

ADOPTION AMENDMENTS

2015 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Todd Weiler

House Sponsor: V. Lowry Snow

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LONG TITLE

General Description:

This bill amends the Utah Adoption Act.

Highlighted Provisions:

This bill:

- ▶ provides a definition;
- ▶ requires an unmarried biological father to file a petition in district court for an order establishing temporary child support before the unmarried biological father may consent to the adoption of a child who is six months of age or less; and
- ▶ creates a process for the court's consideration of multiple petitions for adoption.

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 2012, Chapter 340

**78B-6-111**, as renumbered and amended by Laws of Utah 2008, Chapter 3

**78B-6-121**, as last amended by Laws of Utah 2013, Chapters 278 and 458

**78B-6-133**, as last amended by Laws of Utah 2010, Chapter 237

REPEALS:

**78B-6-132**, as last amended by Laws of Utah 2012, Chapter 281

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

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

32 **78B-6-103. Definitions.**

33 As used in this part:

34 (1) "Adoptee" means a person who:

35 (a) is the subject of an adoption proceeding; or

36 (b) has been legally adopted.

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

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

39 (b) except as provided in Subsection **78B-6-138(2)**, terminates the parental rights of

40 any other person with respect to the child.

41 (3) "Adoption service provider" means a:

42 (a) child-placing agency; or

43 (b) licensed counselor who has at least one year of experience providing professional

44 social work services to:

45 (i) adoptive parents;

46 (ii) prospective adoptive parents; or

47 (iii) birth parents.

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

49 (5) "Adult" means a person who is 18 years of age or older.

50 (6) "Adult adoptee" means an adoptee who is 18 years of age or older.

51 (7) "Adult sibling" means a brother or sister of the adoptee, who is 18 years of age or

52 older and whose birth mother or father is the same as that of the adoptee.

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

54 (9) "Birth parent" means:

55 (a) a birth mother;

56 (b) a man whose paternity of a child is established;

57 (c) a man who:

- 58 (i) has been identified as the father of a child by the child's birth mother; and  
59 (ii) has not denied paternity; or  
60 (d) an unmarried biological father.
- 61 (10) "Child-placing agency" means an agency licensed to place children for adoption  
62 under Title 62A, Chapter 4a, Part 6, Child Placing.
- 63 (11) "Cohabiting" means residing with another person and being involved in a sexual  
64 relationship with that person.
- 65 (12) "Division" means the Division of Child and Family Services, within the  
66 Department of Human Services, created in Section [62A-4a-103](#).
- 67 (13) "Extra-jurisdictional child-placing agency" means an agency licensed to place  
68 children for adoption by a district, territory, or state of the United States, other than Utah.
- 69 (14) "Genetic and social history" means a comprehensive report, when obtainable, on  
70 an adoptee's birth parents, aunts, uncles, and grandparents, which contains the following  
71 information:
- 72 (a) medical history;
  - 73 (b) health status;
  - 74 (c) cause of and age at death;
  - 75 (d) height, weight, and eye and hair color;
  - 76 (e) ethnic origins;
  - 77 (f) where appropriate, levels of education and professional achievement; and
  - 78 (g) religion, if any.
- 79 (15) "Health history" means a comprehensive report of the adoptee's health status at the  
80 time of placement for adoption, and medical history, including neonatal, psychological,  
81 physiological, and medical care history.
- 82 (16) "Identifying information" means the name and address of a pre-existing parent or  
83 adult adoptee, or other specific information which by itself or in reasonable conjunction with  
84 other information may be used to identify that person.
- 85 (17) "Licensed counselor" means a person who is licensed by the state, or another state,

86 district, or territory of the United States as a:

87 (a) certified social worker;

88 (b) clinical social worker;

89 (c) psychologist;

90 (d) marriage and family therapist;

91 (e) professional counselor; or

92 (f) an equivalent licensed professional of another state, district, or territory of the

93 United States.

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

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

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

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

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

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

105 (22) "Pre-existing parent" means:

106 (a) a birth parent; or

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

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

110 (24) "Relative" means:

111 (a) an adult who is a grandparent, great grandparent, aunt, great aunt, uncle, great  
112 uncle, brother-in-law, sister-in-law, stepparent, first cousin, stepsibling, sibling of a child, or  
113 first cousin of the child's parent; and

114 (b) in the case of a child defined as an "Indian" under the Indian Child Welfare Act, 25  
115 U.S.C. Sec. 1903, an "extended family member" as defined by that statute.

116 ~~[(24)]~~ (25) "Unmarried biological father" means a person who:

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

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

120 Section 2. Section **78B-6-111** is amended to read:

121 **78B-6-111. Criminal sexual offenses.**

122 ~~[A]~~ An unmarried biological father is not entitled to notice of an adoption proceeding,  
123 nor is the consent of ~~[a]~~ an unmarried biological father required in connection with an adoption  
124 proceeding, in cases where it is shown that the child who is the subject of the proceeding was  
125 conceived as a result of conduct ~~[which would constitute any]~~ that constitutes a sexual offense  
126 ~~[described in]~~ under Title 76, Chapter 5, Part 4, Sexual Offenses, or under the laws of the state  
127 where the child was conceived, regardless of whether the unmarried biological father is  
128 formally charged with or convicted of a criminal offense.

129 Section 3. Section **78B-6-121** is amended to read:

130 **78B-6-121. Consent of unmarried biological father.**

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

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

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

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

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

141 (iii) demonstrated a full commitment to the responsibilities of parenthood by financial

142 support of the child of a fair and reasonable sum in accordance with the father's ability; or

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

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

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

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

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

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

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

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

165 (a) initiates proceedings in a district court of Utah to establish paternity under Title  
166 78B, Chapter 15, Utah Uniform Parentage Act;

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

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

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

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

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

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

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

180 (ii) he was prevented from paying the expenses by the person or authorized agency  
181 having lawful custody of the child; or

182 (iii) the mother [~~refuses~~] refused to accept the unmarried biological father's offer to pay  
183 the expenses described in this Subsection (3)(d).

184 (4) (i) The notice described in Subsection (3)(c) is considered filed when received by  
185 the state registrar of vital statistics.

186 (ii) If the unmarried biological father fully complies with the requirements of  
187 Subsection (3), and an adoption of the child is not completed, the unmarried biological father  
188 shall, without any order of the court, be legally obligated for a reasonable amount of child  
189 support, pregnancy expenses, and child birth expenses, in accordance with his financial ability.

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

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

195 (a) the court determines, in accordance with the requirements and procedures of Title  
196 78A, Chapter 6, Part 5, Termination of Parental Rights Act, that the unmarried biological  
197 father's rights should be terminated, based on the petition of any interested party;

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

200 (ii) the unmarried biological father fails to comply with Subsection (3) within 10  
201 business days after the day that notice of the rescission described in Subsection (6)(b)(i) is  
202 mailed by the Office of Vital Records within the Department of Health as provided in Section  
203 78B-15-306; or

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

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

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

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

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

213 Section 4. Section 78B-6-133 is amended to read:

214 **78B-6-133. Contested adoptions -- Rights of parties -- Determination of custody.**

215 (1) If a person whose consent for an adoption is required pursuant to Subsection  
216 78B-6-120(1)(b), (c), (d), (e), or (f) refused to consent, the court shall determine whether  
217 proper grounds exist for the termination of that person's rights pursuant to the provisions of this  
218 chapter or Title 78A, Chapter 6, Part 5, Termination of Parental Rights Act.

219 (2) (a) If there are proper grounds to terminate the person's parental rights, the court  
220 shall order that the person's rights be terminated.

221 (b) If there are not proper grounds to terminate the person's parental rights, the court  
222 shall:

223 (i) dismiss the adoption petition;

224 (ii) conduct an evidentiary hearing to determine who should have custody of the child;

225 and

- 226 (iii) award custody of the child in accordance with the child's best interest.
- 227 (3) Evidence considered at the custody hearing may include:
- 228 (a) evidence of psychological or emotional bonds that the child has formed with a third  
229 person, including the prospective adoptive parent; and
- 230 (b) any detriment that a change in custody may cause the child.
- 231 (4) If the court dismisses the adoption petition, the fact that a person relinquished a  
232 child for adoption or consented to the adoption may not be considered as evidence in a custody  
233 proceeding described in this section, or in any subsequent custody proceeding, that it is not in  
234 the child's best interest for custody to be awarded to such person or that:
- 235 (a) the person is unfit or incompetent to be a parent;
- 236 (b) the person has neglected or abandoned the child;
- 237 (c) the person is not interested in having custody of the child; or
- 238 (d) the person has forfeited the person's parental presumption.
- 239 (5) Any custody order entered pursuant to this section may also:
- 240 (a) include provisions for:
- 241 (i) parent-time; or
- 242 (ii) visitation by an interested third party; and
- 243 (b) provide for the financial support of the child.
- 244 (6) (a) If a person or entity whose consent is required for an adoption under Subsection  
245 [78B-6-120\(1\)\(a\)](#) or (g) refuses to consent, the court shall proceed with an evidentiary hearing  
246 and award custody as set forth in Subsection (2).
- 247 (b) The court may also finalize the adoption if doing so is in the best interest of the  
248 child.
- 249 (7) (a) A person may not contest an adoption after the final decree of adoption is  
250 entered, if that person:
- 251 (i) was a party to the adoption proceeding;
- 252 (ii) was served with notice of the adoption proceeding; or
- 253 (iii) executed a consent to the adoption or relinquishment for adoption.

254 (b) No person may contest an adoption after one year from the day on which the final  
255 decree of adoption is entered.

256 (c) The limitations on contesting an adoption action, described in this Subsection (7),  
257 apply to all attempts to contest an adoption:

258 (i) regardless of whether the adoption is contested directly or collaterally; and

259 (ii) regardless of the basis for contesting the adoption, including claims of fraud,  
260 duress, undue influence, lack of capacity or competency, mistake of law or fact, or lack of  
261 jurisdiction.

262 (d) The limitations on contesting an adoption action, described in this Subsection (7),  
263 do not prohibit a timely appeal of:

264 (i) a final decree of adoption; or

265 (ii) a decision in an action challenging an adoption, if the action was brought within the  
266 time limitations described in Subsections (7)(a) and (b).

267 (8) A court that has jurisdiction over a child for whom more than one petition for  
268 adoption is filed shall grant a hearing only under the following circumstances:

269 (a) to a petitioner:

270 (i) with whom the child is placed;

271 (ii) who has custody or guardianship of the child;

272 (iii) who has filed a written statement with the court within 120 days after the day on  
273 which the shelter hearing is held:

274 (A) requesting immediate placement of the child with the petitioner; and

275 (B) expressing the petitioner's intention of adopting the child; or

276 (iv) who is a relative:

277 (A) with whom the child has a significant and substantial relationship; and

278 (B) who was unaware, within the first 120 days after the day on which the shelter  
279 hearing is held, of the child's removal from the child's parent; or

280 (b) if the child:

281 (i) has been in the current placement for less than 180 days before the day on which the

282 petitioner files the petition for adoption; or  
283 (ii) is placed with, or is in the custody or guardianship of, an individual who previously  
284 informed the division or the court that the individual is unwilling or unable to adopt the child.

285 (9) (a) If the court grants a hearing on more than one petition for adoption, there is a  
286 rebuttable presumption that it is in the best interest of a child to be placed for adoption with a  
287 petitioner:

288 (i) who has fulfilled the requirements described in Title 78B, Chapter 6, Part 1, Utah  
289 Adoption Act; and

290 (ii) (A) with whom the child has continuously resided for six months;

291 (B) who has filed a written statement with the court within 120 days after the day on  
292 which the shelter hearing is held, as described in Subsection (8)(a)(iii); or

293 (C) who is a relative described in Subsection (8)(a)(iv).

294 (b) The court may consider other factors relevant to the best interest of the child to  
295 determine whether the presumption is rebutted.

296 (c) The court shall weigh the best interest of the child uniformly between petitioners if  
297 more than one petitioner satisfies a rebuttable presumption condition described in Subsection  
298 (9)(a).

299 (10) Nothing in this section shall be construed to prevent the division or the child's  
300 guardian ad litem from appearing or participating in any proceeding for a petition for adoption.

301 (11) Neither the court nor the division is obligated to inform a petitioner of the  
302 petitioner's rights or duties under this section.

303 **Section 5. Repealer.**

304 This bill repeals:

305 Section **78B-6-132, Children in the custody of the Division of Child and Family**  
306 **Services -- Consideration of child's relationship with foster parents who petition for**  
307 **adoption.**