

1 **ADOPTION AND VITAL STATISTICS**

2 **AMENDMENTS**

3 2006 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Kory M. Holdaway**

6 Senate Sponsor: Carlene M. Walker

7

8 **LONG TITLE**

9 **General Description:**

10 This bill amends the Utah Vital Statistics Act and the Adoption Chapter of the Judicial
11 Code to provide for the release of an original certificate of birth to an adult adoptee,
12 subject to certain exceptions.

13 **Highlighted Provisions:**

14 This bill:

- 15 ▶ defines terms;
- 16 ▶ provides for the preservation and confidentiality of records;
- 17 ▶ establishes a procedure for the release of an original certificate of birth, and the
18 identifying information of a birth parent included in the certificate, to an adult
19 adoptee whose adoption was finalized on or after January 1, 2007, unless the birth
20 parent files an affidavit of nondisclosure:
- 21 • refusing to release the birth parent's identifying information under any
22 circumstances; or
- 23 • refusing to release the birth parent's identifying information, unless the birth
24 parent consents to the release of the identifying information after the adult
25 adoptee requests the original certificate of birth;
- 26 ▶ subject to certain exceptions, requires the Office of Vital Statistics, within the
27 Department of Health, to attempt to locate and contact a birth parent to determine



28 whether the birth parent will consent to the release of identifying information, when the birth
29 parent has filed an affidavit of nondisclosure that requires consent before releasing identifying
30 information;

31 ▶ provides direction to the Office of Vital Statistics, within the Department of Health,
32 regarding responding to a request for an original certificate of birth of an adult
33 adoptee;

34 ▶ provides that identifying information of an adult adoptee who requests an original
35 certificate of birth may not be given to a birth parent without the consent of the
36 adult adoptee;

37 ▶ permits the Office of Vital Statistics, within the Department of Health, to charge a
38 fee for services provided to an adult adoptee under this bill;

39 ▶ grants rulemaking authority to the Department of Health;

40 ▶ requires certain persons involved in the adoption process to inform a birth parent of
41 certain information relating to the filing of an affidavit of nondisclosure under this
42 bill;

43 ▶ makes it a class A misdemeanor to disclose, or to knowingly allow the disclosure
44 of, information in violation of the provisions of this bill; and

45 ▶ makes technical changes.

46 **Monies Appropriated in this Bill:**

47 None

48 **Other Special Clauses:**

49 None

50 **Utah Code Sections Affected:**

51 **AMENDS:**

52 **26-2-10**, as last amended by Chapter 86, Laws of Utah 2000

53 **26-2-22**, as last amended by Chapter 255, Laws of Utah 2001

54 **78-30-15**, as last amended by Chapter 224, Laws of Utah 1999

55 **78-30-16**, as last amended by Chapter 65, Laws of Utah 1990

56 **78-30-18**, as last amended by Chapter 20, Laws of Utah 1995

57 **78-30-19**, as enacted by Chapter 39, Laws of Utah 1987

58 **ENACTS:**

59 **78-30-17.5**, Utah Code Annotated 1953

60 **78-30-17.7**, Utah Code Annotated 1953

61

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

63 Section 1. Section **26-2-10** is amended to read:

64 **26-2-10. Supplementary certificate of birth.**

65 (1) Any person born in this state who is legitimized by the subsequent marriage of his
66 natural parents, or whose parentage has been determined by any U.S. state court or Canadian
67 provincial court having jurisdiction, or who has been legally adopted under the law of this or
68 any other state or any province of Canada, may request the state registrar to register a
69 supplementary certificate of birth on the basis of that status.

70 (2) The application for registration of a supplementary certificate may be made by the
71 person requesting registration, if he is of legal age, by a legal representative, or by any agency
72 authorized to receive children for placement or adoption under the laws of this or any other
73 state.

74 (3) (a) The state registrar shall require that an applicant submit identification and proof
75 according to department rules.

76 (b) In the case of an adopted person, that proof may be established by order of the court
77 in which the adoption proceedings were held.

78 (4) (a) After the supplementary certificate is registered, any information disclosed from
79 the record shall be from the supplementary certificate.

80 (b) Access to the original certificate and to the evidence submitted in support of the
81 supplementary certificate are not open to inspection except:

82 (i) upon the order of a Utah district court; or

83 (ii) as provided under Section 78-30-17.5 or 78-30-18.

84 (c) After the supplementary certificate is registered, the original certificate shall be
85 placed in a separate, sealed file and may not be released except as provided in Subsection
86 (4)(b).

87 Section 2. Section **26-2-22** is amended to read:

88 **26-2-22. Inspection of vital records.**

89 (1) (a) The vital records shall be open to inspection, but only in compliance with:

90 (i) the provisions of this chapter[;];

91 (ii) department rules[~~;~~and];

92 (iii) Section 78-30-17.5; and

93 (iv) Section 78-30-18.

94 (b) It is unlawful for any state or local officer or employee to disclose data contained in
95 vital records contrary to this chapter or department rule.

96 [~~(b)~~] (c) A custodian of vital records may permit inspection of a vital record or issue a
97 certified copy of a record or a part of it when the custodian is satisfied the applicant has
98 demonstrated a direct, tangible, and legitimate interest.

99 (2) A direct, tangible, and legitimate interest in a vital record is present only if:

100 (a) the request is from the subject, a member of the subject's immediate family, the
101 guardian of the subject, or a designated legal representative;

102 (b) the request involves a personal or property right of the subject of the record;

103 (c) the request is for official purposes of a state, local, or federal governmental agency;

104 (d) the request is for a statistical or medical research program and prior consent has
105 been obtained from the state registrar; or

106 (e) the request is a certified copy of an order of a court of record specifying the record
107 to be examined or copied.

108 (3) For purposes of Subsection (2):

109 (a) "immediate family member" means a spouse, child, parent, sibling, grandparent, or
110 grandchild;

111 (b) a designated legal representative means an attorney, physician, funeral director,
112 genealogist, or other agent of the subject or the subject's immediate family who has been
113 delegated the authority to access vital records;

114 (c) except as provided in Title 78, Chapter 30, Adoption, a parent, or the immediate
115 family member of a parent, who does not have legal or physical custody of or visitation or
116 parent-time rights for a child because of the termination of parental rights pursuant to Title 78,
117 Chapter 3a, Juvenile [~~Courts~~] Court Act of 1996, or by virtue of consenting to or relinquishing
118 a child for adoption pursuant to Title 78, Chapter 30, Adoption, may not be considered as
119 having a direct, tangible, and legitimate interest; and

120 (d) a commercial firm or agency requesting names, addresses, or similar information

121 may not be considered as having a direct, tangible, and legitimate interest.

122 (4) Upon payment of a fee established in accordance with Section 63-38-3.2, the
123 following records shall be available to the public:

124 (a) except as provided in Subsection 26-2-10(4)(b), a birth record, excluding
125 confidential information collected for medical and health use, if 100 years or more have passed
126 since the date of birth;

127 (b) a death record if 50 years or more have passed since the date of death; and

128 (c) a vital record not subject to Subsection (4)(a) or (b) if 75 years or more have passed
129 since the date of the event upon which the record is based.

130 Section 3. Section **78-30-15** is amended to read:

131 **78-30-15. Petition, report, and documents to be sealed -- Exceptions.**

132 The court shall order that the petition for adoption, the written report described in
133 Section 78-30-14, and any other documents filed in connection with the hearing be sealed.

134 Those items are not open to inspection or copying except:

135 (1) upon order of the court expressly permitting inspection or copying, after good cause
136 has been shown;

137 (2) as provided under Section 78-30-17.5 or 78-30-18; or

138 (3) those records shall become public on the one hundredth anniversary of the date the
139 final decree of adoption was entered.

140 Section 4. Section **78-30-16** is amended to read:

141 **78-30-16. Definitions -- Applications.**

142 (1) As used in Sections 78-30-17 through 78-30-19:

143 (a) "Adoptee" means a person who has been legally adopted.

144 (b) "Adoption" means the judicial act which creates the relationship of parent and child
145 where it did not previously exist and which permanently deprives a birth parent of his parental
146 rights.

147 (c) "Adult adoptee" means an adoptee who is 21 years of age or older.

148 (d) "Adult sibling" means a brother or sister of the adoptee, who is 21 years of age or
149 older and whose birth mother or father is the same as that of the adoptee.

150 (e) "Birth parent" means a biological mother, a person whose paternity of a child is
151 established, or, an alleged father, who has been identified as the father of a child by the child's

152 birth mother, and who has not denied paternity.

153 ~~[(f) "Bureau" means the Bureau of Vital Statistics within the Department of Health~~
154 ~~operating under Title 26, Chapter 2.]~~

155 (f) "Consenting birth parent" means a birth parent who:

156 (i) has consented to disclosure of an original certificate of birth to an adult adoptee as
157 evidenced by:

158 (A) an affidavit, described in Subsection 78-30-17.5(2)(b), on file with the office; or

159 (B) signing a written consent under Subsection 78-30-17.5(4)(d); or

160 (ii) fails to file an affidavit of nondisclosure under Subsection 78-30-17.5(1).

161 (g) "Genetic and social history" means a comprehensive report, when obtainable, on an
162 adoptee's birth parents, aunts, uncles, and grandparents, which contains the following
163 information:

164 (i) medical history;

165 (ii) health status;

166 (iii) cause of and age at death;

167 (iv) height, weight, eye, and hair color;

168 (v) ethnic origins;

169 (vi) where appropriate, levels of education and professional achievement; and

170 (vii) religion, if any.

171 (h) "Health history" means a comprehensive report of the adoptee's health status at the
172 time of placement for adoption, and his medical history, including neonatal, psychological,
173 physiological, and medical care history.

174 (i) "Identifying information" means the name and address of a birth parent or adult
175 adoptee, or other specific information which by itself or in reasonable conjunction with other
176 information may be used to identify that person.

177 (j) "Nonconsenting birth parent" means a birth parent who:

178 (i) has an affidavit, described in Subsection 78-30-17.5(1)(a), on file with the office; or

179 (ii) (A) has an affidavit, described in Subsection 78-30-17.5(1)(b), on file with the
180 office; and

181 (B) has not consented to disclosure of the original certificate of birth under Subsection
182 78-30-17.5(4)(d).

183 (k) "Office" means the Office of Vital Statistics within the Department of Health
184 operating under Title 26, Chapter 2, Utah Vital Statistics Act.

185 (2) Sections 78-30-17 through 78-30-19 do not apply to adoptions by a stepparent
186 whose spouse is the adoptee's birth parent.

187 (3) Sections 78-30-17 through 78-30-19 apply only to adoptions of adoptees born in
188 this state.

189 Section 5. Section **78-30-17.5** is enacted to read:

190 **78-30-17.5. Disclosure of original certificate of birth to adult adoptee -- Affidavit**
191 **of nondisclosure -- Consent to disclosure.**

192 (1) A birth parent of an adoptee whose adoption was finalized on or after January 1,
193 2007, may, at any time, file with the office an affidavit of nondisclosure that provides:

194 (a) that the birth parent refuses to consent to the disclosure of an original certificate of
195 birth, or the identifying information included in the certificate, to the adoptee, under any
196 circumstances; or

197 (b) that the birth parent refuses to consent to the disclosure of an original certificate of
198 birth, or the identifying information included in the certificate, to the adoptee, unless the birth
199 parent gives written consent after being contacted by the office as provided in Subsection (4).

200 (2) A birth parent who files an affidavit of nondisclosure under Subsection (1) or an
201 affidavit of disclosure under Subsection (2)(b) may, at any time, replace the affidavit with a
202 new affidavit:

203 (a) under Subsection (1)(a) or (b); or

204 (b) providing that the birth parent consents to the disclosure of an original certificate of
205 birth, and the identifying information included in the certificate, to the adoptee.

206 (3) (a) If an adult adoptee whose adoption was finalized on or after January 1, 2007,
207 requests the adoptee's original certificate of birth from the office, the office shall provide the
208 adult adoptee with a noncertified copy of the original certificate of birth, unless one or both of
209 the birth parents whose identifying information is on the certificate of birth is a nonconsenting
210 birth parent.

211 (b) The office shall, in accordance with Subsection (3)(c), provide a redacted,
212 noncertified copy of an adult adoptee's original certificate of birth to an adult adoptee if:

213 (i) the adult adoptee requests the adoptee's original certificate of birth from the office;

214 (ii) the adult adoptee's adoption was finalized on or after January 1, 2007;
215 (iii) identifying information of two birth parents is included in the certificate of birth;
216 and
217 (iv) only one of the birth parents described in Subsection (3)(b)(iii) is a nonconsenting
218 birth parent.
219 (c) A redacted, noncertified certificate of birth, described in Subsection (3)(b):
220 (i) except as provided in Subsection (3)(c)(ii), may not include the name or any other
221 identifying information of the nonconsenting birth parent; and
222 (ii) shall include the name and identifying information of the consenting birth parent,
223 even if the name and other identifying information of the consenting birth parent is the same or
224 similar to the name and identifying information of the nonconsenting birth parent.
225 (4) (a) Subject to Subsections (5)(a) and (b), if a request for an original certificate of
226 birth is made under Subsection (3), and a birth parent has an affidavit described in Subsection
227 (1)(b) on file with the office, the office shall attempt to locate and contact the birth parent.
228 (b) If the office is not able to locate or contact the birth parent described in Subsection
229 (4)(a), the office shall, without disclosing any identifying information about the birth parent,
230 inform the adult adoptee who made the request that the request, as it relates to that birth parent,
231 cannot be granted, because:
232 (i) the birth parent has an affidavit, described in Subsection (1)(b), on file with the
233 office; and
234 (ii) the office was unable to locate or contact the birth parent described in Subsection
235 (4)(b)(i).
236 (c) Consistent with Subsection (5)(c), if the office is able to contact the birth parent
237 described in Subsection (4)(a), the office:
238 (i) shall discreetly inform the birth parent that an adult adoptee has requested an
239 original certificate of birth that contains identifying information of the birth parent;
240 (ii) shall inquire whether the birth parent is willing to provide written consent to
241 disclosure of the identifying information of the birth parent that is contained in the original
242 certificate of birth; and
243 (iii) may not pressure the birth parent to give the consent described in Subsection
244 (4)(c)(ii).

245 (d) If the birth parent described in Subsection (4)(c) agrees to provide the written
246 consent described in Subsection (4)(c)(ii), the office shall provide a consent form for the birth
247 parent to complete.

248 (e) If the birth parent described in Subsection (4)(c) refuses to provide the consent
249 described in Subsection (4)(c)(ii), the office shall inform the birth parent:

250 (i) of the birth parent's right under Subsection (2) to file an affidavit described in
251 Subsection (1)(a); and

252 (ii) that, if the birth parent does not file an affidavit described in Subsection (1)(a), the
253 birth parent may again be contacted by the office on behalf of the adult adoptee no earlier than
254 seven years after the day on which the request by the adult adoptee under Subsection (3) was
255 made, to determine whether the birth parent is willing to provide the consent described in
256 Subsection (4)(c)(ii).

257 (f) If a birth parent has an affidavit, described in Subsection (1)(a), on file with the
258 office, the office may not attempt to locate or contact the birth parent:

259 (i) regarding the request described in Subsection (3); or

260 (ii) to determine whether the birth parent will consent to the request described in
261 Subsection (3).

262 (5) (a) The office is not required to take unreasonable or burdensome measures to
263 locate or contact a birth parent under Subsection (4).

264 (b) If the office has previously contacted a birth parent for the purpose of making the
265 inquiry described in Subsection (4)(c)(ii), and that consent is denied, the office may not again
266 attempt to locate or contact that birth parent to make an inquiry under Subsection (4)(c)(ii) on
267 behalf of the same adult adoptee, until seven years after the day on which the last request under
268 Subsection (3) by that adult adoptee was made.

269 (c) If the office contacts a birth parent under Subsection (4)(c), the office may not
270 disclose any identifying information regarding the adult adoptee, unless the adult adoptee gives
271 written consent to disclosure of the identifying information to the birth parent.

272 (6) Except as otherwise provided in this section, an affidavit, or the fact that an
273 affidavit has been filed with the office under this section, may only be disclosed to the person
274 who filed the affidavit.

275 (7) The office may charge a fee for services provided to an adult adoptee under this

276 section that shall be limited to the cost of providing those services.

277 (8) The Department of Health, created in Section 26-1-4, shall:

278 (a) make rules, in accordance with Title 63, Chapter 46a, Utah Administrative
279 Rulemaking Act, as necessary for the administration of this section; and

280 (b) create forms for the affidavits and written consents described in this section.

281 Section 6. Section **78-30-17.7** is enacted to read:

282 **78-30-17.7. Obligation to inform regarding nondisclosure affidavit.**

283 (1) (a) (i) For purposes of this section, "obligated informant" means:

284 (A) Subject to Subsection (1)(a)(ii), the person before whom a consent or
285 relinquishment described in Section 78-30-4.18 is signed;

286 (B) the attorney representing a person who signs a consent or relinquishment under
287 Section 78-30-4.18;

288 (C) if the person described in Subsection (1)(a)(i)(B) is not represented by an attorney,
289 the receiver of consent; or

290 (D) if the child to be adopted is in the custody of the Division of Child and Family
291 Services, created in Section 62A-4a-103, the caseworker assigned to the child.

292 (ii) If the consent or relinquishment described in Subsection (1)(a)(i)(A) is signed in
293 the presence of a notary public under Subsection 78-30-4.18(3), the "obligated informant":

294 (A) is not the notary public; and

295 (B) is the receiver of consent.

296 (b) "Receiver of consent" means the child placing agency, attorney, court, or other
297 person involved in the adoption process who:

298 (i) requests that the consent or relinquishment described in Subsection (1)(a)(i)(A) be
299 made; or

300 (ii) receives the consent or relinquishment described in Subsection (1)(a)(i)(A) from
301 the person who signs the consent or relinquishment.

302 (2) Within 14 days after the day on which a birth parent consents to the adoption of a
303 child or relinquishes a child for adoption under Section 78-30-4.18, the obligated informant
304 shall inform the birth parent:

305 (a) that the birth parent may file an affidavit of nondisclosure under Section
306 78-30-17.5;

307 (b) that failure to file an affidavit on nondisclosure may result in disclosure to the
308 child, when the child reaches the age of 21, of the child's original certificate of birth, including
309 the identifying information of the birth parent that is contained in the original certificate of
310 birth;

311 (c) that the birth parent may contact the office for further information regarding an
312 affidavit of nondisclosure; and

313 (d) of a phone number for the office where the information described in Subsection
314 (2)(c) can be obtained.

315 (3) Failure by an obligated informant to comply with Subsection (2) does not
316 invalidate:

317 (a) a consent to adoption; or

318 (b) a relinquishment for adoption.

319 Section 7. Section **78-30-18** is amended to read:

320 **78-30-18. Mutual-consent, voluntary adoption registry -- Procedures -- Fees.**

321 (1) The [bureau] office shall establish a mutual-consent, voluntary adoption registry.

322 (a) Adult adoptees and birth parents of adult adoptees, upon presentation of positive
323 identification, may request identifying information from the [bureau] office, in the form
324 established by the [bureau] office. A court of competent jurisdiction or a child placing agency
325 licensed under Title 62A, Chapter 4a, Part 6, may accept that request from the adult adoptee or
326 birth parent, in the form provided by the [bureau] office, and transfer that request to the
327 [bureau] office. The adult adoptee or birth parent is responsible for notifying the [bureau]
328 office of any change in information contained in the request.

329 (b) [~~The bureau~~] Except as provided in Section 78-30-17.5, the office may only release
330 identifying information to an adult adoptee or birth parent when it receives requests from both
331 the adoptee and his birth parent.

332 (c) After matching the request of an adult adoptee with that of at least one of his birth
333 parents, the [bureau] office shall notify both the adoptee and the birth parent that the requests
334 have been matched, and disclose the identifying information to those parties. However, if that
335 adult adoptee has a sibling of the same birth parent who is under the age of 21 years, and who
336 was raised in the same family setting as the adult adoptee, the [bureau] office shall not disclose
337 the requested identifying information to that adult adoptee or his birth parent.

338 (2) (a) Adult adoptees and adult siblings of adult adoptees, upon presentation of
339 positive identification, may request identifying information from the [bureau] office, in the
340 form established by the [bureau] office. A court of competent jurisdiction or a child placing
341 agency licensed under Title 62A, Chapter 4a, Part 6, may accept that request from the adult
342 adoptee or adult sibling, in the form provided by the [bureau] office, and transfer that request to
343 the [bureau] office. The adult adoptee or adult sibling is responsible for notifying the [bureau]
344 office of any change in information contained in the request.

345 (b) ~~[The bureau]~~ Except as provided in Section 78-30-17.5, the office may only release
346 identifying information to an adult adoptee or adult sibling when it receives requests from both
347 the adoptee and his adult sibling.

348 (c) After matching the request of an adult adoptee with that of his adult sibling, if the
349 [bureau] office has been provided with sufficient information to make that match, the [bureau]
350 office shall notify both the adoptee and the adult sibling that the requests have been matched,
351 and disclose the identifying information to those parties.

352 (3) Information registered with the [bureau] office under this section is available only
353 to a registered adult adoptee and his registered birth parent or registered adult sibling, under the
354 terms of this section.

355 (4) ~~[Information]~~ Except as provided in Section 78-30-17.5, information regarding a
356 birth parent who has not registered a request with the [bureau] office under this section may not
357 be disclosed.

358 (5) The [bureau] office may charge a fee for services provided under this section,
359 limited to the cost of providing those services.

360 Section 8. Section **78-30-19** is amended to read:

361 **78-30-19. Restrictions on disclosure of information -- Violations -- Penalty.**

362 (1) Information maintained or filed with the [bureau] office under this chapter may not
363 be disclosed except as provided by this chapter, or pursuant to a court order.

364 (2) Any person who discloses information obtained from the [bureau's] office's
365 voluntary adoption registry in violation of this chapter, or knowingly allows that information to
366 be disclosed in violation of this chapter is guilty of a class A misdemeanor.

367 (3) Any person who discloses, or knowingly allows the disclosure of, information in
368 violation of Section 78-30-17.5 is guilty of a class A misdemeanor.

Legislative Review Note

as of 1-5-06 8:18 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