

ADOPTION REVISIONS

2009 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Sheryl L. Allen

Senate Sponsor: Daniel R. Liljenquist

LONG TITLE

Committee Note:

The Health and Human Services Interim Committee recommended this bill.

General Description:

This bill amends provisions of the Utah Adoption Act.

Highlighted Provisions:

This bill:

- ▶ defines terms, including reducing the age of an "adult adoptee" from 21 to 18;
- ▶ modifies provisions relating to determining the venue of an adoption proceeding;
- ▶ modifies and clarifies provisions relating to providing notice of an adoption proceeding;
- ▶ provides that notice of an adoption proceeding may be served at any time after the petition for adoption is filed, but at least 30 days prior to the final disposition hearing;
- ▶ increases the maximum amount required to be paid by a child-placing agency or the prospective adoptive parents for counseling of a parent who is placing a child for adoption from \$250 to \$400;
- ▶ provides that the maximum amount referred to in the preceding paragraph may be increased by a signed agreement;
- ▶ modifies provisions relating to who has the right to consent to an adoption;
- ~~H→ [→ provides that a court may not refuse to allow or accept a mother's consent to~~



28 ~~adoption or relinquishment for adoption on the grounds that an unmarried biological father~~
 29 ~~filed an action to establish parentage or complied with, or alleges compliance with, the~~
 30 ~~requirements for an unmarried biological father to preserve the right to consent to an adoption;]~~ ←H

- 31 ▶ modifies provisions relating to the dissolution of parental rights;
- 32 ▶ amends provisions relating to who may inspect an adoption petition and related
- 33 documents;
- 34 ▶ reduces from 21 to 18 the age:
 - 35 • of an adult adoptee who may participate in the mutual-consent, voluntary
 - 36 adoption registry; and
 - 37 • that a sibling of the adult adoptee who has the same birth parent as the adult
 - 38 adoptee, and who was raised in the same family setting as the adult adoptee,
 - 39 must be before an adult adoptee may obtain information from the
 - 40 mutual-consent, voluntary adoption registry; and
 - 41 ▶ makes technical changes.

42 **Monies Appropriated in this Bill:**

43 None

44 **Other Special Clauses:**

45 None

46 **Utah Code Sections Affected:**

47 AMENDS:

48 **78B-6-103**, as enacted by Laws of Utah 2008, Chapter 3 and last amended by Laws of
 49 Utah 2008, Chapter 137

50 **78B-6-105**, as last amended by Laws of Utah 2008, Chapter 137 and renumbered and
 51 amended by Laws of Utah 2008, Chapter 3

52 **78B-6-110**, as renumbered and amended by Laws of Utah 2008, Chapter 3

53 **78B-6-115**, as renumbered and amended by Laws of Utah 2008, Chapter 3

54 **78B-6-119**, as renumbered and amended by Laws of Utah 2008, Chapter 3

55 **78B-6-120**, as enacted by Laws of Utah 2008, Chapter 3

56 **78B-6-121**, as enacted by Laws of Utah 2008, Chapter 3 and last amended by Laws of
 57 Utah 2008, Chapter 123

58 **78B-6-138**, as renumbered and amended by Laws of Utah 2008, Chapter 3

59 **78B-6-141**, as renumbered and amended by Laws of Utah 2008, Chapter 3

60 **78B-6-144**, as last amended by Laws of Utah 2008, Chapter 137 and renumbered and
61 amended by Laws of Utah 2008, Chapter 3



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

64 Section 1. Section **78B-6-103** is amended to read:

65 **78B-6-103. Definitions.**

66 As used in this part:

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

68 (2) "Adoption" means the judicial act which creates the relationship of parent and child
69 where it did not previously exist and which permanently deprives a birth parent of parental
70 rights.

71 (3) "Adoption service provider" means a:

72 (a) child-placing agency; or

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

75 (i) adoptive parents; or

76 (ii) birth parents.

77 (4) "Adult" means a person who is 18 years of age or older.

78 [~~4~~] (5) "Adult adoptee" means an adoptee who is [21] 18 years of age or older.

79 [~~5~~] (6) "Adult sibling" means a brother or sister of the adoptee, who is [21] 18 years
80 of age or older and whose birth mother or father is the same as that of the adoptee.

81 [~~6~~] (7) "Birth parent" means a biological mother, a person whose paternity of a child
82 is established, or an alleged father, who has been identified as the father of a child by the child's
83 birth mother, and who has not denied paternity.

84 [~~7~~] (8) "Bureau" means the Bureau of Vital Statistics within the Department of
85 Health operating under Title 26, Chapter 2, Utah Vital Statistics Act.

86 [~~8~~] (9) "Child-placing agency" means an agency licensed to place children for
87 adoption under Title 62A, Chapter 4a, Part 6, Child Placing.

88 [~~9~~] (10) "Cohabiting" means residing with another person and being involved in a
89 sexual relationship with that person.

90 [~~(10)~~] (11) "Division" means the Division of Child and Family Services, within the
91 Department of Human Services, created in Section 62A-4a-103.

92 [~~(11)~~] (12) "Extra-jurisdictional child-placing agency" means an agency licensed to
93 place children for adoption by a district, territory, or state of the United States, other than Utah.

94 [~~(12)~~] (13) "Genetic and social history" means a comprehensive report, when
95 obtainable, on an adoptee's birth parents, aunts, uncles, and grandparents, which contains the
96 following information:

97 (a) medical history;

98 (b) health status;

99 (c) cause of and age at death;

100 (d) height, weight, and eye and hair color;

101 (e) ethnic origins;

102 (f) where appropriate, levels of education and professional achievement; and

103 (g) religion, if any.

104 [~~(13)~~] (14) "Health history" means a comprehensive report of the adoptee's health
105 status at the time of placement for adoption, and medical history, including neonatal,
106 psychological, physiological, and medical care history.

107 [~~(14)~~] (15) "Identifying information" means the name and address of a birth parent or
108 adult adoptee, or other specific information which by itself or in reasonable conjunction with
109 other information may be used to identify that person.

110 [~~(15)~~] (16) "Licensed counselor" means a person who is licensed by the state, or
111 another state, district, or territory of the United States as a:

112 (a) certified social worker;

113 (b) clinical social worker;

114 (c) psychologist;

115 (d) marriage and family therapist;

116 (e) professional counselor; or

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

119 [~~(16)~~] (17) "Parent," for purposes of Section 78B-6-119, means any person described in
120 Subsections 78B-6-120(1)(b) through (f) from whom consent for adoption or relinquishment

121 for adoption is required under Sections 78B-6-120 through 78B-6-122.

122 ~~[(17)]~~ (18) "Unmarried biological father" means a person who:

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

124 (b) was not married to the biological mother of the child described in Subsection ~~[(17)]~~

125 (18)(a) at the time of the child's:

126 (i) conception; or

127 (ii) birth.

128 Section 2. Section **78B-6-105** is amended to read:

129 **78B-6-105. District court venue -- Jurisdiction of juvenile court -- Jurisdiction**
 130 **over nonresidents -- Time for filing.**

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

133 (a) in the district where the person adopting resides~~[, or]~~;

134 (b) if the person adopting is not a resident of this state, in the district where [the child
 135 ~~was born or in which the child-placing agency that has custody of the child is located; or]~~;

136 (i) the proposed adoptee was born;

137 (ii) the proposed adoptee resides on the day on which the petition is filed; or

138 (iii) a parent of the proposed adoptee resides on the day on which the petition is filed;

139 or

140 ~~[(b)]~~ (c) with the juvenile court as provided in Subsection 78A-6-103(1).

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

143 (3) A petition for adoption shall be filed within 30 days of the date the adoptee is
 144 placed in the home of the petitioners for the purpose of adoption, unless:

145 (a) the time for filing has been extended by the court; or

146 (b) the adoption is arranged by a child-placing agency in which case the agency may
 147 extend the filing time.

148 (4) (a) If a person whose consent for the adoption is required under Section 78B-6-120
 149 or 78B-6-121 cannot be found within the state, the fact of the minor's presence within the state
 150 shall confer jurisdiction on the court in proceedings under this chapter as to such absent person,
 151 provided that due notice has been given in accordance with the Utah Rules of Civil Procedure.

152 (b) The notice may not include the name of:

153 (i) the person or persons seeking to adopt the adoptee; or

154 (ii) an unmarried mother without her consent.

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

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

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

163 Section 3. Section **78B-6-110** is amended to read:

164 **78B-6-110. Notice of adoption proceedings.**

165 (1) (a) An unmarried biological father, by virtue of the fact that he has engaged in a
166 sexual relationship with a woman:

167 (i) is considered to be on notice that a pregnancy and an adoption proceeding regarding
168 the child may occur; and

169 (ii) has a duty to protect his own rights and interests.

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

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

173 (a) any person or agency whose consent or relinquishment is required under Section
174 78B-6-120 or 78B-6-121, unless that right has been terminated by:

175 (i) waiver;

176 (ii) relinquishment;

177 (iii) consent; or

178 (iv) judicial action;

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

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

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

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

186 (f) any person who, prior to the time the mother executes her consent for adoption or
187 relinquishes the child for adoption, is recorded on the birth certificate as the child's father, with
188 the knowledge and consent of the mother;

189 (g) a person who is:

190 (i) openly living in the same household with the child at the time the consent is
191 executed or relinquishment made; and

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

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

195 (3) (a) In order to preserve any right to notice [~~and consent~~], an unmarried, biological
196 father may, consistent with Subsection (3)(d):

197 (i) initiate proceedings in a district court of the state of Utah to establish paternity
198 under Title 78B, Chapter 15, Utah Uniform Parentage Act; and

199 (ii) file a notice of [~~the initiation~~] commencement of the proceedings described in
200 Subsection (3)(a)(i) with the state registrar of vital statistics within the Department of Health.

201 (b) If the unmarried, biological father does not know the county in which the birth
202 mother resides, he may initiate his action in any county, subject to a change in trial pursuant to
203 Section 78B-3-307.

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

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

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

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

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

211 (B) relinquishment of the child for adoption.

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

214 (5) The notice required by this section:
215 (a) may be served [~~immediately after relinquishment or execution of consent~~] at any
216 time after the petition for adoption is filed;
217 (b) shall be served at least 30 days prior to the final dispositional hearing;
218 (c) shall specifically state that the person served must respond to the petition within 30
219 days of service if he intends to intervene in or contest the adoption;
220 (d) shall state the consequences, described in Subsection (6)(b), for failure of a person
221 to file a motion for relief within 30 days after the day on which the person is served with notice
222 of an adoption proceeding;
223 (e) is not required to include, nor be accompanied by, a summons or a copy of the
224 petition for adoption; and
225 (f) shall state where the person may obtain a copy of the petition for adoption.
226 (6) (a) A person who has been served with notice of an adoption proceeding and who
227 wishes to contest the adoption shall file a motion to intervene in the adoption proceeding:
228 (i) within 30 days after the day on which the person was served with notice of the
229 adoption proceeding;
230 (ii) setting forth specific relief sought; and
231 (iii) accompanied by a memorandum specifying the factual and legal grounds upon
232 which the motion is based.
233 (b) A person who fails to file a motion for relief within 30 days after the day on which
234 the person was served with notice of the adoption proceeding:
235 (i) waives any right to further notice in connection with the adoption;
236 (ii) forfeits all rights in relation to the adoptee; and
237 (iii) is barred from thereafter bringing or maintaining any action to assert any interest in
238 the adoptee.
239 (7) Service of notice under this section shall be made as follows:
240 (a) (i) Subject to Subsection (5)(e), service on a person whose consent is necessary
241 under Section 78B-6-120 or 78B-6-121 shall be in accordance with the provisions of the Utah
242 Rules of Civil Procedure.
243 (ii) If service of a person described in Subsection (7)(a)(i) is by publication, the court
244 shall designate the content of the notice regarding the identity of the parties.

245 (iii) The notice described in this Subsection (7)(a) may not include the name of a
246 person seeking to adopt the adoptee.

247 (b) (i) Except as provided in Subsection (7)(b)(ii) to any other person for whom notice
248 is required under this section, service by certified mail, return receipt requested, is sufficient.

249 (ii) If the service described in Subsection (7)(b)(i) cannot be completed after two
250 attempts, the court may issue an order providing for service by publication, posting, or by any
251 other manner of service.

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

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

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

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

263 (11) Except as to those persons whose consent to an adoption is required under Section
264 78B-6-120 or 78B-6-121, the sole purpose of notice under this section is to enable the person
265 served to:

266 (a) intervene in the adoption; and

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

268 Section 4. Section **78B-6-115** is amended to read:

269 **78B-6-115. Who may adopt -- Adoption of minor -- Adoption of adult.**

270 (1) For purposes of this section, "vulnerable adult" means:

271 (a) a person 65 years of age or older; or

272 (b) an adult, 18 years of age or older, who has a mental or physical impairment which
273 substantially affects that person's ability to:

274 (i) provide personal protection;

275 (ii) provide necessities such as food, shelter, clothing, or medical or other health care;

- 276 (iii) obtain services necessary for health, safety, or welfare;
- 277 (iv) carry out the activities of daily living;
- 278 (v) manage the adult's own resources; or
- 279 (vi) comprehend the nature and consequences of remaining in a situation of abuse,
- 280 neglect, or exploitation.
- 281 (2) Subject to this section and Section 78B-6-117, any adult may be adopted by another
- 282 adult.
- 283 (3) The following provisions of this part apply to the adoption of an adult just as
- 284 though the person being adopted were a minor:
- 285 (a) (i) Section 78B-6-108;
- 286 (ii) Section 78B-6-114;
- 287 (iii) Section 78B-6-116;
- 288 (iv) Section 78B-6-118;
- 289 (v) Section 78B-6-124;
- 290 (vi) Section 78B-6-136;
- 291 (vii) Section 78B-6-137;
- 292 (viii) Section 78B-6-138;
- 293 (ix) Section 78B-6-139;
- 294 (x) Section 78B-6-141; and
- 295 (xi) Section 78B-6-142;
- 296 (b) Subsections [~~78B-6-106(1)~~] 78B-6-105(1)(a), (1)(b)(i), (1)(b)(ii), (2), and (7),
- 297 except that the juvenile court does not have jurisdiction over a proceeding for adoption of an
- 298 adult, unless the adoption arises from a case where the juvenile court has continuing
- 299 jurisdiction over the adult adoptee; and
- 300 (c) if the adult adoptee is a vulnerable adult, Sections 78B-6-128 through 78B-6-131,
- 301 regardless of whether the adult adoptee resides, or will reside, with the adoptors, unless the
- 302 court, based on a finding of good cause, waives the requirements of those sections.
- 303 (4) Before a court enters a final decree of adoption of an adult, the adoptee and the
- 304 adoptive parent or parents shall appear before the court presiding over the adoption
- 305 proceedings and execute consent to the adoption.
- 306 (5) No provision of this part, other than those listed or described in this section or

307 Section 78B-6-117, apply to the adoption of an adult.

308 Section 5. Section **78B-6-119** is amended to read:

309 **78B-6-119. Counseling for parents.**

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

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

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

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

317 (i) child-placing agency; or

318 (ii) prospective adoptive parents.

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

321 (b) Notwithstanding Subsection (1)(c), the total amount required to be paid by a
322 child-placing agency or the prospective adoptive parents for the counseling described in
323 Subsection (1) may not exceed [~~\$250.~~] \$400, unless an agreement for a greater amount is
324 signed by:

325 (i) the parent who receives the counseling; and

326 (ii) the child-placing agency or prospective adoptive parents.

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

329 (a) child-placing agency;

330 (b) prospective adoptive parents; or

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

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

334 (i) is signed by each parent who:

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

336 (B) consents to the adoption; and

337 (ii) states that, before the parent took the action described in Subsection (4)(a)(i)(A) or

338 (B), the parent was advised of the parent's right to participate in the counseling described in this
339 section at the expense of the:

340 (A) child-placing agency; or

341 (B) prospective adoptive parents.

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

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

344 (ii) consents to the adoption.

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

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

348 (A) relinquishment of parental rights; or

349 (B) consent to adoption; and

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

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

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

355 Section 6. Section **78B-6-120** is amended to read:

356 **78B-6-120. Necessary consent to adoption or relinquishment for adoption.**

357 (1) Except as provided in Subsection (2), consent to adoption of a child, or
358 relinquishment of a child for adoption, is required from:

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

361 (b) ~~[both parents or the surviving parent of an adoptee who was conceived or born~~
362 ~~within a marriage;]~~ a man who:

363 (i) by operation of law under Section 78B-15-204, is recognized as the father of the
364 proposed adoptee, unless:

365 (A) the presumption is rebutted under Section 78B-15-607; or

366 (B) the man was not married to the mother of the proposed adoptee until after the
367 mother consented to adoption, or relinquishment for adoption, of the proposed adoptee;

368 ~~H→ [(ii) is confirmed to be the father of the proposed adoptee under Title 78B, Chapter 15,~~

369 Utah Uniform Parentage Act, unless the man was not married to the mother of the proposed
 370 adoptee until after the mother consented to adoption, or relinquishment for adoption, of the
 371 proposed adoptee;] ←H or

372 H→ [(iii)] (ii) ←H is the father of the adoptee by a previous legal adoption;

373 (c) the mother of [an] the adoptee ~~[born outside of marriage]~~;

374 (d) a biological parent who has been adjudicated to be the child's biological father by a
 375 court of competent jurisdiction prior to the mother's execution of consent to adoption or her
 376 relinquishment of the child for adoption;

377 (e) consistent with Subsection (3), a biological parent who has executed and filed a
 378 voluntary declaration of paternity with the state registrar of vital statistics within the
 379 Department of Health in accordance with Title 78B, Chapter 15, Utah Uniform Parentage Act,
 380 prior to the mother's execution of consent to adoption or her relinquishment of the child for
 381 adoption;

382 (f) an unmarried biological father of an adoptee, only if he fully and strictly complies
 383 with the requirements of Sections 78B-6-121 and 78B-6-122; and

384 (g) the person or agency to whom an adoptee has been relinquished and that is placing
 385 the child for adoption.

386 (2) (a) The consent of a person described in Subsections (1)(b) through (g) is not
 387 required if the adoptee is 18 years of age or older.

388 (b) The consent of a person described in Subsections (1)(b) through (f) is not required
 389 if the person's parental rights relating to the adoptee have been terminated.

390 (3) For purposes of Subsection (1)(e), a voluntary declaration of paternity is considered
 391 filed when it is entered into a database that:

392 (a) can be accessed by the Department of Health; and

393 (b) is designated by the state registrar of vital statistics as the official database for
 394 voluntary declarations of paternity.

395 H→ ~~[(4) A court may not refuse to allow or accept a mother's consent to adoption or~~
 396 ~~relinquishment for adoption on the grounds that an unmarried biological father:~~

397 ~~— (a) filed an action to establish parentage of the child under Title 78B, Chapter 15, Utah~~
 398 ~~Uniform Parentage Act, or any other proceeding to establish parentage in Utah or outside of~~
 399 ~~Utah; or~~

400 ~~(b) complied with, or alleges compliance with, the requirements of Section 78B-6-121~~
401 ~~or 78B-6-122.] ←H~~

402 Section 7. Section **78B-6-121** is amended to read:

403 **78B-6-121. Consent of unmarried biological father.**

404 (1) Except as provided in Subsections (2)(a) and 78B-6-122(1), and subject to
405 Subsection (5), with regard to a child who is placed with adoptive parents more than six
406 months after birth, consent of an unmarried biological father is not required unless the
407 unmarried biological father:

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

409 (A) visiting the child monthly, unless the unmarried biological father was physically or
410 financially unable to visit the child on a monthly basis; or

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

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

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

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

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

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

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

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

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

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

431 Subsection (1).

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

437 (a) initiates proceedings in a district court of [~~the state~~] Utah to establish paternity
438 under Title 78B, Chapter 15, Utah Uniform Parentage Act;

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

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

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

442 (iii) agreeing to a court order of child support and the payment of expenses incurred in
443 connection with the mother's pregnancy and the child's birth;

444 (c) consistent with Subsection (4), files notice of the commencement of paternity
445 proceedings, described in Subsection (3)(a), with the state registrar of vital statistics within the
446 Department of Health, in a confidential registry established by the department for that purpose;
447 and

448 (d) offered to pay and paid a fair and reasonable amount of the expenses incurred in
449 connection with the mother's pregnancy and the child's birth, in accordance with his financial
450 ability, unless:

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

452 (ii) he was prevented from paying the expenses by the person or authorized agency
453 having lawful custody of the child; or

454 (iii) the mother refuses to accept the unmarried biological father's offer to pay the
455 expenses described in this Subsection (3)(d).

456 (4) The notice described in Subsection (3)(c) is considered filed when it is entered into
457 the registry described in Subsection (3)(c).

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

459 (a) the court determines, in accordance with the requirements and procedures of Title
460 78A, Chapter 6, Part 5, Termination of Parental Rights Act, that the unmarried biological
461 father's rights should be terminated, based on the petition of any interested party; or

462 (b) (i) a declaration of paternity declaring the unmarried biological father to be the
463 father of the child is rescinded under Section 78B-15-306; and

464 (ii) the unmarried biological father fails to comply with Subsection (3) within ten
465 business days after the day that notice of the rescission described in Subsection (5)(b)(i) is
466 mailed by the Office of Vital Records within the Department of Health as provided in Section
467 78B-15-306.

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

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

473 (b) (i) that no filing has been found pertaining to the father of the child in question; or

474 (ii) if a filing is found, the name of the putative father and the time and date of filing.

475 Section 8. Section **78B-6-138** is amended to read:

476 **78B-6-138. Biological parent's rights and duties dissolved.**

477 (1) A [birth] biological parent of an adopted child is released from all parental duties
478 toward and all responsibilities for the adopted child, including residual rights, and has no
479 further rights with regard to that child at the earlier of:

480 [(+)] (a) the time the parent's parental rights are terminated; or

481 [(2)] (b) except as provided in Subsection (2), and subject to Subsection (3), the time
482 the final decree of adoption is entered.

483 (2) The rights and duties of a biological parent described in Subsection (1) who, at the
484 time the child is adopted, is lawfully married to the person adopting the child are not released
485 or terminated under Subsection (1)(b).

486 (3) The rights and duties of a biological parent described in Subsection (1) who, at the
487 time the child is adopted, is not lawfully married to the person adopting the child are
488 terminated as provided in Subsection (1)(b).

489 Section 9. Section **78B-6-141** is amended to read:

490 **78B-6-141. Petition, report, and documents sealed -- Exceptions.**

491 ~~[The court shall order that the]~~ (1) A petition for adoption, the written report described
492 in Section 78B-6-135, and any other documents filed in connection with the ~~[hearing be]~~

493 petition are sealed. [Those items are not open to inspection or copying except:]

494 (2) The documents described in Subsection (1) may only be open to inspection as
495 follows:

496 (a) in accordance with Subsection (3)(a), by a party to the adoption proceeding:

497 (i) while the proceeding is pending; or

498 (ii) within six months after the day on which the adoption decree is entered;

499 (b) subject to Subsection (3)(b), a court enters an order permitting access to the
500 documents by a person who has appealed the denial of that person's motion to intervene;

501 ~~[(1)]~~ (c) upon order of the court expressly permitting inspection or copying, after good
502 cause has been shown;

503 ~~[(2)]~~ (d) as provided under Section 78B-6-144;

504 ~~[(3)]~~ (e) those records shall become public on the one hundredth anniversary of the
505 date the final decree of adoption was entered; or

506 ~~[(4)]~~ (f) if the adoptee is an adult at the time the final decree of adoption is entered, the
507 documents described in this section are open to inspection and copying without a court order
508 by the adoptee or a parent who adopted the adoptee, unless the final decree of adoption is
509 entered by the juvenile court under Subsection 78B-6-115(3)(b).

510 (3) (a) A person who files a motion to intervene in an adoption proceeding:

511 (i) is not a party to the adoption proceeding, unless the motion to intervene is granted;

512 and

513 (ii) may not be granted access to the documents described in Subsection (1), unless the
514 motion to intervene is granted.

515 (b) An order described in Subsection (2)(b) shall:

516 (i) prohibit the person described in Subsection (2)(b) from inspecting a document
517 described in Subsection (1) that contains identifying information of the adoptive or potential
518 adoptive parents; and

519 (ii) permit the person described in Subsection (3)(b)(i) to review a copy of a document
520 described in Subsection (3)(b)(i) after the identifying information described in Subsection
521 (3)(b)(i) is redacted from the document.

522 Section 10. Section **78B-6-144** is amended to read:

523 **78B-6-144. Mutual-consent, voluntary adoption registry -- Procedures -- Fees.**

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

525 (a) Adult adoptees and birth parents of adult adoptees, upon presentation of positive
526 identification, may request identifying information from the bureau, in the form established by
527 the bureau. A court of competent jurisdiction or a child-placing agency may accept that request
528 from the adult adoptee or birth parent, in the form provided by the bureau, and transfer that
529 request to the bureau. The adult adoptee or birth parent is responsible for notifying the bureau
530 of any change in information contained in the request.

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

533 (c) After matching the request of an adult adoptee with that of at least one of his birth
534 parents, the bureau shall notify both the adoptee and the birth parent that the requests have been
535 matched, and disclose the identifying information to those parties. However, if that adult
536 adoptee has a sibling of the same birth parent who is under the age of [2+] 18 years, and who
537 was raised in the same family setting as the adult adoptee, the bureau shall not disclose the
538 requested identifying information to that adult adoptee or his birth parent.

539 (2) (a) Adult adoptees and adult siblings of adult adoptees, upon presentation of
540 positive identification, may request identifying information from the bureau, in the form
541 established by the bureau. A court of competent jurisdiction or a child-placing agency may
542 accept that request from the adult adoptee or adult sibling, in the form provided by the bureau,
543 and transfer that request to the bureau. The adult adoptee or adult sibling is responsible for
544 notifying the bureau of any change in information contained in the request.

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

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

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

554 (4) Information regarding a birth parent who has not registered a request with the

555 bureau may not be disclosed.

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

557 cost of providing those services.

Legislative Review Note
as of 11-20-08 6:40 AM

Office of Legislative Research and General Counsel

H.B. 42 - Adoption Revisions

Fiscal Note

2009 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Birth parents who voluntarily relinquish their parental rights for the purposes of adoption may benefit from this bill. An undetermined number of businesses that would engage as contract providers of certain counseling services to birth parents may benefit from enactment of this bill. Prospective adoptive parents would pay any increases in fees. The number of prospective adoptive parents and the amount of increased fees cannot be undetermined. There would be no measurable direct cost or benefit for local governments.
