

ADOPTION OF CHILDREN

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Stephen E. Sandstrom

Senate Sponsor: Daniel R. Liljenquist

LONG TITLE

General Description:

This bill amends provisions of the Juvenile Court Act of 1996 and the Utah Adoption Act, relating to the adoption of children.

Highlighted Provisions:

This bill:

- ▶ requires that, when a child is in the custody of the Division of Child and Family Services, a court is required to comply with a parent's decision to place the child for adoption with an adoption agency or adoptive parents selected by the parent if:
 - the other parent of the child, if any, consents to the adoption, or the parental rights of the other parent are terminated;
 - the court determines that the placement is in the best interest of the child; and
 - the placement complies with all applicable requirements of federal and state law relating to the adoption;
- ▶ provides that a court is only required to comply with a parent's first placement selection, but that the court may choose to comply with an additional placement selection by the parent;
- ▶ provides that the consent or choice, described in the preceding paragraphs, by a parent may not be used as grounds for subsequently terminating the parental rights of the parent if the parent withdraws consent or changes the parent's placement preference;



- 28 ▶ amends provisions relating to notice of an adoption proceeding;
- 29 ▶ removes the requirement that a form approved by the Department of Human
- 30 Services be used for a preplacement adoptive evaluation; and
- 31 ▶ makes technical changes.

32 **Money Appropriated in this Bill:**

33 None

34 **Other Special Clauses:**

35 None

36 **Utah Code Sections Affected:**

37 AMENDS:

38 **78B-6-110**, as last amended by Laws of Utah 2010, Chapter 237

39 **78B-6-128**, as last amended by Laws of Utah 2010, Chapter 237

40 ENACTS:

41 **78A-6-510.5**, Utah Code Annotated 1953



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

44 Section 1. Section **78A-6-510.5** is enacted to read:

45 **78A-6-510.5. Selection by natural parent of adoptive placement of a child who is**
46 **in state custody.**

47 (1) Except as provided in Subsection (2), a court shall comply with the decision of a
48 natural parent of a child who is in the custody of the division to place the child for adoption
49 with an adoption agency selected by the natural parent, or a prospective adoptive parent or
50 parents selected by the natural parent, if:

51 (a) (i) the other natural parent of the child, if any, consents to the adoption; or

52 (ii) the parental rights of the other natural parent of the child, if any:

53 (A) have been terminated; or

54 (B) will be terminated before the adoption decree is entered;

55 (b) the court determines that the placement is in the best interest of the child; and

56 (c) the placement complies with all applicable requirements of federal and state law
57 relating to the adoption.

58 (2) A court is only required to comply with Subsection (1) with respect to one adoption

59 agency, one adoptive parent, or one set of prospective adoptive parents selected by the natural
60 parent. If the selection made by the natural parent does not satisfy the requirements described
61 in Subsection (1), or the parent changes the parent's selection, the court may, but is not required
62 to, comply with an additional selection by the natural parent.

63 (3) A decision by a natural parent, under this section, to place a child for adoption or to
64 consent to termination of the natural parent's parental rights may not be used as grounds for
65 subsequently terminating the parental rights of the natural parent if the natural parent
66 withdraws the natural parent's consent or selects a different placement than originally selected
67 by the natural parent.

68 Section 2. Section **78B-6-110** is amended to read:

69 **78B-6-110. Notice of adoption proceedings.**

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

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

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

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

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

78 (a) any person or agency whose consent or relinquishment is required under Section
79 78B-6-120 or 78B-6-121, unless that right has been terminated by:

80 (i) waiver;

81 (ii) relinquishment;

82 (iii) consent; or

83 (iv) judicial action;

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

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

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

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

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

94 (g) a person who is:

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

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

98 (h) any person who is married to the child's mother at the time she executes her consent
99 to the adoption or relinquishes the child for adoption, unless a court of competent jurisdiction
100 enters an order in a divorce proceeding, or under Section 78B-15-607, that the person is not the
101 father of the child.

102 (3) (a) In order to preserve any right to notice, an unmarried, biological father may,
103 consistent with Subsection (3)(d):

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

106 (ii) file a notice of commencement of the proceedings described in Subsection (3)(a)(i)
107 with the state registrar of vital statistics within the Department of Health.

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

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

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

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

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

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

118 (B) relinquishment of the child for adoption.

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

121 (5) The notice required by this section:
122 (a) may be served on a person who is not the birth mother at any time after the petition
123 for adoption is filed, including before the adoptee is born;
124 (b) may be served on the birth mother at any time after:
125 (i) the adoption petition is filed; and
126 (ii) the adoptee is born;
127 ~~[(b)]~~ (c) shall be served at least 30 days prior to the final dispositional hearing;
128 ~~[(c)]~~ (d) shall specifically state that if the person served [must respond to the petition
129 within 30 days of service if he] intends to intervene in or contest the adoption, the person must,
130 within 30 days after the day on which the person is served, file a motion to intervene in the
131 adoption proceeding, accompanied by the memorandum described in Subsection (6)(a)(iii);
132 ~~[(d)]~~ (e) shall state the consequences, described in Subsection (6)(b), for failure of a
133 person to file a motion for relief within 30 days after the day on which the person is served
134 with notice of an adoption proceeding;
135 ~~[(e)]~~ (f) is not required to include, nor be accompanied by, a summons or a copy of the
136 petition for adoption; and
137 ~~[(f)]~~ (g) shall state where the person may obtain a copy of the petition for adoption.
138 (6) (a) A person who has been served with notice of an adoption proceeding and who
139 wishes to contest the adoption shall file a motion to intervene in the adoption proceeding:
140 (i) within 30 days after the day on which the person was served with notice of the
141 adoption proceeding;
142 (ii) setting forth specific relief sought; and
143 (iii) accompanied by a memorandum specifying the factual and legal grounds upon
144 which the motion is based.
145 (b) A person who fails to fully and strictly comply with all of the requirements
146 described in Subsection (6)(a) within 30 days after the day on which the person was served
147 with notice of the adoption proceeding:
148 (i) waives any right to further notice in connection with the adoption;
149 (ii) forfeits all rights in relation to the adoptee; and
150 (iii) is barred from thereafter bringing or maintaining any action to assert any interest in
151 the adoptee.

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

153 (a) (i) Subject to Subsection (5)~~(e)~~(f), service on a person whose consent is necessary
154 under Section 78B-6-120 or 78B-6-121 shall be in accordance with the provisions of the Utah
155 Rules of Civil Procedure.

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

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

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

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

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

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

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

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

176 (11) Except as to those persons whose consent to an adoption is required under Section
177 78B-6-120 or 78B-6-121, the sole purpose of notice under this section is to enable the person
178 served to:

179 (a) intervene in the adoption; and

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

181 Section 3. Section **78B-6-128** is amended to read:

182 **78B-6-128. Preplacement adoptive evaluations -- Exceptions.**

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

187 (b) Except as provided in Section 78B-6-131, the court may, at any time, authorize
188 temporary placement of a child in a potential adoptive home pending completion of a
189 preplacement adoptive evaluation described in this section.

190 (c) Subsection (1)(a) does not apply if a birth parent has legal custody of the child to be
191 adopted and the prospective adoptive parent is related to that child as a step-parent, sibling by
192 half or whole blood or by adoption, grandparent, aunt, uncle, or first cousin, unless the
193 evaluation is otherwise requested by the court. The prospective adoptive parent described in
194 this Subsection (1)(c) shall obtain the information described in Subsections (2)(a) and (b), and
195 file that documentation with the court prior to finalization of the adoption.

196 (d) The required preplacement adoptive evaluation must be completed or updated
197 within the 12-month period immediately preceding the placement of a child with the
198 prospective adoptive parent. If the prospective adoptive parent has previously received custody
199 of a child for the purpose of adoption, the preplacement adoptive evaluation must be completed
200 or updated within the 12-month period immediately preceding the placement of a child with the
201 prospective adoptive parent and after the placement of the previous child with the prospective
202 adoptive parent.

203 (2) The preplacement adoptive evaluation shall include:

204 (a) criminal history record information regarding each prospective adoptive parent and
205 any other adult living in the prospective home, prepared no earlier than 18 months immediately
206 preceding placement of the child in accordance with the following:

207 (i) if the child is in state custody, each prospective adoptive parent and any other adult
208 living in the prospective home shall:

209 (A) submit fingerprints for a Federal Bureau of Investigation national criminal history
210 record check through the Criminal and Technical Services Division of the Department of
211 Public Safety in accordance with the provisions of Section 62A-2-120; or

212 (B) submit to a fingerprint based Federal Bureau of Investigation national criminal
213 history record check through a law enforcement agency in another state, district, or territory of

214 the United States; or

215 (ii) subject to Subsection (3), if the child is not in state custody, each prospective
216 adoptive parent and any other adult living in the prospective home shall:

217 (A) submit fingerprints for a Federal Bureau of Investigation national criminal history
218 records check as a personal records check; or

219 (B) complete a criminal records check, if available, for each state and country where
220 the potential adoptive parent and any adult living in the prospective adoptive home resided
221 during the five years immediately preceding the day on which the adoption petition is to be
222 finalized;

223 (b) a report containing all information regarding reports and investigations of child
224 abuse, neglect, and dependency, with respect to each prospective adoptive parent and any other
225 adult living in the prospective home, obtained no earlier than 18 months immediately preceding
226 the day on which the child is placed in the prospective home, pursuant to waivers executed by
227 each prospective adoptive parent and any other adult living in the prospective home, that:

228 (i) if the prospective adoptive parent or the adult living in the prospective adoptive
229 parent's home is a resident of Utah, is prepared by the Department of Human Services from the
230 records of the Department of Human Services; or

231 (ii) if the prospective adoptive parent or the adult living in the prospective adoptive
232 parent's home is not a resident of Utah, prepared by the Department of Human Services, or a
233 similar agency in another state, district, or territory of the United States, where each
234 prospective adoptive parent and any other adult living in the prospective home resided in the
235 five years immediately preceding the day on which the child is placed in the prospective
236 adoptive home;

237 (c) in accordance with Subsection (6), an evaluation conducted by:

238 (i) an expert in family relations approved by the court;

239 (ii) a certified social worker;

240 (iii) a clinical social worker;

241 (iv) a marriage and family therapist;

242 (v) a psychologist; or

243 (vi) a professional counselor; and

244 (d) in accordance with Subsection (7), if the child to be adopted is a child who is in the

245 custody of any public child welfare agency, and is a child who has a special need as defined in
246 Section 62A-4a-902, the preplacement evaluation shall be conducted by the Department of
247 Human Services or a child-placing agency that has entered into a contract with the department
248 to conduct the preplacement evaluations for children with special needs.

249 (3) For purposes of Subsection (2)(a)(ii):

250 (a) if the adoption is being handled by a human services program, as defined in Section
251 62A-2-101:

252 (i) the criminal history check described in Subsection (2)(a)(ii)(A) shall be submitted
253 through the Criminal Investigations and Technical Services Division of the Department of
254 Public Safety, in accordance with the provisions of Section 62A-2-120; and

255 (ii) subject to Subsection (4), the criminal history check described in Subsection
256 (2)(a)(ii)(B) shall be submitted in a manner acceptable to the court that will:

257 (A) preserve the chain of custody of the results; and

258 (B) not permit tampering with the results by a prospective adoptive parent or other
259 interested party; and

260 (b) if the adoption is being handled by a private attorney, and not a human services
261 program, the criminal history checks described in Subsection (2)(a)(ii) shall be:

262 (i) submitted in accordance with procedures established by the Criminal Investigations
263 and Technical Services Division of the Department of Public Safety; or

264 (ii) subject to Subsection (4), submitted in a manner acceptable to the court that will:

265 (A) preserve the chain of custody of the results; and

266 (B) not permit tampering with the results by a prospective adoptive parent or other
267 interested party.

268 (4) In order to comply with Subsection (3)(a)(ii) or (b)(ii), the manner in which the
269 criminal history check is submitted shall be approved by the court.

270 (5) Except as provided in Subsection 78B-6-131(2), in addition to the other
271 requirements of this section, before a child in state custody is placed with a prospective foster
272 parent or a prospective adoptive parent, the Department of Human Services shall comply with
273 Section 78B-6-131.

274 (6) (a) A person described in Subsection (2)(c) shall be licensed to practice under the
275 laws of:

276 (i) this state; or
277 (ii) the state, district, or territory of the United States where the prospective adoptive
278 parent or other person living in the prospective adoptive home resides.

279 ~~[(b) The evaluation described in Subsection (2)(c) shall be in a form approved by the~~
280 ~~Department of Human Services.]~~

281 ~~[(c)]~~ (b) Neither the Department of Human Services nor any of its divisions may
282 proscribe who qualifies as an expert in family relations or who may conduct evaluations under
283 Subsection (2)(c).

284 (7) Any fee assessed by the evaluating agency described in Subsection (2)(d) is the
285 responsibility of the adopting parent or parents.

286 (8) The person or agency conducting the preplacement adoptive evaluation shall, in
287 connection with the evaluation, provide the prospective adoptive parent or parents with
288 literature approved by the Division of Child and Family Services relating to adoption, including
289 information relating to:

- 290 (a) the adoption process;
 - 291 (b) developmental issues that may require early intervention; and
 - 292 (c) community resources that are available to the adoptive parent or parents.
- 293 (9) A copy of the preplacement adoptive evaluation shall be filed with the court.

Legislative Review Note
as of 2-22-11 1:06 PM

Office of Legislative Research and General Counsel

FISCAL NOTE

H.B. 368

SHORT TITLE: **Adoption of Children**

SPONSOR: **Sandstrom, S.**

2011 GENERAL SESSION, STATE OF UTAH

STATE GOVERNMENT (UCA 36-12-13(2)(b))

Enactment of this bill may cost the Courts \$89,200, the Guardian Ad Litem \$48,800, and the Attorney General \$48,800 ongoing from the General Fund to participate in additional court hearings beginning in FY 2012. The Division of Child and Family Services might also lose federal funding for an undeterminable number of children in state custody.

STATE BUDGET DETAIL TABLE

	FY 2011	FY 2012	FY 2013
Revenue	\$0	\$0	\$0
Expenditure:			
General Fund	\$0	\$186,800	\$186,800
Total Expenditure	\$0	\$186,800	\$186,800
Net Impact, All Funds (Rev.-Exp.)	\$0	(\$186,800)	(\$186,800)
Net Impact, General/Education Funds	\$0	(\$186,800)	(\$186,800)

LOCAL GOVERNMENTS (UCA 36-12-13(2)(c))

Enactment of this bill likely will not result in direct, measurable costs for local governments.

DIRECT EXPENDITURES BY UTAH RESIDENTS AND BUSINESSES (UCA 36-12-13(2)(d))

Enactment of this bill likely will not result in direct, measurable expenditures by Utah residents or businesses.