

**ADOPTION AND TERMINATION OF
PARENTAL RIGHTS
2008 GENERAL SESSION
STATE OF UTAH**

Chief Sponsor: Sheryl L. Allen

Senate Sponsor: Carlene M. Walker

LONG TITLE

Committee Note:

The Health and Human Services Interim Committee recommended this bill.

General Description:

This bill amends provisions of the Utah Health Code, the Utah Criminal Code, and the Judicial Code, relating to adoption and the termination of parental rights.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ provides that a child-placing agency has a direct, tangible, and legitimate interest in the vital records of a child that has been placed with the agency pending finalization of an adoption;
- ▶ modifies and clarifies the definition of "adoption related expenses" that a person may pay or accept without violating the crime of "sale of a child";
- ▶ amends the offense of "sale of a child" to make it a third degree felony to offer to sell or dispose of a child, or to give, or attempt to give, money or another thing of value to a person with the intent to induce the person to sell or dispose of a child;
- ▶ makes incarceration for a felony a factor that a court must consider in determining whether a parent is unfit or has neglected a child, regardless of whether the child is in the custody of the Division of Child and Family Services;



- 28 ▶ modifies requirements relating to taking consents and relinquishments for adoption;
- 29 ▶ clarifies which code provisions must be complied with in order for a court to waive
- 30 the requirement that adoptive parents and the child to be adopted appear before the
- 31 court prior to entry of a final decree of adoption;
- 32 ▶ requires a child-placing agency and a petitioner for adoption to comply with the
- 33 Indian Child Welfare Act in an adoption proceeding involving an "Indian child";
- 34 and
- 35 ▶ makes technical changes.

36 **Monies Appropriated in this Bill:**

37 None

38 **Other Special Clauses:**

39 None

40 **Utah Code Sections Affected:**

41 AMENDS:

- 42 **26-2-22**, as last amended by Laws of Utah 2006, Chapters 55 and 56
- 43 **76-7-203**, as last amended by Laws of Utah 2005, Chapter 137
- 44 **78-3a-408**, as last amended by Laws of Utah 2005, Chapter 95
- 45 **78-30-1.1**, as last amended by Laws of Utah 2006, Chapter 186
- 46 **78-30-3.5**, as last amended by Laws of Utah 2007, Chapter 152
- 47 **78-30-4.18**, as last amended by Laws of Utah 2007, Chapter 196
- 48 **78-30-4.22**, as renumbered and amended by Laws of Utah 1995, Chapter 168
- 49 **78-30-7**, as last amended by Laws of Utah 2006, Chapter 132
- 50 **78-30-8**, as last amended by Laws of Utah 2007, Chapter 196
- 51 **78-30-17**, as enacted by Laws of Utah 1987, Chapter 39
- 52 **78-30-18**, as last amended by Laws of Utah 1995, Chapter 20

53 ENACTS:

54 **78-30-15.2**, Utah Code Annotated 1953



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

57 Section 1. Section **26-2-22** is amended to read:

58 **26-2-22. Inspection of vital records.**

59 (1) (a) The vital records shall be open to inspection, but only in compliance with the
60 provisions of this chapter, department rules, and Section 78-30-18.

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

63 (c) A custodian of vital records may permit inspection of a vital record or issue a
64 certified copy of a record or a part of a record when the custodian is satisfied that the applicant
65 has demonstrated a direct, tangible, and legitimate interest.

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

67 (a) the request is from:

68 (i) the subject[~~;~~];

69 (ii) a member of the subject's immediate family[~~;~~];

70 (iii) the guardian of the subject[~~;~~~~or~~];

71 (iv) a designated legal representative of the subject; or

72 (v) a person, including a child-placing agency as defined in Section 78-30-1.1, with
73 whom a child has been placed pending finalization of an adoption of the child;

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

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

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

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

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

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

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

86 (c) except as provided in Title 78, Chapter 30, Adoption, a parent, or the immediate
87 family member of a parent, who does not have legal or physical custody of or visitation or
88 parent-time rights for a child because of the termination of parental rights pursuant to Title 78,
89 Chapter 3a, Juvenile Court Act of 1996, or by virtue of consenting to or relinquishing a child

90 for adoption pursuant to Title 78, Chapter 30, Adoption, may not be considered as having a
91 direct, tangible, and legitimate interest; and

92 (d) a commercial firm or agency requesting names, addresses, or similar information
93 may not be considered as having a direct, tangible, and legitimate interest.

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

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

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

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

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

103 **76-7-203. Sale of child -- Felony -- Payment of adoption related expenses.**

104 (1) For purposes of this section:

105 (a) "[~~adoption~~] Adoption related expenses" means expenses that:

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

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

108 (iii) may include expenses:

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

110 (I) legal expenses;

111 (II) maternity expenses;

112 (III) medical expenses;

113 (IV) hospital expenses;

114 (V) counseling expenses;

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

116 (VII) expenses for travel between the mother's or father's home and the location where
117 the child will be born or placed for adoption; [~~or~~]

118 (B) of a directly affected person for:

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

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

122 [~~and~~] or

123 (C) other than those included in Subsection (1)(a)(iii)(A) or (B), that are not made for
 124 the purpose of inducing the mother, parent, or legal guardian of a child to:

125 (I) place the child for adoption;

126 (II) consent to an adoption; or

127 (III) cooperate in the completion of an adoption.

128 (b) "[~~directly~~] Directly affected person" means a person who is:

129 (i) a parent or guardian of a minor when the minor is the mother or father of the child
 130 being adopted;

131 (ii) a dependant of:

132 (A) the mother or father of the child being adopted; or

133 (B) the parent or guardian described in Subsection (1)(b)(i); or

134 (iii) the spouse of the mother or father of the child being adopted.

135 (2) Except as provided in Subsection (3), a person is guilty of a third degree felony if
 136 the person[;];

137 (a) while having custody, care, control, or possession of a child, sells, or disposes of
 138 the child, or attempts or offers to sell or dispose of[;] the child, for and in consideration of the
 139 payment of money or [~~other~~] another thing of value[-]; or

140 (b) offers, gives, or attempts to give money or another thing of value to a person, with
 141 the intent to induce or encourage a person to violate Subsection (2)(a).

142 (3) A person does not violate this section by paying or receiving payment for adoption
 143 related expenses, if:

144 (a) the expenses are paid as an act of charity; and

145 (b) [~~if~~] the payment is not made for the purpose of inducing the mother, parent, or legal
 146 guardian of a child to:

147 (i) place the child for adoption;

148 (ii) consent to an adoption; or

149 (iii) cooperate in the completion of an adoption.

150 Section 3. Section **78-3a-408** is amended to read:

151 **78-3a-408. Evidence of grounds for termination.**

152 (1) In determining whether a parent or parents have abandoned a child, it is prima facie
153 evidence of abandonment that the parent or parents:

154 (a) although having legal custody of the child, have surrendered physical custody of the
155 child, and for a period of six months following the surrender have not manifested to the child
156 or to the person having the physical custody of the child a firm intention to resume physical
157 custody or to make arrangements for the care of the child;

158 (b) have failed to communicate with the child by mail, telephone, or otherwise for six
159 months;

160 (c) failed to have shown the normal interest of a natural parent, without just cause; or

161 (d) have abandoned an infant, as described in Subsection 78-3a-313.5(1).

162 (2) In determining whether a parent or parents are unfit or have neglected a child the
163 court shall consider, but is not limited to, the following circumstances, conduct, or conditions:

164 (a) emotional illness, mental illness, or mental deficiency of the parent that renders the
165 parent unable to care for the immediate and continuing physical or emotional needs of the child
166 for extended periods of time;

167 (b) conduct toward a child of a physically, emotionally, or sexually cruel or abusive
168 nature;

169 (c) habitual or excessive use of intoxicating liquors, controlled substances, or
170 dangerous drugs that render the parent unable to care for the child;

171 (d) repeated or continuous failure to provide the child with adequate food, clothing,
172 shelter, education, or other care necessary for the child's physical, mental, and emotional health
173 and development by a parent or parents who are capable of providing that care;

174 (e) [~~with regard to a child who is in the custody of the division, if~~ whether the parent
175 is incarcerated as a result of conviction of a felony, and the sentence is of such length that the
176 child will be deprived of a normal home for more than one year; or

177 (f) a history of violent behavior.

178 (3) A parent who, legitimately practicing the parent's religious beliefs, does not provide
179 specified medical treatment for a child is not, for that reason alone, a negligent or unfit parent.

180 (4) (a) Notwithstanding Subsection (2), a parent may not be considered neglectful or
181 unfit because of a health care decision made for a child by the child's parent unless the state or
182 other party to the proceeding shows, by clear and convincing evidence, that the health care

183 decision is not reasonable and informed.

184 (b) Nothing in Subsection (4)(a) may prohibit a parent from exercising the right to
185 obtain a second health care opinion.

186 (5) If a child has been placed in the custody of the division and the parent or parents
187 fail to comply substantially with the terms and conditions of a plan within six months after the
188 date on which the child was placed or the plan was commenced, whichever occurs later, that
189 failure to comply is evidence of failure of parental adjustment.

190 (6) The following circumstances constitute prima facie evidence of unfitness:

191 (a) sexual abuse, injury, or death of a sibling of the child, or of any child, due to known
192 or substantiated abuse or neglect by the parent or parents;

193 (b) conviction of a crime, if the facts surrounding the crime are of such a nature as to
194 indicate the unfitness of the parent to provide adequate care to the extent necessary for the
195 child's physical, mental, or emotional health and development;

196 (c) a single incident of life-threatening or gravely disabling injury to or disfigurement
197 of the child; or

198 (d) the parent has committed, aided, abetted, attempted, conspired, or solicited to
199 commit murder or manslaughter of a child or child abuse homicide.

200 Section 4. Section **78-30-1.1** is amended to read:

201 **78-30-1.1. Definitions.**

202 As used in this chapter:

203 (1) "Adoption service provider" means a:

204 (a) child-placing agency; or

205 (b) licensed counselor who has at least one year of experience providing professional
206 social work services to:

207 (i) adoptive parents; or

208 (ii) birth parents.

209 (2) "Child-placing agency" means an agency licensed to place children for adoption
210 under Title 62A, Chapter 4a, Part 6, Child Placing.

211 (3) "Division" means the Division of Child and Family Services, within the
212 Department of Human Services, created in Section 62A-4a-103.

213 (4) "Extra-jurisdictional child-placing agency" means an agency licensed to place

214 children for adoption by a district, territory, or state, of the United States, other than Utah.

215 [~~(4)~~] (5) "Licensed counselor" means a person who is licensed by the state, or another
216 state, district, or territory of the United States as a:

217 (a) certified social worker;

218 (b) clinical social worker;

219 (c) psychologist;

220 (d) marriage and family therapist;

221 (e) professional counselor; or

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

224 [~~(5)~~] (6) "Parent," for purposes of Section 78-30-3.3, means any person described in
225 Subsections 78-30-4.14(1)(b) through (f) from whom consent for adoption or relinquishment
226 for adoption is required under Section 78-30-4.14.

227 [~~(6)~~] (7) "Unmarried biological father" means a person who:

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

229 (b) was not married to the biological mother of the child described in Subsection [~~(6)~~]

230 (7)(a) at the time of the child's:

231 (i) conception; or

232 (ii) birth.

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

234 **78-30-3.5. Preplacement and postplacement adoptive evaluations -- Exceptions.**

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

239 (b) Except as provided in Subsection (8), the court may, at any time, authorize
240 temporary placement of a child in a potential adoptive home pending completion of a
241 preplacement adoptive evaluation described in this section.

242 (c) Subsection (1)(a) does not apply if a birth parent has legal custody of the child to be
243 adopted and the prospective adoptive parent is related to that child as a step-parent, sibling by
244 half or whole blood or by adoption, grandparent, aunt, uncle, or first cousin, unless the

245 evaluation is otherwise requested by the court. The prospective adoptive parent described in
246 this Subsection (1)(c) shall, however, obtain the information described in Subsections (2)(a)
247 and (b), and file that documentation with the court prior to finalization of the adoption.

248 (d) The required preplacement adoptive evaluation must be completed or updated
249 within the 12-month period immediately preceding the placement of a child with the
250 prospective adoptive parent. If the prospective adoptive parent has previously received custody
251 of a child for the purpose of adoption, the preplacement adoptive evaluation must be completed
252 or updated within the 12-month period immediately preceding the placement of a child with the
253 prospective adoptive parent and after the placement of the previous child with the prospective
254 adoptive parent.

255 (2) The preplacement adoptive evaluation shall include:

256 (a) criminal history record information regarding each prospective adoptive parent and
257 any other adult living in the prospective home, prepared by a law enforcement agency based on
258 a fingerprint criminal history check, no earlier than 18 months immediately preceding
259 placement of the child;

260 (b) a report prepared by the Department of Human Services containing all information
261 regarding reports and investigation of child abuse, neglect, and dependency, with respect to
262 each prospective adoptive parent and any other adult living in the prospective home, obtained
263 no earlier than 18 months immediately preceding placement of the child, pursuant to waivers
264 executed by those parties;

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

273 (d) if the child to be adopted is a child who is in the custody of any public child welfare
274 agency, and is a child ~~[with]~~ who has a special [needs] need as defined in ~~[Subsection]~~ Section
275 62A-4a-902[(2)], the preplacement evaluation must be conducted by the Department of Human

276 Services or a [~~licensed~~] child-placing agency which has entered into a contract with the
277 department to conduct the preplacement evaluations for children with special needs. Any fee
278 assessed by the evaluating agency is the responsibility of the adopting parent or parents.

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

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

285 (5) (a) Except as provided in Subsections (5)(b) and (c), a postplacement evaluation
286 shall be conducted and submitted to the court prior to the final hearing in an adoption
287 proceeding. The postplacement evaluation shall include:

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

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

294 (c) Upon the request of the petitioner, the court may waive the postplacement adoptive
295 evaluation, unless it determines that it is in the best interest of the child to require the
296 postplacement evaluation. Except where the child to be adopted and the prospective parent are
297 related as set forth in Subsection (1)(c), the court may waive the postplacement adoptive
298 evaluation for a child [~~with~~] who has a special [~~needs~~] need as defined in Section 62A-4a-902.

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

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

307 (8) Notwithstanding any other provision of this section, except as otherwise permitted
 308 by federal law or rule, a child who is in the legal custody of the state may not be placed with a
 309 prospective foster parent or a prospective adoptive parent, unless, before the child is placed
 310 with the prospective foster parent or the prospective adoptive parent:

311 (a) a fingerprint based FBI national criminal history records check is conducted on the
 312 prospective foster parent or prospective adoptive parent and each adult living in the home of
 313 the prospective foster parent or prospective adoptive parent;

314 (b) the Department of Human Services conducts a check of the child abuse and neglect
 315 registry in each state where the prospective foster parent or prospective adoptive parent resided
 316 in the five years immediately preceding the day on which the prospective foster parent or
 317 prospective adoptive parent applied to be a foster parent or adoptive parent, to determine
 318 whether the prospective foster parent or prospective adoptive parent is listed in the registry as
 319 having a substantiated or supported finding of child abuse or neglect;

320 (c) the Department of Human Services conducts a check of the child abuse and neglect
 321 registry of each state where each adult living in the home of the prospective foster parent or
 322 prospective adoptive parent described in Subsection (8)(b) resided in the five years
 323 immediately preceding the day on which the prospective foster parent or prospective adoptive
 324 parent applied to be a foster parent or adoptive parent, to determine whether the adult is listed
 325 in the registry as having a substantiated or supported finding of child abuse or neglect; and

326 (d) each person required to undergo a background check described in this Subsection
 327 (8) passes the background check, pursuant to the provisions of Section 62A-2-120.

328 Section 6. Section **78-30-4.18** is amended to read:

329 **78-30-4.18. Persons who may take consents and relinquishments.**

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

331 (a) a judge of any court that has jurisdiction over adoption proceedings~~[-or];~~

332 (b) subject to Subsection (6), a person appointed by [that] the judge [for the purpose of
 333 taking] described in Subsection (1)(a) to take consents or relinquishments; or

334 [(b)] (c) subject to Subsection (6), a person who is authorized by a [licensed]
 335 child-placing agency to take consents or relinquishments [so long as the signature is notarized
 336 or witnessed by two individuals who are not members of the birth mother's immediate family],
 337 if the consent or relinquishment grants legal custody of the child to a child-placing agency or

338 an extra-jurisdictional child-placing agency.

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

341 (a) subject to Subsection (6), a person who is authorized by a child-placing agency to
342 take consents or relinquishments, if the consent or relinquishment grants legal custody of the
343 child to a child-placing agency or an extra-jurisdictional child-placing agency;

344 (b) subject to Subsection (6), a person authorized or appointed to take consents or
345 relinquishments by a court of this state that has jurisdiction over adoption proceedings;

346 (c) a court that has jurisdiction over adoption proceedings in the state where the
347 consent or relinquishment is taken; or

348 (d) a person authorized, under the laws of the state where the consent or relinquishment
349 is taken, to take consents or relinquishments of a birth mother or adoptee.

350 (3) The consent or relinquishment of any other person or agency as required by Section
351 78-30-4.14 may be signed before a Notary Public or any person authorized to take a consent or
352 relinquishment under Subsection (1) or (2).

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

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

359 (6) A signature described in Subsection (1)(b), (1)(c), (2)(a), or (2)(b), shall be:

360 (a) notarized; or

361 (b) witnessed by two individuals who are not members of the birth mother's or the
362 signatory's immediate family.

363 Section 7. Section **78-30-4.22** is amended to read:

364 **78-30-4.22. Custody pending final decree.**

365 (1) Except as otherwise provided by the court, once a petitioner has received the
366 adoptee into his home and a petition for adoption has been filed, the petitioner is entitled to the
367 custody and control of the adoptee and is responsible for the care, maintenance, and support of
368 the adoptee, including any necessary medical or surgical treatment, pending further order of the

369 court.

370 (2) Once a child has been placed with, relinquished to, or ordered into the custody of a
371 [licensed] child-placing agency for purposes of adoption, the agency shall have custody and
372 control of the child and is responsible for his care, maintenance, and support. The agency may
373 delegate the responsibility for care, maintenance, and support, including any necessary medical
374 or surgical treatment, to the petitioner once the petitioner has received the child into his home.
375 However, until the final decree of adoption is entered by the court, the agency has the right to
376 the custody and control of the child.

377 Section 8. Section **78-30-7** is amended to read:

378 **78-30-7. District court venue -- Jurisdiction of juvenile court -- Jurisdiction over**
379 **nonresidents -- Time for filing.**

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

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

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

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

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

392 (4) (a) If a person whose consent for the adoption is required under Section 78-30-4.14
393 cannot be found within the state, the fact of the minor's presence within the state shall confer
394 jurisdiction on the court in proceedings under this chapter as to such absent person, provided
395 that due notice has been given in accordance with the Utah Rules of Civil Procedure.

396 (b) The notice may not include:

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

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

399 (5) Service of notice as provided in Subsection (6) shall vest the court with jurisdiction

400 over the person served in the same manner and to the same extent as if the person served was
401 served personally within the state.

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

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

407 Section 9. Section **78-30-8** is amended to read:

408 **78-30-8. Final decree of adoption -- Agreement by adoptive parent or parents.**

409 (1) Except as provided in Subsection (2), before a court enters a final decree of
410 adoption:

411 (a) the adoptive parent or parents and the child being adopted shall appear before the
412 appropriate court[;]; and [~~an agreement shall be executed by~~]

413 (b) the adoptive parent or parents shall execute an agreement stating that the child shall
414 be adopted and treated in all respects as [~~his~~] the parent's or parents' own lawful child.

415 (2) Except as provided in Subsection 78-30-1(2)(d), a court may waive the requirement
416 [~~that the adoptive parent or parents and the child being adopted appear before the court~~]
417 described in Subsection (1)(a) if:

418 (a) the adoption is not contested; [~~and~~]

419 (b) the adoptive parent or parents:

420 (i) execute an agreement stating that the child shall be adopted and treated in all
421 respects as the parent's or parents' own lawful child;

422 (ii) have the agreement described in Subsection (2)(b)(i) notarized; and

423 (iii) file the agreement described in Subsection (2)(b)(i) with the court; and

424 [~~(b)~~] (c) all requirements of this chapter to obtain a final decree of adoption are
425 otherwise complied with.

426 Section 10. Section **78-30-15.2** is enacted to read:

427 **78-30-15.2. Compliance with the Indian Child Welfare Act.**

428 In any adoption proceeding involving an "Indian child," as defined in 25 U.S.C. Sec.
429 1903, a child-placing agency and the petitioners shall comply with the Indian Child Welfare
430 Act, Title 25, Chapter 21, of the United States Code.

431 Section 11. Section **78-30-17** is amended to read:

432 **78-30-17. Nonidentifying health history of adoptee filed with bureau -- Limited**
433 **availability.**

434 (1) Upon finalization of an adoption in this state, the person who proceeded on behalf
435 of the petitioner for adoption, or a [~~licensed~~] child-placing agency if an agency is involved in
436 the adoption, shall file a report with the bureau, in the form established by the bureau. That
437 report shall include a detailed health history, and a genetic and social history of the adoptee.

438 (2) The report filed under Subsection (1) may not contain any information which
439 identifies the adoptee's birth parents or members of their families.

440 (3) When the report described in Subsection (1) is filed, a duplicate report shall be
441 provided to the adoptive parents.

442 (4) The report filed with the bureau under Subsection (1) shall only be available upon
443 request, and upon presentation of positive identification, to the following persons:

444 (a) the adoptive parents;

445 (b) in the event of the death of the adoptive parents, the adoptee's legal guardian;

446 (c) the adoptee;

447 (d) in the event of the death of the adoptee, the adoptee's spouse, if the spouse is the
448 parent or guardian of the adoptee's child;

449 (e) the adoptee's child or descendant;

450 (f) the adoptee's birth parent; and

451 (g) the adoptee's adult sibling.

452 (5) No information which identifies a birth parent or his family may be disclosed under
453 this section.

454 (6) The actual cost of providing information under this section shall be paid by the
455 person requesting the information.

456 Section 12. Section **78-30-18** is amended to read:

457 **78-30-18. Mutual-consent, voluntary adoption registry -- Procedures -- Fees.**

458 (1) The bureau shall establish a mutual-consent, voluntary adoption registry.

459 (a) Adult adoptees and birth parents of adult adoptees, upon presentation of positive
460 identification, may request identifying information from the bureau, in the form established by
461 the bureau. A court of competent jurisdiction or a child-placing agency [~~licensed under Title~~

462 ~~62A, Chapter 4a, Part 6,]~~ may accept that request from the adult adoptee or birth parent, in the
463 form provided by the bureau, and transfer that request to the bureau. The adult adoptee or birth
464 parent is responsible for notifying the bureau of any change in information contained in the
465 request.

466 (b) The bureau may only release identifying information to an adult adoptee or birth
467 parent when it receives requests from both the adoptee and his birth parent.

468 (c) After matching the request of an adult adoptee with that of at least one of his birth
469 parents, the bureau shall notify both the adoptee and the birth parent that the requests have been
470 matched, and disclose the identifying information to those parties. However, if that adult
471 adoptee has a sibling of the same birth parent who is under the age of 21 years, and who was
472 raised in the same family setting as the adult adoptee, the bureau shall not disclose the
473 requested identifying information to that adult adoptee or his birth parent.

474 (2) (a) Adult adoptees and adult siblings of adult adoptees, upon presentation of
475 positive identification, may request identifying information from the bureau, in the form
476 established by the bureau. A court of competent jurisdiction or a child-placing agency
477 ~~[licensed under Title 62A, Chapter 4a, Part 6,]~~ may accept that request from the adult adoptee
478 or adult sibling, in the form provided by the bureau, and transfer that request to the bureau.
479 The adult adoptee or adult sibling is responsible for notifying the bureau of any change in
480 information contained in the request.

481 (b) The bureau may only release identifying information to an adult adoptee or adult
482 sibling when it receives requests from both the adoptee and his adult sibling.

483 (c) After matching the request of an adult adoptee with that of his adult sibling, if the
484 bureau has been provided with sufficient information to make that match, the bureau shall
485 notify both the adoptee and the adult sibling that the requests have been matched, and disclose
486 the identifying information to those parties.

487 (3) Information registered with the bureau under this section is available only to a
488 registered adult adoptee and his registered birth parent or registered adult sibling, under the
489 terms of this section.

490 (4) Information regarding a birth parent who has not registered a request with the
491 bureau may not be disclosed.

492 (5) The bureau may charge a fee for services provided under this section, limited to the

493 cost of providing those services.

Legislative Review Note
as of 11-14-07 2:00 PM

Office of Legislative Research and General Counsel

H.B. 46 - Adoption and Termination of Parental Rights

Fiscal Note

2008 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.
