

PARENTAL RIGHTS OF BIOLOGICAL FATHERS

2012 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Christine F. Watkins

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends Title 78B, Chapter 6, Particular Proceedings, and Chapter 15, Utah Uniform Parentage Act, relating to consent requirements before the adoption of a child.

Highlighted Provisions:

This bill:

- ▶ requires that notice of an adoption proceeding be provided to an unmarried biological father in certain circumstances;
- ▶ modifies the procedure an unmarried biological father must follow to protect his parental rights in regard to a child age six months or younger;
- ▶ modifies the procedure the office of vital records and statistics must follow in accepting a notice of intent to initiate paternity proceedings;
- ▶ permits a birth mother to revoke her consent to adoption under a limited circumstance; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:



- 28 **78B-6-110**, as last amended by Laws of Utah 2010, Chapter 237
- 29 **78B-6-121**, as last amended by Laws of Utah 2009, Chapter 159
- 30 **78B-6-126**, as renumbered and amended by Laws of Utah 2008, Chapter 3
- 31 **78B-15-401**, as renumbered and amended by Laws of Utah 2008, Chapter 3



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

34 Section 1. Section **78B-6-110** is amended to read:

35 **78B-6-110. Notice of adoption proceedings.**

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

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

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

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

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

44 (a) any person or agency whose consent or relinquishment is required under Section
45 78B-6-120 or 78B-6-121, unless that right has been terminated by:

46 (i) waiver;

47 (ii) relinquishment;

48 (iii) consent; or

49 (iv) judicial action;

50 (b) any person who has [~~initiated a paternity proceeding and~~] filed notice of [~~that~~
51 ~~action~~] intent to commence a paternity proceeding with the state registrar of vital statistics
52 within the Department of Health, in accordance with Subsection (3);

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

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

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

57 (f) any person who, prior to the time the mother executes her consent for adoption or
58 relinquishes the child for adoption, is recorded on the birth certificate as the child's father, with

59 the knowledge and consent of the mother;

60 (g) a person who is:

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

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

64 (h) any person who is married to the child's mother at the time she executes her consent
65 to the adoption or relinquishes the child for adoption[-]; and

66 (i) an unmarried biological father, if:

67 (i) he has preserved his rights under Subsection (3); or

68 (ii) subject to the requirements of Subsection (12), he is not a resident of Utah.

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

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

73 (ii) file a notice of ~~[commencement of]~~ intent to commence the proceedings described
74 in Subsection (3)(a)(i) with the state registrar of vital statistics within the Department of
75 Health.

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

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

82 (d) The ~~[action and]~~ notice described in Subsection (3)(a)(ii):

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

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

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

86 (B) relinquishment of the child for adoption.

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

89 (5) The notice required by this section:

- 90 (a) may be served at any time after the petition for adoption is filed;
- 91 (b) shall be served at least 30 days prior to the final dispositional hearing;
- 92 (c) shall specifically state that the person served must respond to the petition within 30
93 days of service if he intends to intervene in or contest the adoption;
- 94 (d) shall state the consequences, described in Subsection (6)(b), for failure of a person
95 to file a motion for relief within 30 days after the day on which the person is served with notice
96 of an adoption proceeding;
- 97 (e) is not required to include, nor be accompanied by, a summons or a copy of the
98 petition for adoption; and
- 99 (f) shall state where the person may obtain a copy of the petition for adoption.
- 100 (6) (a) A person who has been served with notice of an adoption proceeding and who
101 wishes to contest the adoption shall file a motion to intervene in the adoption proceeding:
102 (i) within 30 days after the day on which the person was served with notice of the
103 adoption proceeding;
- 104 (ii) setting forth specific relief sought; and
- 105 (iii) accompanied by a memorandum specifying the factual and legal grounds upon
106 which the motion is based.
- 107 (b) A person who fails to fully and strictly comply with all of the requirements
108 described in Subsection (6)(a) within 30 days after the day on which the person was served
109 with notice of the adoption proceeding:
110 (i) waives any right to further notice in connection with the adoption;
- 111 (ii) forfeits all rights in relation to the adoptee; and
- 112 (iii) is barred from thereafter bringing or maintaining any action to assert any interest in
113 the adoptee.
- 114 (7) Service of notice under this section shall be made as follows:
115 (a) (i) Subject to Subsection (5)(e), service on a person whose consent is necessary
116 under Section 78B-6-120 or 78B-6-121 shall be in accordance with the provisions of the Utah
117 Rules of Civil Procedure.
- 118 (ii) If service of a person described in Subsection (7)(a)(i) is by publication, the court
119 shall designate the content of the notice regarding the identity of the parties.
- 120 (iii) The notice described in this Subsection (7)(a) may not include the name of a

121 person seeking to adopt the adoptee.

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

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

127 (c) Notice to a person who has [~~initiated a paternity proceeding and~~] filed notice of
128 [~~that action~~] intent to commence a paternity proceeding with the state registrar of vital statistics
129 in the Department of Health in accordance with the requirements of Subsection (3), shall be
130 served by certified mail, return receipt requested, at the last address filed with the registrar.

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

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

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

138 (11) Except as to those persons whose consent to an adoption is required under Section
139 78B-6-120 or 78B-6-121, the sole purpose of notice under this section is to enable the person
140 served to:

141 (a) intervene in the adoption; and

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

143 (12) If an unmarried biological father is not a resident of Utah:

144 (a) a written notice of the existence of an adoption plan shall be:

145 (i) sent to the unmarried biological father's last known or reasonably ascertainable
146 address by certified mail; or

147 (ii) published in a newspaper of general circulation in the area where the unmarried
148 biological father was last known or believed to reside if his address is not known or reasonably
149 ascertainable; and

150 (b) shall include a statement indicating that:

151 (i) if the unmarried biological father desires to assert or preserve his parental rights, he

152 must comply with Sections 78B-6-121 and 78B-6-122 within 30 days of the later of the day on
153 which the notice is served or the day on which the mother executes her consent to the adoption
154 or relinquishes the child for adoption;

155 (ii) if the unmarried biological father fails to comply with Sections 78B-6-121 and
156 78B-6-122, he shall:

157 (A) irrevocably lose the ability to assert the right to consent or refuse to consent to the
158 adoption;

159 (B) lose the ability to assert the right to contest any future adoption of the child; and

160 (C) lose the right to notice of any adoption proceedings related to the child; and

161 (iii) if the unmarried biological father wishes to consent to the adoption:

162 (A) he is under no obligation to respond to the notice described in this Subsection (12)

163 and his consent shall be implied after the time limit described in Subsection (12)(a) expires;

164 and

165 (B) he may respond to indicate his desire to execute his consent.

166 Section 2. Section **78B-6-121** is amended to read:

167 **78B-6-121. Consent of unmarried biological father.**

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

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

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

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

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

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

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

181 (A) (I) for a period of at least six months during the one-year period immediately

182 preceding the day on which the child is placed with adoptive parents; or

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

186 (B) immediately preceding placement of the child with adoptive parents; and
187 (ii) openly held himself out to be the father of the child during the six-month period
188 described in Subsection (1)(b)(i)(A).

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

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

196 (3) Except as provided in [~~Subsection~~] Subsections (7) and 78B-6-122(1), and subject
197 to Subsection (5), with regard to a child who is six months of age or less at the time the child is
198 placed with adoptive parents, consent of an unmarried biological father is not required unless[;
199 ~~prior to the time~~];

200 (a) before the mother executes her consent for adoption or relinquishes the child for
201 adoption, the unmarried biological father:

202 [~~(a) initiates proceedings in a district court of Utah to establish paternity under Title~~
203 ~~78B, Chapter 15, Utah Uniform Parentage Act;~~]

204 [~~(b) files with the court that is presiding over the paternity proceeding a sworn~~
205 ~~affidavit;~~]

206 [~~(i) stating that he is fully able and willing to have full custody of the child;~~]

207 [~~(ii) setting forth his plans for care of the child; and~~]

208 [~~(iii) agreeing to a court order of child support and the payment of expenses incurred in~~
209 ~~connection with the mother's pregnancy and the child's birth;~~]

210 [~~(c)~~] (i) consistent with Subsection (4), files notice of [~~the commencement of~~] intent to
211 commence paternity proceedings[~~; described in Subsection (3)(a);~~] with the state registrar of
212 vital statistics within the Department of Health, in a confidential registry established by the
213 department for that purpose; and

214 ~~[(d)]~~ (ii) offered to pay and paid a fair and reasonable amount of the expenses incurred
215 in connection with the mother's pregnancy and the child's birth, in accordance with his financial
216 ability, unless:

217 ~~[(i)]~~ (A) he did not have actual knowledge of the pregnancy;

218 ~~[(i)]~~ (B) he was prevented from paying the expenses by the person or authorized
219 agency having lawful custody of the child; or

220 ~~[(iii)]~~ (C) the mother refuses to accept the unmarried biological father's offer to pay the
221 expenses described in this Subsection (3)~~[(d)]~~(a)(ii); and

222 (b) within 30 days after filing a notice of intent to commence paternity proceedings
223 under Subsection (3)(a)(i), the unmarried biological father:

224 (i) initiates proceedings in a district court of Utah to establish paternity under Title
225 78B, Chapter 15, Utah Uniform Parentage Act; and

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

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

228 (B) setting forth his plans for care of the child; and

229 (C) agreeing to a court order of child support and the payment of expenses incurred in
230 connection with the mother's pregnancy and the child's birth.

231 (4) The notice described in Subsection (3)~~[(e)]~~(a)(i) is considered filed when it is
232 entered into the registry described in Subsection (3)~~[(e)]~~(a)(i).

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

234 (a) the child is six months of age or less and the unmarried biological father does not
235 fully and strictly comply with Subsection (3);

236 (b) the unmarried biological father has initiated proceedings in a district court of Utah
237 to establish paternity under Title 78B, Chapter 15, Utah Uniform Parentage Act, but the court
238 has:

239 (i) adjudicated the paternity of the child and ruled against the unmarried biological
240 father; or

241 (ii) dismissed the proceeding for want of prosecution under Section 78B-15-621;

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

245 ~~[(b)]~~ (d) (i) a declaration of paternity declaring the unmarried biological father to be the
 246 father of the child is rescinded under Section 78B-15-306; and

247 (ii) the unmarried biological father fails to comply with Subsection (3) within 10
 248 business days after the day that notice of the rescission described in Subsection (5)~~[(b)]~~(d)(i) is
 249 mailed by the Office of Vital Records within the Department of Health as provided in Section
 250 78B-15-306.

251 (6) Unless the adoptee is conceived or born within a marriage, the petitioner in an
 252 adoption proceeding shall, ~~[prior to entrance of]~~ before the court enters a final decree of
 253 adoption, file with the court a certificate from the state registrar of vital statistics within the
 254 Department of Health, stating:

255 (a) that a diligent search has been made of the registry of notices from unmarried
 256 biological fathers described in Subsection (3)~~[(c)]~~(a)(i); and

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

259 (7) If the unmarried biological father is not a resident of Utah, he shall have 30 days
 260 from the later of the day on which he received notice of the adoption proceeding, as described
 261 in Subsection 78B-6-110(12), or the day on which the mother executes her consent to the
 262 adoption, to fulfill the requirements of Subsections (3)(a) and (b).

263 Section 3. Section **78B-6-126** is amended to read:

264 **78B-6-126. When consent or relinquishment effective.**

265 ~~[A]~~ (1) Except as provided in Subsection (2), a consent or relinquishment is effective
 266 when it is signed and may not be revoked.

267 (2) A mother may revoke her consent to an adoption within 30 days after the day on
 268 which the unmarried biological father:

269 (a) successfully asserts his parental rights by fully and strictly complying with Sections
 270 78B-6-120 through 78B-6-122;

271 (b) is adjudicated to be the father of the child under Title 78B, Chapter 15, Utah
 272 Uniform Parentage Act; and

273 (c) refuses to relinquish or terminate his parental rights and consent to the adoption.

274 Section 4. Section **78B-15-401** is amended to read:

275 **78B-15-401. Maintenance of records.**

276 (1) The Office of Vital Records shall register the following records which are filed
277 with the office:

278 (a) all declarations of paternity;

279 (b) all judicial and administrative determinations of paternity; and

280 (c) all notices of proceedings to establish paternity which are filed pursuant to Sections
281 78B-6-110, 78B-6-120, 78B-6-121, and 78B-6-122.

282 [~~(2) A notice of initiation of paternity proceedings may not be accepted into the registry~~
283 ~~unless accompanied by a copy of the pleading which has been filed with the court to establish~~
284 ~~paternity.]~~

285 [(3)] (2) A notice of [~~initiation of~~] intent to initiate paternity proceedings may not be
286 filed if another man is the adjudicated or declarant father.

Legislative Review Note
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Office of Legislative Research and General Counsel