

1 **TECHNICAL AMENDMENTS TO TITLES**

2 **78A AND 78B**

3 2008 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Gregory S. Bell**

6 House Sponsor: Douglas C. Aagard

7

8 **LONG TITLE**

9 **General Description:**

10 This bill makes technical and coordinating amendments to Titles 78A and 78B that were
11 missed in the recodification process.

12 **Highlighted Provisions:**

13 This bill:

- 14 ▶ repeals provisions overlooked in the recodification process;
- 15 ▶ coordinates with legislation already passed;
- 16 ▶ amends a section to correct missing language;
- 17 ▶ creates transition and savings clauses; and
- 18 ▶ makes technical cross-reference changes.

19 **Monies Appropriated in this Bill:**

20 None

21 **Other Special Clauses:**

22 This bill provides an immediate effective date and retrospective operation.

23 This bill coordinates with S.B. 16, Exoneration and Innocence Assistance, providing for
24 technical renumbering.

25 **Utah Code Sections Affected:**

26 AMENDS:

27 **78B-2-113**, as renumbered and amended by Laws of Utah 2008, Chapter 3

28 **78B-6-121**, as enacted by Laws of Utah 2008, Chapter 3

29 **78B-6-122**, as enacted by Laws of Utah 2008, Chapter 3

30 78B-6-901, as renumbered and amended by Laws of Utah 2008, Chapter 3

31 ENACTS:

32 78A-1-106, Utah Code Annotated 1953

33 78A-1-107, Utah Code Annotated 1953

34 RENUMBERS AND AMENDS:

35 78A-6-1220, (Renumbered from 78-57-110, as enacted by Laws of Utah 1999, Chapter
36 94)

37 REPEALS:

38 78-3a-115.1, as last amended by Laws of Utah 2004, Chapter 324

39 78-11-20.5, as last amended by Laws of Utah 1997, Chapter 365

40 78-11-21, as enacted by Laws of Utah 1977, Chapter 181

41 78-35-5, as last amended by Laws of Utah 1991, Chapter 241

42 78-45f-902, as enacted by Laws of Utah 2000, Chapter 161



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

45 Section 1. Section 78A-1-106 is enacted to read:

46 **78A-1-106. Transition clause -- Recodification of Title 78.**

47 For purposes of a matter pending in any court beginning February 7, 2008 through
48 August 31, 2008, citation to an appropriate section in the previous Title 78, Judicial Code, shall
49 be considered a proper citation to the corresponding section in Title 78A, Judiciary and Judicial
50 Administration, or Title 78B, Judicial Code.

51 Section 2. Section 78A-1-107 is enacted to read:

52 **78A-1-107. Savings clause -- Recodification of Title 78.**

53 The provisions of Title 78A, Judiciary and Judicial Administration, and Title 78B,
54 Judicial Code, are considered a continuation of the previous Title 78, Judicial Code. No loss of
55 rights, interruption of jurisdiction, or prejudice to matters pending in any court on February 7,
56 2008 shall result from the enactment of Titles 78A and 78B. With respect to the organization
57 of the courts, the offices of all officers and employees, shall be construed as continuations of the

58 previous Title 78, Judicial Code. The tenure of justices, judges, justices of the peace, officers,
59 and employees of the courts in office on February 7, 2008 is not affected by its enactment.

60 Section 3. Section **78A-6-1220**, which is renumbered from Section 78-57-110 is
61 renumbered and amended to read:

62 ~~[78-57-110].~~ **78A-6-1220. School credit.**

63 Local school boards may provide school credit for participation as a member of a Youth
64 Court.

65 Section 4. Section **78B-2-113** is amended to read:

66 **78B-2-113. Effect of payment, acknowledgment, or promise to pay.**

67 ~~[(1) An action based on a contract may not be brought without the defendant's~~
68 ~~agreement in writing if the defendant has:]~~

69 ~~[(a) paid any portion of the principal or interest; or]~~

70 ~~[(b) acknowledged the debt or claim in writing.]~~

71 (1) An action for recovery of a debt may be brought within the applicable statute of
72 limitations from the date:

73 (a) the debt arose;

74 (b) a written acknowledgment of the debt or a promise to pay is made by the debtor; or

75 (c) a payment is made on the debt by the debtor.

76 (2) If a right of action is barred by the provisions of any statute, it shall be unavailable
77 either as a cause of action or ground for defense.

78 Section 5. Section **78B-6-121** is amended to read:

79 **78B-6-121. Consent of unmarried biological father.**

80 (1) Except as provided in Subsections (2)(a) and ~~[76B-6-122]~~ 78B-6-122(1), and
81 subject to Subsection (5), with regard to a child who is placed with adoptive parents more than
82 six months after birth, consent of an unmarried biological father is not required unless the
83 unmarried biological father:

84 (a) (i) developed a substantial relationship with the child by:

85 (A) visiting the child monthly, unless the unmarried biological father was physically or

86 financially unable to visit the child on a monthly basis; or

87 (B) engaging in regular communication with the child or with the person or authorized
88 agency that has lawful custody of the child;

89 (ii) took some measure of responsibility for the child and the child's future; and

90 (iii) demonstrated a full commitment to the responsibilities of parenthood by financial
91 support of the child of a fair and reasonable sum in accordance with the father's ability; or

92 (b) (i) openly lived with the child:

93 (A) (I) for a period of at least six months during the one-year period immediately
94 preceding the day on which the child is placed with adoptive parents; or

95 (II) if the child is less than one year old, for a period of at least six months during the
96 period of time beginning on the day on which the child is born and ending on the day on which
97 the child is placed with adoptive parents; and

98 (B) immediately preceding placement of the child with adoptive parents; and

99 (ii) openly held himself out to be the father of the child during the six-month period
100 described in Subsection (1)(b)(i)(A).

101 (2) (a) If an unmarried biological father was prevented from complying with a
102 requirement of Subsection (1) by the person or authorized agency having lawful custody of the
103 child, the unmarried biological father is not required to comply with that requirement.

104 (b) The subjective intent of an unmarried biological father, whether expressed or
105 otherwise, that is unsupported by evidence that the requirements in Subsection (1) have been
106 met, shall not preclude a determination that the father failed to meet the requirements of
107 Subsection (1).

108 (3) Except as provided in Subsection 78B-6-122(1), and subject to Subsection (5), with
109 regard to a child who is six months of age or less at the time the child is placed with adoptive
110 parents, consent of an unmarried biological father is not required unless, prior to the time the
111 mother executes her consent for adoption or relinquishes the child for adoption, the unmarried
112 biological father:

113 (a) initiates proceedings in a district court of the state to establish paternity under Title

114 78B, Chapter 15, Utah Uniform Parentage Act;

115 (b) files with the court that is presiding over the paternity proceeding a sworn affidavit:

116 (i) stating that he is fully able and willing to have full custody of the child;

117 (ii) setting forth his plans for care of the child; and

118 (iii) agreeing to a court order of child support and the payment of expenses incurred in

119 connection with the mother's pregnancy and the child's birth;

120 (c) consistent with Subsection (4), files notice of the commencement of paternity

121 proceedings, described in Subsection (3)(a), with the state registrar of vital statistics within the

122 Department of Health, in a confidential registry established by the department for that purpose;

123 and

124 (d) offered to pay and paid a fair and reasonable amount of the expenses incurred in

125 connection with the mother's pregnancy and the child's birth, in accordance with his financial

126 ability, unless:

127 (i) he did not have actual knowledge of the pregnancy;

128 (ii) he was prevented from paying the expenses by the person or authorized agency

129 having lawful custody of the child; or

130 (iii) the mother refuses to accept the unmarried biological father's offer to pay the

131 expenses described in this Subsection (3)(d).

132 (4) The notice described in Subsection (3)(c) is considered filed when it is entered into

133 the registry described in Subsection (3)(c).

134 (5) Consent of an unmarried biological father is not required under this section if:

135 (a) the court determines, in accordance with the requirements and procedures of Title

136 78A, Chapter 6, Part 5, Termination of Parental Rights Act, that the unmarried biological

137 father's rights should be terminated, based on the petition of any interested party; or

138 (b) (i) a declaration of paternity declaring the unmarried biological father to be the

139 father of the child is rescinded under Section 78B-15-306; and

140 (ii) the unmarried biological father fails to comply with Subsection (3) within ten

141 business days after the day that notice of the rescission described in Subsection (5)(b)(i) is

142 mailed by the Office of Vital Records within the Department of Health as provided in Section
143 78B-15-306.

144 (6) Unless the adoptee is conceived or born within a marriage, the petitioner in an
145 adoption proceeding shall, prior to entrance of a final decree of adoption, file with the court a
146 certificate from the state registrar of vital statistics within the Department of Health, stating:

147 (a) that a diligent search has been made of the registry of notices from unmarried
148 biological fathers described in Subsection (3)(c); and

149 (b) (i) that no filing has been found pertaining to the father of the child in question; or
150 (ii) if a filing is found, the name of the putative father and the time and date of filing.

151 Section 6. Section **78B-6-122** is amended to read:

152 **78B-6-122. Qualifying circumstance.**

153 (1) (a) For purposes of this section, "qualifying circumstance" means that, at any point
154 during the time period beginning at the conception of the child and ending at the time the
155 mother executed a consent to adoption or relinquishment of the child for adoption:

156 (i) the child or the child's mother resided, on a permanent or temporary basis, in the
157 state;

158 (ii) the mother intended to give birth to the child in the state;

159 (iii) the child was born in the state; or

160 (iv) the mother intended to execute a consent to adoption or relinquishment of the child
161 for adoption:

162 (A) in the state; or

163 (B) under the laws of the state.

164 (b) For purposes of Subsection (1)(c)(i), a court shall consider the totality of the
165 circumstances when determining whether an unmarried biological father has demonstrated a full
166 commitment to his parental responsibilities, including, if applicable:

167 (i) efforts he has taken to discover the location of the child or the child's mother;

168 (ii) whether he has expressed or demonstrated an interest in taking responsibility for the
169 child;

170 (iii) whether, and to what extent, he has developed, or attempted to develop, a
171 relationship with the child;

172 (iv) whether he offered to provide and, if the offer was accepted, did provide, financial
173 support for the child or the child's mother;

174 (v) whether, and to what extent, he has communicated, or attempted to communicate,
175 with the child or the child's mother;

176 (vi) whether he has filed legal proceedings to establish his paternity of, and take
177 responsibility for, the child;

178 (vii) whether he has filed a notice with a public official or agency relating to:
179 (A) his paternity of the child; or
180 (B) legal proceedings to establish his paternity of the child; or
181 (viii) other evidence that demonstrates that he has demonstrated a full commitment to
182 his parental responsibilities.

183 (c) Notwithstanding the provisions of Section 78B-6-121, the consent of an unmarried
184 biological father is required with respect to an adoptee who is under the age of 18 if:

185 (i) (A) the unmarried biological father did not know, and through the exercise of
186 reasonable diligence could not have known, before the time the mother executed a consent to
187 adoption or relinquishment of the child for adoption, that a qualifying circumstance existed;

188 (B) before the mother executed a consent to adoption or relinquishment of the child for
189 adoption, the unmarried biological father fully complied with the requirements to establish
190 parental rights in the child, and to preserve the right to notice of a proceeding in connection
191 with the adoption of the child, imposed by:

192 (I) the last state where the unmarried biological father knew, or through the exercise of
193 reasonable diligence should have known, that the mother resided in before the mother executed
194 the consent to adoption or relinquishment of the child for adoption; or
195 (II) the state where the child was conceived; and
196 (C) the unmarried biological father has demonstrated, based on the totality of the
197 circumstances, a full commitment to his parental responsibilities, as described in Subsection

198 (1)(b); or

199 (ii) (A) the unmarried biological father knew, or through the exercise of reasonable
200 diligence should have known, before the time the mother executed a consent to adoption or
201 relinquishment of the child for adoption, that a qualifying circumstance existed; and

202 (B) the unmarried biological father complied with the requirements of Section
203 78B-6-121 before the later of:

204 (I) 20 days after the day that the unmarried biological father knew, or through the
205 exercise of reasonable diligence should have known, that a qualifying circumstance existed; or

206 (II) the time that the mother executed a consent to adoption or relinquishment of the
207 child for adoption.

208 (2) An unmarried biological father who does not fully and strictly comply with the
209 requirements of Section 78B-6-121 and this section is considered to have waived and
210 surrendered any right in relation to the child, including the right to:

211 (a) notice of any judicial proceeding in connection with the adoption of the child; and

212 (b) consent, or refuse to consent, to the adoption of the child.

213 Section 7. Section **78B-6-901** is amended to read:

214 **78B-6-901. Form of action -- Judgment -- Special execution.**

215 ~~[(1) Recovery and enforcement of rights secured by a mortgage on real property may
216 only be pursued according to the provisions of this part.]~~

217 (1) There is only one action for the recovery of any debt or the enforcement of any right
218 secured solely by mortgage upon real estate and that action shall be in accordance with the
219 provisions of this chapter.

220 (2) A judgment shall include:

221 (a) the amount due, with costs and disbursements;

222 (b) an order for the sale of mortgaged property, or a portion of it to satisfy the amount
223 and accruing costs;

224 (c) direction to the sheriff to proceed and sell the property according to the provisions
225 of law relating to sales on execution; and

226 (d) a special execution or order of sale shall be issued for that purpose.

227 Section 8. **Repealer.**

228 This bill repeals:

229 Section **78-3a-115.1, Access to abuse, neglect, and dependency hearings.**

230 Section **78-11-20.5, Criminal conviction for criminal mischief or criminal trespass**
231 **not a prerequisite for civil action under chapter.**

232 Section **78-11-21, Property damage caused by minor -- When parent or guardian**
233 **not liable.**

234 Section **78-35-5, Penalties for wrongful acts of defendant.**

235 Section **78-45f-902, Severability clause.**

236 Section 9. **Effective date -- Retrospective operation.**

237 (1) If approved by two-thirds of all the members elected to each house, this bill takes
238 effect upon approval by the governor, or the day following the constitutional time limit of Utah
239 Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto,
240 the date of veto override.

241 (2) This bill has retrospective operation to February 7, 2008.

242 Section 10. **Coordinating S.B. 278 with S.B. 16 -- Technical renumbering.**

243 If this S.B. 278 and S.B. 16, Exoneration and Innocence Assistance, both pass, it is the
244 intent of the Legislature that the following sections in S.B. 16 be renumbered as follows:

245 (1) Section 78-35a-300.5 be renumbered to 78B-9-300;

246 (2) Section 78-35a-401 be renumbered to 78B-9-401;

247 (3) Section 78-35a-402 be renumbered to 78B-9-402;

248 (4) Section 78-35a-403 be renumbered to 78B-9-403;

249 (5) Section 78-35a-404 be renumbered to 78B-9-404; and

250 (6) Section 78-35a-405 be renumbered to 78B-9-405.