracted with the department to conduct ~~[the]~~ preplacement adoptive evaluations for children  
 314 with special needs~~[- Any fee assessed by the evaluating agency is the responsibility of the~~  
 315 ~~adopting parent or parents.]; or~~  
 316 (iii) if a prospective adoptive parent resides outside of the state, the public child  
 317 welfare agency in the state, district, or territory of the United States where the prospective  
 318 adoptive parent resides.

319 ~~[(3) The person or agency conducting the]~~  
 320 (b) Notwithstanding Subsection (1)(a), the court may appoint any person that the court  
 321 determines is qualified to conduct a preplacement adoptive evaluation if:

322 (i) the child to be adopted is not a child described in Subsection (3)(a); and  
 323 (ii) an adoptive parent establishes that an adoption service provider is not reasonably  
 324 available to conduct a preplacement adoptive evaluation.

325 (c) The adoptive parent or parents shall be responsible to pay any fee assessed for a  
 326 preplacement adoptive evaluation conducted pursuant to this section.

327 (d) A person that conducts a preplacement adoptive evaluation under this section shall,  
 328 in connection with the evaluation, provide the prospective adoptive parent or parents with  
 329 literature that:

330 (i) is approved by the Division of Child and Family Services relating to adoption[;]  
 331 and [including]

332 (ii) includes information relating to:

333 (A) the adoption process[;];

334 (B) developmental issues that may require early intervention[;]; and

335 (C) community resources that are available to the adoptive parent or parents.

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

337 (5) (a) ~~[Except as provided in Subsections (5)(b) and (c)]~~ Subject to Subsections (5)(b)

338 and (8), a postplacement adoption evaluation shall;

339 (i) except as provided in Subsection (9), be conducted [and] by:

340 (A) an adoption service provider; or

341 (B) a person authorized to conduct a postplacement adoption evaluation by the state,

342 district, or territory of the United States where a prospective adoptive parent resides;

343 (ii) be submitted to the court prior to the final hearing in an adoption proceeding[.The

344 postplacement evaluation shall]; and

345 (iii) include:

346 [(i)] (A) verification of the allegations of fact contained in the petition for adoption;

347 [(ii)] (B) an evaluation of the progress of the child's placement in the adoptive home;

348 and

349 [(iii)] (C) a recommendation regarding whether the adoption is in the best interest of

350 the child.

351 ~~[(b) The exemptions from and requirements for evaluations, described in Subsections~~

352 ~~(1)(c), (2)(c), and (3), also apply to postplacement adoptive evaluations.]~~

353 ~~[(c) Upon]~~

354 (b) Notwithstanding Subsection (5)(a), upon the request of the petitioner, the court may  
355 waive the postplacement adoptive evaluation, unless [it]:

356 (i) the court determines that it is in the best interest of the child to require the  
357 postplacement adoptive evaluation[. Except where]; or

358 (ii) the child to be adopted [and the prospective parent are related as set forth in  
359 Subsection (1)(c), the court may waive the postplacement adoptive evaluation for a child];

360 (A) is not related to the prospective parent in a manner described in Subsection

361 (8)(a)(ii); and

362 (B) is a child with special needs as defined in Section 62A-4a-902.

363 (6) (a) [If the person or agency conducting] Subject to Subsection (6)(b), if the person  
364 who conducts the evaluation disapproves the adoptive placement, either in the preplacement or  
365 postplacement adoptive evaluation, the court may dismiss the petition. [However;]

366 (b) Notwithstanding Subsection (6)(a), upon request of a prospective adoptive parent,  
367 the court shall;

368 (i) order that an additional preplacement or postplacement adoptive evaluation be

369 conducted[;]; and

370 (ii) hold a hearing on the suitability of the adoption, including testimony of interested  
 371 parties.

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

375 (8) (a) Except as provided in Subsection (8)(b), Subsections (1)(a) and (5)(a) do not  
 376 apply if:

377 (i) a birth parent has legal custody of the child to be adopted; and

378 (ii) the prospective adoptive parent is related to the child as a:

379 (A) step-parent;

380 (B) sibling by:

381 (I) half blood;

382 (II) whole blood; or

383 (III) adoption;

384 (C) grandparent;

385 (D) aunt;

386 (E) uncle; or

387 (F) first cousin.

388 (b) Notwithstanding Subsection (8)(a):

389 (i) Subsection (1)(a) applies if the court requests a preplacement adoptive evaluation;

390 and

391 (ii) Subsection (5)(a) applies if the court requests a postplacement adoptive evaluation.

392 (9) Notwithstanding Subsection (5)(a)(i), the court may appoint any person that the  
 393 court determines is qualified to conduct a postplacement adoptive evaluation if an adoptive  
 394 parent establishes that an adoption service provider is not reasonably available to conduct a  
 395 postplacement adoptive evaluation.

396 Section 6. Section **78-30-4.12** is amended to read:

397 **78-30-4.12. Rights and responsibilities of parties in adoption proceedings.**

398 (1) The Legislature finds that the rights and interests of all parties affected by an  
 399 adoption proceeding must be considered and balanced in determining what constitutional

400 protections and processes are necessary and appropriate.

401 (2) The Legislature finds that:

402 (a) the state has a compelling interest in providing stable and permanent homes for  
403 adoptive children in a prompt manner, in preventing the disruption of adoptive placements, and  
404 in holding parents accountable for meeting the needs of children;

405 (b) an unmarried mother, faced with the responsibility of making crucial decisions  
406 about the future of a newborn child, is entitled to privacy, and has the right to make timely and  
407 appropriate decisions regarding her future and the future of the child, and is entitled to  
408 assurance regarding the permanence of an adoptive placement;

409 (c) adoptive children have a right to permanence and stability in adoptive placements;

410 (d) adoptive parents have a constitutionally protected liberty and privacy interest in  
411 retaining custody of an adopted child; and

412 (e) an unmarried biological father has an inchoate interest that acquires constitutional  
413 protection only when he demonstrates a timely and full commitment to the responsibilities of  
414 parenthood, both during pregnancy and upon the child's birth. The state has a compelling  
415 interest in requiring unmarried biological fathers to demonstrate that commitment by providing  
416 appropriate medical care and financial support and by establishing legal paternity, in  
417 accordance with the requirements of this chapter.

418 (3) (a) In enacting [~~Sections 78-30-4.11~~] Subsection 78-30-1.1(5) and Sections  
419 78-30-4.12 through 78-30-4.21, the Legislature prescribes the conditions for determining  
420 whether an unmarried biological father's action is sufficiently prompt and substantial to require  
421 constitutional protection.

422 (b) If an unmarried biological father fails to grasp the opportunities to establish a  
423 relationship with his child that are available to him, his biological parental interest may be lost  
424 entirely, or greatly diminished in constitutional significance by his failure to timely exercise it,  
425 or by his failure to strictly comply with the available legal steps to substantiate it.

426 (c) A certain degree of finality is necessary in order to facilitate the state's compelling  
427 interest. The Legislature finds that the interests of the state, the mother, the child, and the  
428 adoptive parents described in this section outweigh the interest of an unmarried biological  
429 father who does not timely grasp the opportunity to establish and demonstrate a relationship  
430 with his child in accordance with the requirements of this chapter.

431 (d) An unmarried biological father has the primary responsibility to protect his rights.

432 (e) An unmarried biological father is presumed to know that the child may be adopted  
433 without his consent unless he strictly complies with the provisions of this chapter, manifests a  
434 prompt and full commitment to his parental responsibilities, and establishes paternity.

435 (4) The Legislature finds that an unmarried mother has a right of privacy with regard to  
436 her pregnancy and adoption plan, and therefore has no legal obligation to disclose the identity  
437 of an unmarried biological father prior to or during an adoption proceeding, and has no  
438 obligation to volunteer information to the court with respect to the father.

439 Section 7. Section **78-30-4.13** is amended to read:

440 **78-30-4.13. Notice of adoption proceedings.**

441 (1) (a) An unmarried[;] biological father, by virtue of the fact that he has engaged in a  
442 sexual relationship with a woman[;]:

443 (i) is considered to be on notice that a pregnancy and an adoption proceeding regarding  
444 [that] the child may occur[;]; and

445 (ii) has a duty to protect his own rights and interests. [~~He is therefore~~]

446 (b) An unmarried biological father is entitled to actual notice of a birth or an adoption  
447 proceeding with regard to [that] his child only as provided in this section.

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

449 (a) any person or agency whose consent or relinquishment is required under Section  
450 78-30-4.14, unless that right has been terminated by:

451 (i) waiver[;];

452 (ii) relinquishment[;];

453 (iii) consent[;]; or

454 (iv) judicial action;

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

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

459 (d) the petitioner's spouse, if any, only if [~~he~~] the petitioner's spouse has not joined in  
460 the petition;

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

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

465 (g) any person who is:

466 (i) openly living in the same household with the child at the time the consent is  
467 executed or relinquishment made[;]; and [~~who is~~]

468 (ii) holding himself out to be the child's father; and

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

471 (3) (a) In order to preserve any right to notice and consent, an unmarried, biological  
472 father may, consistent with Subsection (3)(d):

473 (i) initiate proceedings to establish paternity under Title 78, Chapter 45a, Uniform Act  
474 on Paternity[;]; and

475 (ii) file a notice of the initiation of [~~those~~] the proceedings described in Subsection  
476 (3)(a)(i) with the state registrar of vital statistics within the Department of Health [~~prior to the~~  
477 ~~mother's execution of consent or her relinquishment to an agency. That action and notice may~~  
478 ~~also be filed prior to the child's birth~~].

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

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

485 (d) The action and notice described in Subsection (3)(a):

486 (i) may be filed before or after the child's birth; and

487 (ii) shall be filed prior to the mother's:

488 (A) execution of consent to adoption of the child; or

489 (B) relinquishment of the child for adoption.

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

492 (5) The notice required by this section;



493 (a) may be served immediately after relinquishment or execution of consent~~[-but];~~

494 (b) shall be served at least 30 days prior to the final dispositional hearing~~[-The~~  
495 ~~notice]; and~~

496 (c) shall specifically state that the person served must respond to the petition within 30  
497 days of service if he intends to intervene in or contest the adoption.

498 (6) (a) Any person who has been served with notice of an adoption proceeding and who  
499 wishes to contest the adoption shall file a motion in the adoption proceeding:

500 (i) within 30 days after ~~[service. The motion]~~ the day on which the person was served  
501 with notice of the adoption proceeding;

502 (ii) that shall set forth specific relief sought; and

503 (iii) that shall be accompanied by a memorandum specifying the factual and legal  
504 grounds upon which the motion is based.

505 (b) Any person who fails to file a motion for relief within 30 days after ~~[service of~~  
506 ~~notice]~~ the day on which the person was served with notice of the adoption proceeding:

507 (i) waives any right to further notice in connection with the adoption~~[-];~~

508 (ii) forfeits all rights in relation to the adoptee~~[-];~~ and

509 (iii) is barred from thereafter bringing or maintaining any action to assert any interest in  
510 the adoptee.

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

512 (a) (i) With regard to a person whose consent is necessary under Section 78-30-4.14,  
513 service shall be in accordance with the provisions of the Utah Rules of Civil Procedure.

514 (ii) If service of a person described in Subsection (7)(a)(i) is by publication, the court  
515 shall designate the content of the notice regarding the identity of the parties.

516 (iii) The notice described in this Subsection (7)(a) may not include the name of ~~[the~~  
517 ~~person or persons]~~ a person seeking to adopt the adoptee.

518 (b) ~~[As]~~ (i) Except as provided in Subsection (7)(b)(ii) to any other person for whom  
519 notice is required under this section, service by certified mail, return receipt requested, is  
520 sufficient.

521 (ii) If ~~[that]~~ the service described in Subsection (7)(b)(i) cannot be completed after two  
522 attempts, the court may issue an order providing for service by publication, posting, or by any  
523 other manner of service.

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

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

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

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

535 (11) Except as to those persons whose consent to an adoption is required under Section  
536 78-30-4.14, the sole purpose of notice under this section is to enable the person served to:

537 (a) intervene in the adoption; and

538 (b) present evidence to the court relevant to the best interest of the child.

539 Section 8. Section **78-30-4.14** is amended to read:

540 **78-30-4.14. Necessary consent to adoption or relinquishment for adoption.**

541 (1) Either relinquishment of a child for adoption [~~to a licensed child-placing agency~~] or  
542 consent to adoption of a child is required from:

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

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

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

548 (d) any biological parent who has been adjudicated to be the child's biological father by  
549 a court of competent jurisdiction prior to the mother's execution of consent to adoption or her  
550 relinquishment [~~to an agency~~] of the child for adoption;

551 (e) any biological parent who has executed and filed a voluntary declaration of  
552 paternity with the state registrar of vital statistics within the Department of Health in  
553 accordance with Title 78, Chapter 45e, Voluntary Declaration of Paternity Act, prior to the  
554 mother's execution of consent to adoption or her relinquishment [~~to an agency~~] of the child for

555 adoption, which voluntary declaration of paternity is considered filed when entered into a  
556 database that can be accessed by the Department of Health;

557 (f) an unmarried[;] biological father of an adoptee, [~~as defined in Section 78-30-4.11;~~]  
558 only if the requirements and conditions of Subsection (2)(a) or (b) have been proven; and

559 (g) the [~~licensed child-placing~~] person or agency to whom an adoptee has been  
560 relinquished and that is placing the child for adoption.

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

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

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

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

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

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

584 (b) With regard to a child who is under six months of age at the time he is placed with  
585 adoptive parents, an unmarried[;] biological father shall have manifested a full commitment to

586 his parental responsibilities by performing all of the acts described in this Subsection (2) prior  
587 to the time the mother executes her consent for adoption or relinquishes the child [~~to a licensed~~  
588 ~~child-placing agency~~] for adoption. The father shall:

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

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

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

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

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

614 (5) An unmarried[;] biological father who does not fully and strictly comply with each  
615 of the conditions provided in this section, is [~~deemed~~] considered to have waived and  
616 surrendered any right in relation to the child, including the right to notice of any judicial

617 proceeding in connection with the adoption of the child, and his consent to the adoption of the  
618 child is not required.

619 Section 9. Section **78-30-4.16** is amended to read:

620 **78-30-4.16. Contested adoptions -- Rights of parties -- Determination of custody.**

621 (1) If a person whose consent for an adoption is required pursuant to Subsection  
622 78-30-4.14(1)(b), (c), (d), (e), or (f) refused to consent, the court shall determine whether  
623 proper grounds exist for the termination of that person's rights pursuant to the provisions of this  
624 chapter or Title 78, Chapter 3a, Part 4, Termination of Parental Rights Act.

625 (2) (a) If there are proper grounds to terminate the person's parental rights, the court  
626 shall order that the person's rights be terminated.

627 (b) If there are not proper grounds to terminate the person's parental rights, the court  
628 shall:

629 ~~[(a)]~~ (i) dismiss the adoption petition; ~~[and]~~

630 ~~[(b)]~~ (ii) conduct an evidentiary hearing to determine who should have custody of the  
631 child; and

632 (iii) award custody of the child in accordance with the child's best interest.

633 (3) Evidence considered at the custody hearing may include:

634 (a) evidence of psychological or emotional bonds that the child has formed with a third  
635 person, including the prospective adoptive parent~~;~~; and

636 (b) any detriment that a change in custody may cause the child.

637 (4) The fact that a person relinquished a child ~~[to a licensed child-placing agency]~~ for  
638 adoption or consented to the adoption may not be considered as evidence that it is not in the  
639 child's best interest for custody to be awarded to such person or that:

640 (a) the person is unfit or incompetent to be a parent;

641 (b) the person has neglected or abandoned the child; or

642 (c) the person is not interested in having custody of the child.

643 (5) Any custody order entered pursuant to this section may also:

644 (a) include provisions for:

645 (i) parent-time by a biological parent; or

646 (ii) visitation by an interested third party~~;~~; and

647 (b) provide for the financial support of the child.

648 (6) (a) If a person or entity whose consent is required for an adoption under Subsection  
649 78-30-4.14(1)(a) or (g) refuses to consent, the court shall proceed with an evidentiary hearing  
650 and award custody as set forth in Subsection (2).

651 (b) The court may also finalize the adoption if doing so is in the best interest of the  
652 child.

653 (7) An adoption may not be contested after the final decree of adoption is entered.

654 Section 10. Section 78-30-4.21 is amended to read:

655 **78-30-4.21. Power of a minor to consent or relinquish.**

656 (1) A minor parent has the power to:

657 (a) consent to the adoption of [~~his or her~~] the minor's child; and [~~has the power to~~]

658 (b) relinquish [~~his or her~~] the minor's control or custody of the child [~~to a licensed~~  
659 ~~child-placing agency. That~~] for adoption.

660 (2) The consent or relinquishment described in Subsection (1) is valid and has the same  
661 force and effect as a consent or relinquishment executed by an adult parent.

662 (3) A minor parent, having executed a consent or relinquishment, cannot revoke that  
663 consent upon reaching the age of majority or otherwise becoming emancipated.

664 Section 11. **Repealer.**

665 This bill repeals:

666 Section **78-30-4.11, Definition.**

**Legislative Review Note**  
as of 2-1-05 11:51 AM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

**Office of Legislative Research and General Counsel**

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**Fiscal Note**  
**Bill Number HB0259**

**Adoption Amendments**

*05-Feb-05*

*9:36 AM*

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**State Impact**

No state or local government fiscal impact.

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**Individual and Business Impact**

Provisions of this bill could increase the cost of adoption. There may be other expenses that could be shifted between parties, depending on the circumstances and the individuals involved.

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**Office of the Legislative Fiscal Analyst**