

**Senator Todd Weiler** proposes the following substitute bill:

**ADOPTION ACT AMENDMENTS**

2014 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Todd Weiler**

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

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**LONG TITLE**

**General Description:**

This bill amends provisions of Title 78B, Chapter 6, Part 1, Utah Adoption Act, relating to the rights and obligations of individuals in relation to the adoption of a child.

**Highlighted Provisions:**

This bill:

- ▶ amends the definition of a "qualifying circumstance";
- ▶ modifies provisions relating to the rights and obligations of an unmarried biological father;
- ▶ extends, from 20 days to 30 days, the period of time during which an unmarried biological father is required to take certain action in relation to a child; and
- ▶ provides that a birth mother may not consent to adoption or relinquishment of the child for adoption, if the child is six months of age or less, unless:
  - at any point during the time period beginning at the conception of the child and ending at the time the mother executes a consent to adoption or relinquishment of the child for adoption, the birth mother or one of the adoptive parents resided in the state no fewer than 90 total days on a permanent or temporary basis; or
  - the birth mother files a declaration regarding the potential birth father with the court, before or at the time of a petition for adoption.



26 **Money Appropriated in this Bill:**

27 None

28 **Other Special Clauses:**

29 None

30 **Utah Code Sections Affected:**

31 AMENDS:

32 **78B-6-110**, as last amended by Laws of Utah 2013, Chapter 458

33 **78B-6-122**, as last amended by Laws of Utah 2013, Chapter 474

34 **78B-6-125**, as renumbered and amended by Laws of Utah 2008, Chapter 3



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

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

38 **78B-6-110. Notice of adoption proceedings.**

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

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

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

44 (b) An unmarried biological father is entitled to actual notice of a birth or an adoption  
45 proceeding with regard to his child only as provided in this section or Section 78B-6-125.

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

47 (a) any person or agency whose consent or relinquishment is required under Section  
48 78B-6-120 or 78B-6-121, unless that right has been terminated by:

49 (i) waiver;

50 (ii) relinquishment;

51 (iii) actual consent, as described in Subsection (12); or

52 (iv) judicial action;

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

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

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

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

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

63 (g) a person who is:

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

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

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

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

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

74 (ii) file a notice of commencement of the proceedings described in Subsection (3)(a)(i)  
75 with the office of vital statistics within the Department of 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) When the state registrar of vital statistics receives a completed form, the registrar  
83 shall:

84 (i) record the date and time the form was received; and

85 (ii) immediately enter the information provided by the unmarried biological father in  
86 the confidential registry established by Subsection 78B-6-121(3)(c).

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

- 88 (i) may be filed before or after the child's birth; and  
89 (ii) shall be filed prior to the mother's:  
90 (A) execution of consent to adoption of the child; or  
91 (B) relinquishment of the child for adoption.  
92 (4) Notice provided in accordance with this section need not disclose the name of the  
93 mother of the child who is the subject of an adoption proceeding.  
94 (5) The notice required by this section:  
95 (a) may be served at any time after the petition for adoption is filed, but may not be  
96 served on a birth mother before she has given birth to the child who is the subject of the  
97 petition for adoption;  
98 (b) shall be served at least 30 days prior to the final dispositional hearing;  
99 (c) shall specifically state that the person served shall fulfill the requirements of  
100 Subsection (6)(a), within 30 days after the day on which the person receives service if the  
101 person intends to intervene in or contest the adoption;  
102 (d) shall state the consequences, described in Subsection (6)(b), for failure of a person  
103 to file a motion for relief within 30 days after the day on which the person is served with notice  
104 of an adoption proceeding;  
105 (e) is not required to include, nor be accompanied by, a summons or a copy of the  
106 petition for adoption; and  
107 (f) shall state where the person may obtain a copy of the petition for adoption.  
108 (6) (a) A person who has been served with notice of an adoption proceeding and who  
109 wishes to contest the adoption shall file a motion to intervene in the adoption proceeding:  
110 (i) within 30 days after the day on which the person was served with notice of the  
111 adoption proceeding;  
112 (ii) setting forth specific relief sought; and  
113 (iii) accompanied by a memorandum specifying the factual and legal grounds upon  
114 which the motion is based.  
115 (b) A person who fails to fully and strictly comply with all of the requirements  
116 described in Subsection (6)(a) within 30 days after the day on which the person was served  
117 with notice of the adoption proceeding:  
118 (i) waives any right to further notice in connection with the adoption;

119 (ii) forfeits all rights in relation to the adoptee; and  
120 (iii) is barred from thereafter bringing or maintaining any action to assert any interest in  
121 the adoptee.

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

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

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

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

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

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

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

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

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

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

146 (11) Except as to those persons whose consent to an adoption is required under Section  
147 78B-6-120 or 78B-6-121, the sole purpose of notice under this section is to enable the person  
148 served to:

149 (a) intervene in the adoption; and

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

151 (12) In order to be excused from the requirement to provide notice as described in  
152 Subsection (2)(a) on the grounds that the person has provided consent to the adoption  
153 proceeding under Subsection (2)(a)(iii), the consent may not be implied consent, as described  
154 in Section 78B-6-120.1.

155 Section 2. Section 78B-6-122 is amended to read:

156 **78B-6-122. Qualifying circumstance.**

157 (1) (a) For purposes of this section, "qualifying circumstance" means that, at any point  
158 during the time period beginning at the conception of the child and ending at the time the  
159 mother executed a consent to adoption or relinquishment of the child for adoption:

160 (i) the child or the child's mother resided in the state no fewer than 90 total days, as  
161 described in Subsection (1)(b), on a permanent [basis,] or [a] temporary basis [of no less than  
162 30 consecutive days, in the state]; or

163 (ii) two or more of the following circumstances existed:

164 ~~[(ii)]~~ (A) the mother intended to give birth to the child in the state;

165 ~~[(iii)]~~ (B) the child was born in the state; or

166 ~~[(iv)]~~ (C) the mother intended to execute a consent to adoption or relinquishment of the  
167 child for adoption~~[-(A)]~~ in the state~~;~~ or ~~[(B)]~~ under the laws of the state.

168 (b) In determining, under Subsection (1)(a)(i), whether the 90-day requirement is  
169 satisfied, the following apply:

170 (i) the 90 days are not required to be consecutive;

171 (ii) no absence from the state may be for more than seven consecutive days;

172 (iii) any day on which the individual is absent from the state does not count toward the  
173 total 90-day period; and

174 (iv) the 90-day period begins and ends during a period that is no more than 120  
175 consecutive days.

176 ~~[(b)]~~ (c) For purposes of Subsection (1)~~[(c)]~~~~(d)~~(i)(C) only, when determining whether  
177 an unmarried biological father has demonstrated a full commitment to his parental  
178 responsibilities, a court shall consider the totality of the circumstances, including, if applicable:

179 (i) efforts he has taken to discover the location of the child or the child's mother;

180 (ii) whether he has expressed or demonstrated an interest in taking responsibility for

181 the child;

182 (iii) whether, and to what extent, he has developed, or attempted to develop, a  
183 relationship with the child;

184 (iv) whether he offered to provide and, if the offer was accepted, did provide, financial  
185 support for the child or the child's mother;

186 (v) whether, and to what extent, he has communicated, or attempted to communicate,  
187 with the child or the child's mother;

188 (vi) whether he has filed legal proceedings to establish his paternity of, and take  
189 responsibility for, the child;

190 (vii) whether he has filed a notice with a public official or agency relating to:

191 (A) his paternity of the child; or

192 (B) legal proceedings to establish his paternity of the child; or

193 (viii) other evidence that demonstrates that he has demonstrated a full commitment to  
194 his parental responsibilities.

195 ~~(e)~~ (d) Notwithstanding the provisions of Section 78B-6-121, the consent of an  
196 unmarried biological father is required with respect to an adoptee who is under the age of 18 if:

197 (i) (A) the unmarried biological father did not know, and through the exercise of  
198 reasonable diligence could not have known, before the time the mother executed a consent to  
199 adoption or relinquishment of the child for adoption, that a qualifying circumstance existed;

200 (B) before the mother executed a consent to adoption or relinquishment of the child for  
201 adoption, the unmarried biological father fully complied with the requirements to establish  
202 parental rights in the child, and to preserve the right to notice of a proceeding in connection  
203 with the adoption of the child, imposed by:

204 (I) the last state where the unmarried biological father knew, or through the exercise of  
205 reasonable diligence should have known, that the mother resided in before the mother executed  
206 the consent to adoption or relinquishment of the child for adoption; or

207 (II) the state where the child was conceived; and

208 (C) the unmarried biological father has demonstrated, based on the totality of the  
209 circumstances, a full commitment to his parental responsibilities, as described in Subsection  
210 (1)~~(b)~~(c); or

211 (ii) (A) the unmarried biological father knew, or through the exercise of reasonable

212 diligence should have known, before the time the mother executed a consent to adoption or  
213 relinquishment of the child for adoption, that a qualifying circumstance existed; and

214 (B) the unmarried biological father complied with the requirements of Section  
215 78B-6-121 before the later of:

216 (I) [20] 30 days after the day that the unmarried biological father knew, or through the  
217 exercise of reasonable diligence should have known, that a qualifying circumstance existed; or

218 (II) the time that the mother executed a consent to adoption or relinquishment of the  
219 child for adoption.

220 (2) An unmarried biological father who does not fully and strictly comply with the  
221 requirements of Section 78B-6-121 and this section is considered to have waived and  
222 surrendered any right in relation to the child, including the right to:

223 (a) notice of any judicial proceeding in connection with the adoption of the child; and

224 (b) consent, or refuse to consent, to the adoption of the child.

225 Section 3. Section 78B-6-125 is amended to read:

226 **78B-6-125. Birth mother's consent.**

227 (1) A birth mother may not consent to ~~[the adoption of her child or relinquish control~~  
228 ~~or custody of her child]~~ adoption or relinquishment of the child for adoption until at least 24  
229 hours after the birth of ~~[her]~~ the child.

230 (2) The consent or relinquishment of any other person as required by Sections  
231 78B-6-120 and 78B-6-121 may be executed at any time, including ~~[prior to]~~ before the birth of  
232 the child.

233 (3) Notwithstanding any provision of this section or chapter, a birth mother may not  
234 consent to adoption or relinquishment of the child for adoption, if the child is six months of age  
235 or less, unless:

236 (a) at any point during the time period beginning at the conception of the child and  
237 ending at the time the mother executes a consent to adoption or relinquishment of the child for  
238 adoption, the birth mother or one of the adoptive parents resided in the state no fewer than 90  
239 total days, as described in Subsection (4), on a permanent or temporary basis; or

240 (b) the birth mother files a declaration regarding each potential birth father of the child  
241 with the court, in accordance with Subsection (5), before or at the time a petition for adoption  
242 is filed with the court.



243 (4) In determining, under Subsection (3)(a), whether the 90-day requirement is  
244 satisfied, the following apply:  
245 (a) the 90 days are not required to be consecutive;  
246 (b) no absence from the state may be for more than seven consecutive days;  
247 (c) any day on which the individual is absent from the state does not count toward the  
248 total 90-day period; and

249 (d) the 90-day period begins and ends during a period that is no more than 120  
250 consecutive days.

251 (5) The declaration regarding a potential birth father that is filed under Subsection (3)  
252 shall include, for each potential birth father:

253 (a) if known, the potential birth father's name, date of birth, social security number, and  
254 address;

255 (b) whether the potential birth father was notified of:

256 (i) the birth mother's pregnancy;

257 (ii) the fact that he is a potential birth father; or

258 (iii) the fact that the birth mother intends to consent to adoption or relinquishment of  
259 the child for adoption, in Utah;

260 (c) each state where the birth mother lived during the pregnancy;

261 (d) if known, the state in which the child was conceived;

262 (e) whether the birth mother informed the potential birth father that she was traveling  
263 to or planning to reside in Utah;

264 (f) whether the birth mother has contacted the potential birth father while she has been  
265 located in Utah;

266 (g) whether, and for how long, the potential birth father has ever lived with the child;

267 (h) whether the potential birth father has given the birth mother money or offered to  
268 pay for any of her expenses during pregnancy or the child's birth;

269 (i) whether the potential birth father has offered to pay child support;

270 (j) if known, whether the potential birth father has taken any legal action to establish  
271 paternity of the child, either in Utah or in any other state, and, if known, what action he has  
272 taken; and

273 (k) whether the birth mother has ever been involved in a domestic violence matter with

274 the potential birth father.

275 (6) Based on the declaration regarding the potential birth father, the court may order  
276 the birth mother to serve a potential birth father with at least 30 days' written notice that she  
277 intends to consent to adoption or relinquishment of the child for adoption, if the court finds that  
278 the potential birth father:

279 (a) has taken sufficient action to demonstrate an interest in the child;

280 (b) has taken sufficient action to attempt to preserve his legal rights as a birth father; or

281 (c) does not know, and does not have a reason to know, that:

282 (i) the mother or child are present in Utah;

283 (ii) the mother intended to give birth to the child in Utah;

284 (iii) the child was born in Utah; or

285 (iv) the mother intends to consent to adoption or relinquishment of the child for

286 adoption in Utah.