

## SB0055S01 compared with SB0055

~~{deleted text}~~ shows text that was in SB0055 but was deleted in SB0055S01.

inserted text shows text that was not in SB0055 but was inserted into SB0055S01.

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Senator Todd Weiler proposes the following substitute bill:

### AMENDMENTS TO ADOPTION CODE

2012 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor:** Todd Weiler

**House Sponsor:** \_\_\_\_\_

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#### LONG TITLE

##### General Description:

This bill amends provisions of the Utah Adoption Act relating to the rights and obligations of an unmarried biological father and other matters related to adoption.

##### Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ provides a method to give notice of a potential adoption proceeding to an unmarried biological father, including informing him:
  - of the requirements to assert his parental rights;
  - that failure to assert his parental rights within thirty days after receiving the notice described above shall result in the unmarried biological father losing his right to have notice of, or contest a future adoption of, the child; and

## **SB0055S01 compared with SB0055**

- that nothing the birth mother tells him modifies his obligations under Utah law;
- ▶ requires that an unmarried biological father who has not already lost his right to consent to an adoption and who wishes to assert his parental rights be given one business day after a child's birth to comply with the requirements to assert his parental rights;
- ▶ modifies when a court may enter a final decree of adoption; and
- ▶ makes technical changes.

### **Money Appropriated in this Bill:**

None

### **Other Special Clauses:**

None

### **Utah Code Sections Affected:**

AMENDS:

**78B-6-103**, as last amended by Laws of Utah 2010, Chapter 237

**78B-6-105**, as last amended by Laws of Utah 2010, Chapter 237

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

**78B-6-112**, as last amended by Laws of Utah 2010, Chapter 237

**78B-6-113**, as last amended by Laws of Utah 2010, Chapter 237

**78B-6-115**, as last amended by Laws of Utah 2009, Chapters 159 and 356

**78B-6-121**, as last amended by Laws of Utah 2009, Chapter 159

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

**78B-6-129**, as last amended by Laws of Utah 2010, Chapter 237

**78B-6-135**, as last amended by Laws of Utah 2010, Chapter 237

**78B-6-136**, as last amended by Laws of Utah 2008, Chapter 137 and renumbered and amended by Laws of Utah 2008, Chapter 3

**78B-6-136.5**, as enacted by Laws of Utah 2010, Chapter 237

**78B-6-140**, as last amended by Laws of Utah 2010, Chapter 237

**78B-6-141**, as last amended by Laws of Utah 2009, Chapter 159

**78B-6-143**, as last amended by Laws of Utah 2008, Chapter 137 and renumbered and amended by Laws of Utah 2008, Chapter 3

**78B-6-144**, as last amended by Laws of Utah 2009, Chapter 159

## SB0055S01 compared with SB0055

78B-6-145, as renumbered and amended by Laws of Utah 2008, Chapter 3

ENACTS:

78B-6-110.1, Utah Code Annotated 1953

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

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

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

As used in this part:

(1) "Adoptee" means a person who:

(i) is the subject of an adoption proceeding; or

(ii) has been legally adopted.

(2) "Adoption" means the judicial act that:

(a) creates the relationship of parent and child where it did not previously exist; and

(b) except as provided in Subsection 78B-6-138(2), terminates the parental rights of any other person with respect to the child.

(3) "Adoption service provider" means a:

(a) child-placing agency; or

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

(i) adoptive parents; [~~or~~]

(ii) prospective adoptive parents; or

~~[(ii)]~~ (iii) birth parents.

(4) "Adoptive parent" means a person who has legally adopted an adoptee.

~~[(4)]~~ (5) "Adult" means a person who is 18 years of age or older.

~~[(5)]~~ (6) "Adult adoptee" means an adoptee who is 18 years of age or older.

~~[(6)]~~ (7) "Adult sibling" means a brother or sister of the adoptee, who is 18 years of age or older and whose birth mother or father is the same as that of the adoptee.

(8) "Birth mother" means the biological mother of a child.

~~[(7)]~~ (9) "Birth parent" means:

(a) a [~~biological~~] birth mother;

(b) a [~~person~~] man whose paternity of a child is established; [~~or~~]

## SB0055S01 compared with SB0055

(c) [~~an alleged father~~] a man who:

(i) has been identified as the father of a child by the child's birth mother; and

(ii) has not denied paternity[-]; or

(d) an unmarried biological father.

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

~~[(9)]~~ (10) "Child-placing agency" means an agency licensed to place children for adoption under Title 62A, Chapter 4a, Part 6, Child Placing.

~~[(10)]~~ (11) "Cohabiting" means residing with another person and being involved in a sexual relationship with that person.

~~[(11)]~~ (12) "Division" means the Division of Child and Family Services, within the Department of Human Services, created in Section 62A-4a-103.

~~[(12)]~~ (13) "Extra-jurisdictional child-placing agency" means an agency licensed to place children for adoption by a district, territory, or state of the United States, other than Utah.

~~[(13)]~~ (14) "Genetic and social history" means a comprehensive report, when obtainable, on an adoptee's birth parents, aunts, uncles, and grandparents, which contains the following information:

(a) medical history;

(b) health status;

(c) cause of and age at death;

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

(e) ethnic origins;

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

(g) religion, if any.

~~[(14)]~~ (15) "Health history" means a comprehensive report of the adoptee's health status at the time of placement for adoption, and medical history, including neonatal, psychological, physiological, and medical care history.

~~[(15)]~~ (16) "Identifying information" means the name and address of a pre-existing parent or adult adoptee, or other specific information which by itself or in reasonable conjunction with other information may be used to identify that person.

~~[(16)]~~ (17) "Licensed counselor" means a person who is licensed by the state, or

## SB0055S01 compared with SB0055

another state, district, or territory of the United States as a:

- (a) certified social worker;
- (b) clinical social worker;
- (c) psychologist;
- (d) marriage and family therapist;
- (e) professional counselor; or
- (f) an equivalent licensed professional of another state, district, or territory of the

United States.

(18) "Man" means a male individual, regardless of age.

(19) "Office" means the Office of Vital Records and Statistics within the Department of Health operating under Title 26, Chapter 2, Utah Vital Statistics Act.

~~[(17)]~~ (20) "Parent," for purposes of Section 78B-6-119, means any person described in Subsections 78B-6-120(1)(b) through (f) from whom consent for adoption or relinquishment for adoption is required under Sections 78B-6-120 through 78B-6-122.

(21) "Potential birth father" means a man who:

(a) is identified by a birth mother as a potential biological father of the birth mother's child, but whose genetic paternity has not been established; and

(b) was not married to the biological mother of the child described in Subsection (21)(a) at the time of the child's conception or birth.

~~[(18)]~~ (22) "Pre-existing parent" means:

(a) a birth parent; or

(b) a person who, before an adoption decree is entered, is, due to an earlier adoption decree, legally the parent of the child being adopted.

(23) "Prospective adoptive parent" means a person who seeks to adopt an adoptee.

~~[(19)]~~ (24) "Unmarried biological father" means a person who:

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

(b) was not married to the biological mother of the child described in Subsection ~~[(19)]~~ (24)(a) at the time of the child's[?] conception or birth.

~~[(i) conception; or]~~

~~[(ii) birth.]~~

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

## SB0055S01 compared with SB0055

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

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

(a) in the district where the [~~person adopting~~] prospective adoptive parent resides;

(b) if the [~~person adopting~~] prospective adoptive parent is not a resident of this state, in the district where:

(i) the [~~proposed~~] adoptee was born;

(ii) the [~~proposed~~] adoptee resides on the day on which the petition is filed; or

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

or

(c) with the juvenile court as provided in Subsection 78A-6-103(1).

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

(3) A petition for adoption:

(a) may be filed before or after the adoptee is placed in the home of the petitioner for the purpose of adoption; and

(b) shall be filed no later than 30 days after the day on which the adoptee is placed in the home of the petitioners for the purpose of adoption, unless:

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

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

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

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

(i) [~~the person or persons seeking to adopt the adoptee~~] a prospective adoptive parent;

or

(ii) an unmarried mother without her consent.

(5) Service of notice as provided in Subsection (6) shall vest the court with jurisdiction

## SB0055S01 compared with SB0055

over the person served in the same manner and to the same extent as if the person served was served personally within the state.

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

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

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

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

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

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

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

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

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

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

(i) waiver;

(ii) relinquishment;

(iii) consent; or

(iv) judicial action;

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

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

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

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

(f) any person who, prior to the time the mother executes her consent for adoption or

## SB0055S01 compared with SB0055

relinquishes the child for adoption, is recorded on the birth certificate as the child's father, with the knowledge and consent of the mother;

(g) a person who is:

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

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

(h) any person who is married to the child's mother at the time she executes her consent to the adoption or relinquishes the child for adoption, unless the court finds that the mother's spouse is not the child's father under Section 78B-15-607.

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

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

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

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

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

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

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

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

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

(B) relinquishment of the child for adoption.

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

(5) The notice required by this section:

(a) may be served at any time after the petition for adoption is filed, but may not be served on a birth mother before she has given birth to the child who is the subject of the



## SB0055S01 compared with SB0055

### petition for adoption;

(b) shall be served at least 30 days prior to the final dispositional hearing;

(c) shall specifically state that the person served [~~must respond to the petition~~] shall fulfill the requirements of Subsection (6)(a), within 30 days [~~of~~] after the day on which the person receives service if [~~he~~] the person intends to intervene in or contest the adoption;

(d) shall state the consequences, described in Subsection (6)(b), for failure of a person to file a motion for relief within 30 days after the day on which the person is served with notice of an adoption proceeding;

(e) is not required to include, nor be accompanied by, a summons or a copy of the petition for adoption; and

(f) shall state where the person may obtain a copy of the petition for adoption.

(6) (a) A person who has been served with notice of an adoption proceeding and who wishes to contest the adoption shall file a motion to intervene in the adoption proceeding:

(i) within 30 days after the day on which the person was served with notice of the adoption proceeding;

(ii) setting forth specific relief sought; and

(iii) accompanied by a memorandum specifying the factual and legal grounds upon which the motion is based.

(b) A person who fails to fully and strictly comply with all of the requirements described in Subsection (6)(a) within 30 days after the day on which the person was served with notice of the adoption proceeding:

(i) waives any right to further notice in connection with the adoption;

(ii) forfeits all rights in relation to the adoptee; and

(iii) is barred from thereafter bringing or maintaining any action to assert any interest in the adoptee.

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

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

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

## **SB0055S01 compared with SB0055**

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

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

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

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

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

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

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

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

- (a) intervene in the adoption; and
- (b) present evidence to the court relevant to the best interest of the child.

Section 4. Section **78B-6-110.1** is enacted to read:

**78B-6-110.1. Prebirth notice to presumed father of intent to place a child for adoption.**

(1) As used in this section, "birth father" means:

- (a) a potential biological father; or
- (b) an unmarried biological father.

(2) Before the birth of a child, the following individuals may notify a birth father of the child that the mother of the child is considering an adoptive placement for the child:

## SB0055S01 compared with SB0055

(a) the child's mother;

(b) a licensed child placing agency;

(c) an attorney representing a prospective adoptive parent of the child; or

(d) an attorney representing the mother of the child.

(3) Providing a birth father with notice under Subsection (2) does not obligate the mother of the child to proceed with an adoptive placement of the child.

(4) The notice described in Subsection (2) shall include the name, address, and telephone number of the person providing the notice, and shall include the following information:

(a) the mother's intent to place the child for adoption;

(b) that the mother has named the person receiving this notice as a potential birth father of her child;

(c) the requirements to contest the adoption, including taking the following steps within 30 days after the day on which the notice is served:

(i) initiating proceedings to establish or assert paternity in a district court of Utah within 30 days after the day on which notice is served, including filing an affidavit stating:

(A) that the birth father is fully able and willing to have full custody of the child;

(B) the birth father's plans to care for the child; and

(C) that the birth father agrees to pay for child support and expenses incurred in connection with the pregnancy and birth; and

(ii) filing a notice of commencement of paternity proceedings with the state registrar of vital statistics within the Utah Department of Health;

(d) the consequences for failure to comply with Subsection (4)(c), including that:

(i) the birth father's ability to assert the right, **if any**, to consent or refuse to consent to the adoption is irrevocably lost;

(ii) the birth father will lose the ability to assert the right to contest any future adoption of the child; and

(iii) the birth father will lose the right, **if any**, to notice of any adoption proceedings related to the child;

(e) that the birth father may consent to the adoption, if any, within 30 days after the day on which the notice is received, and that his consent is irrevocable; and

## SB0055S01 compared with SB0055

(f) that no communication between the mother of the child and the birth father changes the rights and responsibilities of the birth father described in the notice.

(5) If the recipient of the notice described in Subsection (2) does not fully and strictly comply with the requirements of ~~{Sections 78B-6-121 and 78B-6-122}~~ Subsection (4)(c) within 30 days after the day on which he receives the notice, he will lose:

(a) the ability to assert the right to consent or refuse to consent to an adoption of the child described in the notice;

(b) the ability to assert the right to contest any future adoption of the child described in the notice; and

(c) the right to notice of any adoption proceedings relating to the child described in the notice.

(6) ~~{The notice}~~ If an individual described in Subsection (2) chooses to notify a birth father under this section, the notice shall be served on a birth father in a manner consistent with the Utah Rules of Civil Procedure or by certified mail.

Section 5. Section **78B-6-112** is amended to read:

**78B-6-112. District court jurisdiction over certain termination of parental rights proceedings.**

(1) A district court has jurisdiction to hear and decide a petition to terminate parental rights in a child if the party who filed the petition is seeking to terminate parental rights in the child for the purpose of facilitating the adoption of the child.

(2) A petition to terminate parental rights under this section may be:

(a) joined with a proceeding on an adoption petition; or

(b) filed as a separate proceeding before or after a petition to adopt the child is filed.

(3) A court may enter a final order terminating parental rights before a final decree of adoption is entered.

(4) (a) Nothing in this section limits the jurisdiction of a juvenile court relating to proceedings to terminate parental rights as described in Section 78A-6-103.

(b) This section does not grant jurisdiction to a district court to terminate parental rights in a child if the child is under the jurisdiction of the juvenile court in a pending abuse, neglect, dependency, or termination of parental rights proceeding.

(5) The district court may terminate a person's parental rights in a child if:

## SB0055S01 compared with SB0055

~~{ (a) (i) the court finds it is in the best interest of the child; and~~

~~‡ ‡(a) ‡(ii)‡~~ the person executes a voluntary consent to adoption, or relinquishment for adoption, of the child, in accordance with:

~~‡(i) ‡(A)‡~~ the requirements of this chapter; or

~~‡(ii) ‡(B)‡~~ the laws of another state or country, if the consent is valid and irrevocable;

(b) the person is an unmarried biological father who is not entitled to consent to adoption, or relinquishment for adoption, under Section 78B-6-120 or 78B-6-121;

(c) the person:

(i) received notice of the adoption proceeding relating to the child under Section 78B-6-110; and

(ii) failed to file a motion for relief, under Subsection 78B-6-110(6), within 30 days after the day on which the person was served with notice of the adoption proceeding;

(d) the court finds, under Section 78B-15-607, that the person is not a parent of the child; or

(e) the person's parental rights are terminated on grounds described in Title 78A, Chapter 6, Part 5, Termination of Parental Rights Act, if terminating the person's parental rights is in the best interests of the child.

Section 6. Section **78B-6-113** is amended to read:

**78B-6-113. Prospective adoptive parent not a resident -- Preplacement requirements.**

(1) When an adoption petition is to be finalized in this state with regard to any prospective adoptive parent who is not a resident of this state at the time a child is placed in that person's home, the ~~[potential]~~ prospective adoptive parent shall:

(a) comply with the provisions of Sections 78B-6-128 and 78B-6-130; and

(b) (i) if the child is in state custody:

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

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

## SB0055S01 compared with SB0055

the United States; or

(ii) subject to Subsection (2), if the child is not in state custody:

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

(B) complete a criminal records check and child abuse database check for each state and, if available, country, where the ~~[potential]~~ prospective adoptive parent resided during the five years immediately preceding the day on which the adoption petition is to be finalized.

(2) For purposes of Subsection (1)(b)(ii):

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

(i) the criminal history check described in Subsection (1)(b)(ii)(A) shall be submitted in accordance with procedures established by the Criminal Investigations and Technical Services Division of the Department of Public Safety; and

(ii) subject to Subsection (3), the criminal history check described in Subsection (1)(b)(ii)(B) shall be submitted in a manner acceptable to the court that will:

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

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

(b) if the adoption is being handled by a private attorney, and not a human services program, the criminal history checks described in Subsection (1)(b)(ii), shall be:

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

(ii) subject to Subsection (3), submitted in a manner acceptable to the court that will:

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

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

(3) In order to comply with Subsection (2)(a)(ii) or (b)(ii), the manner in which the criminal history check is submitted shall be approved by the court.

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

## **SB0055S01 compared with SB0055**

Section 78B-6-131.

Section 7. Section **78B-6-115** is amended to read:

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

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

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

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

(i) provide personal protection;

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

(iii) obtain services necessary for health, safety, or welfare;

(iv) carry out the activities of daily living;

(v) manage the adult's own resources; or

(vi) comprehend the nature and consequences of remaining in a situation of abuse, neglect, or exploitation.

(2) Subject to this section and Section 78B-6-117, any adult may be adopted by another adult.

(3) The following provisions of this part apply to the adoption of an adult just as though the person being adopted were a minor:

(a) (i) Section 78B-6-108;

(ii) Section 78B-6-114;

(iii) Section 78B-6-116;

(iv) Section 78B-6-118;

(v) Section 78B-6-124;

(vi) Section 78B-6-136;

(vii) Section 78B-6-137;

(viii) Section 78B-6-138;

(ix) Section 78B-6-139;

(x) Section 78B-6-141; and

(xi) Section 78B-6-142;

(b) Subsections 78B-6-105(1)(a), (1)(b)(i), (1)(b)(ii), (2), and (7), except that the juvenile court does not have jurisdiction over a proceeding for adoption of an adult, unless the

## SB0055S01 compared with SB0055

adoption arises from a case where the juvenile court has continuing jurisdiction over the adult adoptee; and

(c) if the adult adoptee is a vulnerable adult, Sections 78B-6-128 through 78B-6-131, regardless of whether the adult adoptee resides, or will reside, with the adoptors, unless the court, based on a finding of good cause, waives the requirements of those sections.

(4) Before a court enters a final decree of adoption of an adult, the adoptee and the prospective adoptive parent or parents shall appear before the court presiding over the adoption proceedings and execute consent to the adoption.

(5) No provision of this part, other than those listed or described in this section or Section 78B-6-117, apply to the adoption of an adult.

Section 8. Section **78B-6-121** is amended to read:

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

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

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

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

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

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

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

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

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

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

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



## SB0055S01 compared with SB0055

and

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

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

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

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

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

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

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

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

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

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

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

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

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

## SB0055S01 compared with SB0055

having lawful custody of the child; or

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

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

(5) Unless his ability to assert the right to consent has been lost for failure to comply with Section 78B-6-110.1, or lost under another provision of Utah law, an unmarried biological father shall have at least one business day after the child's birth to fully and strictly comply with the requirements of Subsection (3).

~~(5)~~ (6) Consent of an unmarried biological father is not required under this section if:

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

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

(ii) the unmarried biological father fails to comply with Subsection (3) within 10 business days after the day that notice of the rescission described in Subsection ~~(5)~~ (6)(b)(i) is mailed by the Office of Vital Records within the Department of Health as provided in Section 78B-15-306~~[-]~~; or

(c) the unmarried biological father is notified under Section 78B-6-110.1 and fails to preserve his rights in accordance with the requirements of that section.

~~(6)~~ (7) Unless the adoptee is conceived or born within a marriage, the petitioner in an adoption proceeding shall, prior to entrance of a final decree of adoption, file with the court a certificate from the state registrar of vital statistics within the Department of Health, stating:

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

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

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

Section 9. Section **78B-6-128** is amended to read:

### **78B-6-128. Placement adoptive evaluations -- Exceptions.**

(1) (a) Except as otherwise provided in this section, a child may not be placed in an

## **SB0055S01 compared with SB0055**

adoptive home until a preplacement adoptive evaluation, assessing the prospective adoptive parent and the prospective adoptive home, has been conducted in accordance with the requirements of this section.

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

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

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

(2) The preplacement adoptive evaluation shall include:

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

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

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

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

## SB0055S01 compared with SB0055

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

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

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

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

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

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

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

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

(ii) a certified social worker;

(iii) a clinical social worker;

(iv) a marriage and family therapist;

(v) a psychologist; ~~[or]~~

(vi) a social service worker, if supervised by a certified or clinical social worker; or

~~[(vi)]~~ (vii) a professional counselor; and

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

## **SB0055S01 compared with SB0055**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## SB0055S01 compared with SB0055

(i) this state; or

(ii) the state, district, or territory of the United States where the prospective adoptive parent or other person living in the prospective adoptive home resides.

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

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

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

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

(a) the adoption process;

(b) developmental issues that may require early intervention; and

(c) community resources that are available to the prospective adoptive parent or parents.

(9) A copy of the preplacement adoptive evaluation shall be filed with the court.

Section 10. Section **78B-6-129** is amended to read:

### **78B-6-129. Postplacement adoptive evaluations.**

(1) Except as provided in Subsections (2) and (3), a postplacement evaluation shall be conducted and submitted to the court prior to the final hearing in an adoption proceeding. The postplacement evaluation shall include:

(a) verification of the allegations of fact contained in the petition for adoption;

(b) an evaluation of the progress of the child's placement in the adoptive home; and

(c) a recommendation regarding whether the adoption is in the best interest of the child.

(2) The exemptions from and requirements for evaluations, described in Subsections 78B-6-128(1)(c), (2)(c), (6), and (8), also apply to postplacement adoptive evaluations.

(3) Upon the request of the petitioner, the court may waive the postplacement adoptive

## SB0055S01 compared with SB0055

evaluation, unless it determines that it is in the best interest of the child to require the postplacement evaluation. [~~Except where the child to be adopted and the prospective parent are related as set forth in Subsection 78B-6-128(1)(c), the court may waive the postplacement adoptive evaluation for a child who has a special need as defined in Section 62A-4a-902.~~]

Section 11. Section **78B-6-135** is amended to read:

### **78B-6-135. Division of Child and Family Services -- Duties -- Report -- Fee.**

(1) At the request of the court, the division, through its field agents, persons licensed by the division for the care and placement of children, or through the probation officer of the juvenile court or court of like jurisdiction of the county, under the division's supervision, shall:

- (a) verify the allegations of the petition for adoption of a minor child;
- (b) make a thorough investigation of the matter; and
- (c) report the division's findings in writing to the court.

(2) (a) When the court requests an investigation under Subsection (1), the court shall serve a copy of the petition, together with a statement containing the names and addresses of the child and petitioners, on the division by certified mail.

(b) The division, or the person appointed by the division, shall complete the investigation described in Subsection (2)(a) and submit a written report to the court within 60 days after the day that the petition is served on the division.

(3) (a) The division shall charge the petitioner a reasonable fee for the services provided under this section.

(b) Fees collected shall be deposited in the General Fund.

(4) The written report submitted to the court under this section shall state:

(a) why the [~~birth~~] pre-existing parents, if living, desire to be released from the care, support, and guardianship of the child;

(b) whether the [~~birth~~] pre-existing parents have abandoned the child or are [~~morally~~] unfit for custody;

(c) whether the [~~proposed~~] prospective adoptive parent or parents are financially able and morally fit to have the care, supervision, and training of the child;

(d) the physical and mental condition of the child, so far as that may be determined; and

(e) any other facts and circumstances pertaining to the child and the child's welfare.

## SB0055S01 compared with SB0055

(5) (a) The court shall conduct a full hearing on the petition for adoption and examine the parties in interest under oath.

(b) The court may adjourn the hearing from time to time as the nature of the case requires.

(6) If the report submitted by the division under Subsection (2) disapproves of the adoption of the child by the petitioner, the court may dismiss the petition.

Section 12. Section **78B-6-136** is amended to read:

### **78B-6-136. Final decree of adoption -- Agreement by adoptive parent or parents.**

(1) Except as provided in Subsection (2), before the court enters a final decree of adoption:

(a) the prospective adoptive parent or parents and the child being adopted shall appear before the appropriate court; and

(b) the prospective adoptive parent or parents shall execute an agreement stating that the child shall be adopted and treated in all respects as the adoptive parent's or parents' own lawful child.

(2) Except as provided in Subsection 78B-6-115(4), a court may waive the requirement described in Subsection (1)(a) if:

(a) the adoption is not contested;

(b) the prospective adoptive parent or parents:

(i) execute an agreement stating that the child shall be adopted and treated in all respects as the parent's or parents' own lawful child;

(ii) have the agreement described in Subsection (2)(b)(i) notarized; and

(iii) file the agreement described in Subsection (2)(b)(i) with the court; and

(c) all requirements of this chapter to obtain a final decree of adoption are otherwise complied with.

Section 13. Section **78B-6-136.5** is amended to read:

### **78B-6-136.5. Timing of entry of final decree of adoption -- Posthumous adoption.**

(1) Except as provided in Subsection (2), a final decree of adoption may not be entered until the earlier of:

(a) when the child has lived in the home of the prospective adoptive parent [~~or parents~~] for six months [~~unless, based on a finding of good cause, the court orders that the final decree~~



## SB0055S01 compared with SB0055

~~of adoption may be entered at an earlier time.]; or~~

(b) when the child has been placed for adoption with the prospective adoptive parent for six months.

(2) (a) If the prospective adoptive parent is the spouse of the ~~[birth]~~ a pre-existing parent, a final decree of adoption may not be entered until the child has lived in the home of that prospective adoptive parent for one year, unless, based on a finding of good cause, the court orders that the final decree of adoption may be entered at an earlier time.

(b) The court may, based on a finding of good cause, order that the final decree of adoption be entered at an earlier time than described in Subsection (1).

(3) If the child dies during the time that the child is placed in the home of ~~[an]~~ a prospective adoptive parent or parents for the purpose of adoption, the court has authority to enter a final decree of adoption after the child's death upon the request of the prospective adoptive parents.

(4) The court may enter a final decree of adoption declaring that a child is adopted by both a deceased and a surviving adoptive parent if, after the child is placed in the home of the child's prospective adoptive parents:

(a) one of the prospective adoptive parents dies;

(b) the surviving prospective adoptive parent requests that the court enter the decree;

and

(c) the decree is entered after the child has lived in the home of the surviving prospective adoptive parent for at least six months.

(5) Upon request of a surviving ~~[birth]~~ pre-existing parent, or a surviving parent for whom adoption of a child has been finalized, the court may enter a final decree of adoption declaring that a child is adopted by a deceased adoptive parent who was the spouse of the surviving parent at the time of the prospective adoptive parent's death.

(6) The court may enter a final decree of adoption declaring that a child is adopted by both deceased prospective adoptive parents if:

(a) both of the prospective adoptive parents die after the child is placed in the prospective adoptive ~~[parent's]~~ parents' home; and

(b) it is in the best interests of the child to enter the decree.

(7) Nothing in this section shall be construed to grant any rights to the pre-existing

## SB0055S01 compared with SB0055

parents of a child to assert any interest in the child during the six-month or one-year periods described in this section.

Section 14. Section **78B-6-140** is amended to read:

### **78B-6-140. Itemization of fees and expenses.**

(1) Except as provided in Subsection (4), prior to the date that a final decree of adoption is entered, an affidavit regarding fees and expenses, signed by the prospective adoptive parent or parents and the person or agency placing the child, shall be filed with the court.

(2) The affidavit described in Subsection (1) shall itemize the following items in connection with the adoption:

(a) all legal expenses, maternity expenses, medical or hospital expenses, and living expenses that have been or will be paid to or on behalf of the pre-existing parents of the child, including the source of payment;

(b) fees paid by the prospective adoptive parent or parents in connection with the adoption;

(c) all gifts, property, or other items that have been or will be provided to the pre-existing parents, including the source of the gifts, property, or other items;

(d) all public funds used for any medical or hospital costs in connection with the:

(i) pregnancy;

(ii) delivery of the child; or

(iii) care of the child;

(e) the state of residence of the:

(i) birth mother or the pre-existing parents; and

(ii) prospective adoptive parent or parents;

(f) a description of services provided to the prospective adoptive parents or pre-existing parents in connection with the adoption; and

(g) that Section 76-7-203 has not been violated.

(3) A copy of the affidavit described in Subsection (1) shall be provided to the Office of Licensing within the Department of Human Services.

(4) This section does not apply if the prospective adoptive parent is the legal spouse of [~~the birth~~] a pre-existing parent.

## **SB0055S01 compared with SB0055**

Section 15. Section **78B-6-141** is amended to read:

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

(1) A petition for adoption, the written report described in Section 78B-6-135, and any other documents filed in connection with the petition are sealed.

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

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

(i) while the proceeding is pending; or

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

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

(c) upon order of the court expressly permitting inspection or copying, after good cause has been shown;

(d) as provided under Section 78B-6-144;

(e) those records shall become public on the one hundredth anniversary of the date the final decree of adoption was entered; or

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

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

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

and

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

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

(i) prohibit the person described in Subsection (2)(b) from inspecting a document described in Subsection (1) that contains identifying information of the adoptive or ~~[potential]~~ prospective adoptive ~~[parents]~~ parent; and

(ii) permit the person described in Subsection (3)(b)(i) to review a copy of a document described in Subsection (3)(b)(i) after the identifying information described in Subsection

## SB0055S01 compared with SB0055

(3)(b)(i) is redacted from the document.

Section 16. Section **78B-6-143** is amended to read:

**78B-6-143. Nonidentifying health history of adoptee filed with office -- Limited availability.**

(1) Upon finalization of an adoption in this state, the person who proceeded on behalf of the petitioner for adoption, or a child-placing agency if an agency is involved in the adoption, shall file a report with the [bureau] office, in the form established by the [bureau] office. That report shall include a detailed health history, and a genetic and social history of the adoptee.

(2) The report filed under Subsection (1) may not contain any information which identifies the adoptee's birth parents or members of their families.

(3) When the report described in Subsection (1) is filed, a duplicate report shall be provided to the adoptive parents.

(4) The report filed with the [bureau] office under Subsection (1) shall only be available upon request, and upon presentation of positive identification, to the following persons:

- (a) the adoptive parents;
- (b) in the event of the death of the adoptive parents, the adoptee's legal guardian;
- (c) the adoptee;
- (d) in the event of the death of the adoptee, the adoptee's spouse, if the spouse is the parent or guardian of the adoptee's child;
- (e) the adoptee's child or descendant;
- (f) the adoptee's birth parent; and
- (g) the adoptee's adult sibling.

(5) No information which identifies a birth parent or his family may be disclosed under this section.

(6) The actual cost of providing information under this section shall be paid by the person requesting the information.

Section 17. Section **78B-6-144** is amended to read:

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

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

## SB0055S01 compared with SB0055

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

(b) The [bureau] office may only release identifying information to an adult adoptee or birth parent when it receives requests from both the adoptee and [his] the adoptee's birth parent.

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

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

(b) The [bureau] office may only release identifying information to an adult adoptee or adult sibling when it receives requests from both the adoptee and [his] the adoptee's adult sibling.

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

(3) Information registered with the bureau under this section is available only to a

## SB0055S01 compared with SB0055

registered adult adoptee and [his] the adoptee's registered birth parent or registered adult sibling, under the terms of this section.

(4) Information regarding a birth parent who has not registered a request with the bureau may not be disclosed.

(5) The bureau may charge a fee for services provided under this section, limited to the cost of providing those services.

Section 18. Section **78B-6-145** is amended to read:

### **78B-6-145. Restrictions on disclosure of information -- Violations -- Penalty.**

(1) Information maintained or filed with the [~~bureau~~] office under this chapter may not be disclosed except as provided by this chapter, or pursuant to a court order.

(2) Any person who discloses information obtained from the [~~bureau's~~] office's voluntary adoption registry in violation of this part, or knowingly allows that information to be disclosed in violation of this chapter is guilty of a class A misdemeanor.

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### **Legislative Review Note**

~~as of 2-1-12 1:22 PM~~

~~Office of Legislative Research and General Counsel}~~