1   **FOSTER CARE AND KINSHIP PLACEMENT AMENDMENTS**

2   2012 GENERAL SESSION

3   STATE OF UTAH

4   **Chief Sponsor: Christine F. Watkins**

5   Senate Sponsor: Luz Robles

6

7   **LONG TITLE**

8   **General Description:**

9   This bill amends Title 62A, Chapter 4a, Child and Family Services by amending the

10   procedure for taking a foster child away from a foster parent who is that child's relative.

11   **Highlighted Provisions:**

12   This bill:

13   ▸   prohibits the Division of Child and Family services from removing a foster child

14   from a foster parent who is the child's relative without clear and convincing

15   evidence that the relative is incapable of caring for the child; and

16   ▸   makes technical changes.

17   **Money Appropriated in this Bill:**

18   None

19   **Other Special Clauses:**

20   None

21   **Utah Code Sections Affected:**

22   AMENDS:

23   **62A-4a-206**, as last amended by Laws of Utah 2010, Chapter 56

24

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

26   Section 1. Section **62A-4a-206** is amended to read:

27   **62A-4a-206.   Process for removal of a child from foster family -- Procedural due**

28 **process.**

29   (1) (a) The Legislature finds that, except with regard to a child's natural parent or legal

30 guardian, a foster family has a very limited but recognized interest in its familial relationship

31 with a foster child who has been in the care and custody of that family. In making

32 determinations regarding removal of a child from a foster home, the division may not dismiss

33 the foster family as a mere collection of unrelated individuals.

34   (b) The Legislature finds that children in the temporary custody and custody of the

35 division are experiencing multiple changes in foster care placements with little or no

36 documentation, and that numerous studies of child growth and development emphasize the

37 importance of stability in foster care living arrangements.

38   (c) For the reasons described in Subsections (1)(a) and (b), the division shall provide

39 procedural due process for a foster family prior to removal of a foster child from their home,

40 regardless of the length of time the child has been in that home, unless removal is for the

41 purpose of:

42   (i) returning the child to the child's natural parent or legal guardian;

43   (ii) immediately placing the child in an approved adoptive home;

44   (iii) placing the child with a relative, as defined in Subsection 78A-6-307(1)(b), who

45 obtained custody or asserted an interest in the child within the preference period described in

46 Subsection 78A-6-307(18)(a); or

47   (iv) placing an Indian child in accordance with preplacement preferences and other

48 requirements described in the Indian Child Welfare Act, 25 U.S.C. Sec. 1915.

49   (2) (a) The division shall maintain and utilize due process procedures for removal of a

50 foster child from a foster home, in accordance with the procedures and requirements of Title

51 63G, Chapter 4, Administrative Procedures Act.

52   (b) Those procedures shall include requirements for:

53   (i) personal communication with, and a written explanation of the reasons for the

54 removal to, the foster parents prior to removal of the child; and

55   (ii) an opportunity for foster parents to present their information and concerns to the

56 division and to:

57   (A) request a review, to be held before removal of the child, by a third party neutral

58 fact finder; or

59   (B) if the child has been placed with the foster parents for a period of at least two years,

60   request a review, to be held before removal of the child, by:

61   (I) the juvenile court judge currently assigned to the child's case; or

62   (II) if the juvenile court judge currently assigned to the child's case is not available,

63   another juvenile court judge.

64   (c) If the division determines that there is a reasonable basis to believe that the child is

65   in danger or that there is a substantial threat of danger to the health or welfare of the child, it

66   shall place the child in emergency foster care during the pendency of the procedures described

67   in this subsection, instead of making another foster care placement.

68   (3) If the division removes a child from a foster home based upon the child's statement

69   alone, the division shall initiate and expedite the processes described in Subsection (2). The

70   division may take no formal action with regard to that foster parent's license until after those

71   processes, in addition to any other procedure or hearing required by law, have been completed.

72   (4) When a complaint is made to the division by a foster child against a foster parent,

73   the division shall, within 30 business days, provide the foster parent with information regarding

74   the specific nature of the complaint, the time and place of the alleged incident, and who was

75   alleged to have been involved.

76   (5) Whenever the division places a child in a foster home, it shall provide the foster

77   parents with:

78   (a) notification of the requirements of this section;

79   (b) a written description of the procedures enacted by the division pursuant to

80   Subsection (2) and how to access those processes; and

81   (c) written notification of the foster parents' ability to petition the juvenile court

82   directly for review of a decision to remove a foster child who has been in their custody for 12

83   months or longer, in accordance with the limitations and requirements of Section 78A-6-318.

84   (6) The requirements of this section do not apply to the removal of a child based on a

85   foster parent's request for that removal.

86   (7) It is unlawful for a person, with the intent to avoid compliance with the

87   requirements of this section, to:

88   (a) take action, or encourage another to take action, against the license of a foster

89   parent; or

90   (b) remove a child from a foster home before the child has been placed with the foster

91   parents for two years.

92   (8) The division may not remove a foster child from a foster parent who is a relative, as

93   defined in Subsection 78A-6-307(1)(b), of the child on the basis of the age or health of the

94   foster parent without clear and convincing evidence that the foster parent is incapable of caring

95   for the foster child.

Legislative Review Note
        as of 11-22-11 3:38 PM

                                                                 Office of Legislative Research and General Counsel