

SB0101S05 compared with SB0101S04

~~text~~ shows text that was in SB0101S04 but was deleted in SB0101S05.

text shows text that was not in SB0101S04 but was inserted into SB0101S05.

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Senator Todd Weiler proposes the following substitute bill:

ADOPTION AMENDMENTS

2015 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Todd Weiler

House Sponsor: ~~_____~~ V. Lowry Snow

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:

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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

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

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:

- (a) is the subject of an adoption proceeding; or
- (b) 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;
- (ii) prospective adoptive parents; or
- (iii) birth parents.

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

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

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- (6) "Adult adoptee" means an adoptee who is 18 years of age or older.
- (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.
- (9) "Birth parent" means:
 - (a) a birth mother;
 - (b) a man whose paternity of a child is established;
 - (c) 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.
- (10) "Child-placing agency" means an agency licensed to place children for adoption under Title 62A, Chapter 4a, Part 6, Child Placing.
- (11) "Cohabiting" means residing with another person and being involved in a sexual relationship with that person.
- (12) "Division" means the Division of Child and Family Services, within the Department of Human Services, created in Section 62A-4a-103.
- (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.
- (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.
- (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,

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physiological, and medical care history.

(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.

(17) "Licensed counselor" means a person who is licensed by the state, or 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.

(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.

(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.

(24) "Relative" means:

(a) an adult who is a grandparent, great grandparent, aunt, great aunt, uncle, great

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uncle, brother-in-law, sister-in-law, stepparent, first cousin, stepsibling, sibling of a child, or ~~fa~~
~~first~~ first cousin of the child's parent; and

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

~~[(24)]~~ (25) "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 ~~[(24)]~~
(25)(a) at the time of the child's conception or birth.

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

78B-6-111. Criminal sexual offenses.

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

Section 3. 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
Subsections (5) and (6), 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

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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; 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 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

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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 having lawful custody of the child; or

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

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

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

(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).

(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;

(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 (6)(b)(i) is mailed by the Office of Vital Records within the Department of Health as provided in Section 78B-15-306; or

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(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.

(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)]~~(d); 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 4. Section ~~{78B-6-132}~~78B-6-133 is amended to read:

~~{~~ ~~78B-6-132. Adoption by married couple.~~

~~————— [(1) In assessing the best interest of a child in the custody of the Division of Child and Family Services whose foster parents have petitioned for adoption, the court shall give special consideration to the relationship of the child with his foster parents, if the child has been in that home for a period of six months or longer.]~~

~~————— [(2)] Nothing in this section shall be construed as requiring an adoption that would be contrary to the public policy of placing an adoptable child with a married couple whenever possible.~~

~~————— Section 5. Section 78B-6-133 is amended to read:~~

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

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

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

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

(i) dismiss the adoption petition;

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

and

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(iii) award custody of the child in accordance with the child's best interest.

(3) Evidence considered at the custody hearing may include:

(a) evidence of psychological or emotional bonds that the child has formed with a third person, including the prospective adoptive parent; and

(b) any detriment that a change in custody may cause the child.

(4) If the court dismisses the adoption petition, the fact that a person relinquished a child for adoption or consented to the adoption may not be considered as evidence in a custody proceeding described in this section, or in any subsequent custody proceeding, that it is not in the child's best interest for custody to be awarded to such person or that:

(a) the person is unfit or incompetent to be a parent;

(b) the person has neglected or abandoned the child;

(c) the person is not interested in having custody of the child; or

(d) the person has forfeited the person's parental presumption.

(5) Any custody order entered pursuant to this section may also:

(a) include provisions for:

(i) parent-time; or

(ii) visitation by an interested third party; and

(b) provide for the financial support of the child.

(6) (a) If a person or entity whose consent is required for an adoption under Subsection 78B-6-120(1)(a) or (g) refuses to consent, the court shall proceed with an evidentiary hearing and award custody as set forth in Subsection (2).

(b) The court may also finalize the adoption if doing so is in the best interest of the child.

(7) (a) A person may not contest an adoption after the final decree of adoption is entered, if that person:

(i) was a party to the adoption proceeding;

(ii) was served with notice of the adoption proceeding; or

(iii) executed a consent to the adoption or relinquishment for adoption.

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

(c) The limitations on contesting an adoption action, described in this Subsection (7),

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apply to all attempts to contest an adoption:

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

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

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

(i) a final decree of adoption; or

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

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

(a) to a petitioner:

(i) with whom the child is placed;

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

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

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

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

(iv) who is a relative:

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

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

(b) if the child:

(i) has been in the current placement for less than 180 days before the day on which the petitioner files the petition for adoption; or

(ii) is placed with, or is in the custody or guardianship of, an individual who previously informed the division or the court that the individual is unwilling or unable to adopt the child.

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

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

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

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

(C) who is a relative described in Subsection (8)(a)(iv);~~or~~

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

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

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

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

Section 5. Repealer.

This bill repeals:

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