

SB0229S02 compared with SB0229S01

~~text~~ shows text that was in SB0229S01 but was deleted in SB0229S02.

text shows text that was not in SB0229S01 but was inserted into SB0229S02.

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Senator Todd Weiler proposes the following substitute bill:

ADOPTION ACT AMENDMENTS

2014 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Todd Weiler

House Sponsor: _____

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 ~~the~~ adoption ~~of her child~~ or ~~relinquish her~~ relinquishment of the child for adoption, if the child is six months

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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 ~~less~~ fewer than 90 total days on a permanent or temporary basis; or
- the birth mother ~~{serves the unmarried biological father with at least 30 days written notice that she intends to consent to the adoption or relinquishment of the child for adoption, in Utah}~~ files a declaration regarding the potential birth father with the court, before or at the time of a petition for adoption.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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

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

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

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

Section 1. 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 or Section 78B-6-125.

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

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(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) actual consent, as described in Subsection (12); 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 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 shall, consistent with Subsection (3)(d):

(i) initiate proceedings in a district court 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 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

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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) When the state registrar of vital statistics receives a completed form, the registrar shall:

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

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

(e) 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 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 shall fulfill the requirements of Subsection (6)(a), within 30 days after the day on which the person receives service if 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

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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.

(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

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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.

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

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

78B-6-122. Qualifying circumstance.

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) whether he has expressed or demonstrated an interest in taking responsibility for the child;

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

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

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

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

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

(A) his paternity of the child; or

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

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

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

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

(B) before the mother executed a consent to adoption or relinquishment of the child for adoption, the unmarried biological father fully complied with the requirements to establish

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parental rights in the child, and to preserve the right to notice of a proceeding in connection with the adoption of the child, imposed by:

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

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

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

(ii) (A) the unmarried biological father knew, or through the exercise of reasonable diligence should have known, before the time the mother executed a consent to adoption or relinquishment of the child for adoption, that a qualifying circumstance existed; and

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

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

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

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

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

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

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

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

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

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

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

(a) 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 ~~less}~~fewer than 90 total days, as described in Subsection (4), on a permanent or temporary basis; or

(b) the birth mother ~~serves the unmarried biological father with at least 30 days written notice that she intends to consent to the adoption of the child, or relinquishment of the child for adoption, in Utah}~~files a declaration regarding each potential birth father of the child with the court, in accordance with Subsection (5), before or at the time a petition for adoption is filed with the court.

(4) In determining, under Subsection (3)(a), whether the 90-day requirement is satisfied, the following apply:

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

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

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

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

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

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

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

(i) the birth mother's pregnancy;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(iii) the child was born in Utah; or

(iv) the mother intends to consent to adoption or relinquishment of the child for adoption in Utah.