

HB0370S01 compared with HB0370

~~deleted text~~ shows text that was in HB0370 but was deleted in HB0370S01.

inserted text shows text that was not in HB0370 but was inserted into HB0370S01.

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Representative Edward H. Redd proposes the following substitute bill:

ADOPTIVE STUDIES AND EVALUATIONS AMENDMENTS

2016 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Edward H. Redd

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends provisions related to adoptive evaluations.

Highlighted Provisions:

This bill:

- ▶ addresses who may conduct a home study as part of a preplacement adoptive evaluation;
- ▶ requires a home study to contain certain information; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

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Utah Code Sections Affected:

AMENDS:

78B-6-103, as last amended by Laws of Utah 2015, Chapters 137 and 194

78B-6-128, as last amended by Laws of Utah 2013, Chapter 458

78B-6-130, as enacted by Laws of Utah 2008, Chapter 3

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 document" means an adoption-related document filed with the office, a petition for adoption, a decree of adoption, an original birth certificate, or evidence submitted in support of a supplementary birth certificate.

(4) "Adoption service provider" means [a]:

- (a) a child-placing agency; [~~or~~]
- (b) a 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[~~;~~]; or

(c) the Office of Licensing within the Department of Human Services.

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

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

(7) "Adult adoptee" means an adoptee who is 18 years of age or older and was adopted

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as a minor.

(8) "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.

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

(10) "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.

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

(12) "Cohabiting" means residing with another person and being involved in a sexual relationship with that person.

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

(14) "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.

(15) "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.

(16) "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.

(17) "Identifying information" means information in the possession of the office, which contains the name and address of a pre-existing parent or adult adoptee, or other specific information that by itself or in reasonable conjunction with other information may be used to identify that person, including information on a birth certificate or in an adoption document.

(18) "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.

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

(20) "Mature adoptee" means an adoptee who is adopted when the adoptee is an adult.

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

(22) "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.

(23) "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

(23)(a) at the time of the child's conception or birth.

(24) "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.

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

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(26) "Relative" means:

(a) an adult who is a grandparent, great grandparent, aunt, great aunt, uncle, great uncle, brother-in-law, sister-in-law, stepparent, first cousin, stepsibling, sibling of a child, or 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, an "extended family member" as defined by that statute.

(27) "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

(27)(a) at the time of the child's conception or birth.

Section 2. Section **78B-6-128** is amended to read:

78B-6-128. Preplacement adoptive evaluations -- Exceptions.

(1) (a) Except as otherwise provided in this section, a child may not be placed in an 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~~] prospective adoptive home pending completion of a preplacement adoptive evaluation described in this section.

(c) (i) Subsection (1)(a) does not apply if a pre-existing parent has legal custody of the child to be adopted and the prospective adoptive parent is related to that child or the pre-existing parent as a stepparent, sibling by half or whole blood or by adoption, grandparent, aunt, uncle, or first cousin, unless the preplacement adoptive evaluation is otherwise requested by the court.

(ii) 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) (i) The [~~required~~] preplacement adoptive evaluation [~~must~~] shall be completed or updated within the 12-month period immediately preceding the placement of a child with the prospective adoptive parent.

(ii) If the prospective adoptive parent has previously received custody of a child for the

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purpose of adoption, the preplacement adoptive evaluation [~~must~~] shall 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) a criminal history [record information] background check 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[:] submit fingerprints to the Department of Human Services, which shall perform a criminal history background check in accordance with Section 62A-2-120; or

~~[(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]~~

(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~~] background check through the Criminal and Technical Services Division of the Department of Public Safety;

~~[(B) complete a criminal records check, if available, for each state and country where the 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

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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]~~ a home study conducted by an adoption service provider that is:

(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;

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

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

(viii) an Office of Licensing employee within the Department of Human Services who is trained to perform a home study; and

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

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~~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]~~ background check described in Subsection (2)(a)(ii)~~[(B)]~~ shall be submitted in a manner acceptable to the court that will:

~~[(A)]~~ (a) preserve the chain of custody of the results; and

~~[(B)]~~ (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]~~ background 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]~~ An individual described in ~~[Subsection (2)(c)]~~ Subsections (2)(c)(i) through (vii) shall be licensed to practice under the laws of:

(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)]~~ (b) 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]~~ a home study under Subsection (2)(c).

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(c) The home study described in Subsection (2)(c) shall be a written document that contains the following:

(i) a recommendation to the court regarding the suitability of the prospective adoptive parent for placement of a child;

(ii) a description of in-person interviews with the prospective adoptive parent, the prospective adoptive parent's children, and other individuals living in the home;

(iii) a description of ~~in-person interviews with~~ character and suitability references from at least two individuals who are not related to the prospective adoptive parent and from at least one individual who is related to the prospective adoptive parent;

(iv) a medical history and a doctor's report, based upon a doctor's physical examination of the prospective adoptive parent, made within two years prior to the date of the application; and

(v) a description of an inspection of the home to determine whether sufficient space and facilities to meet the needs of the child exist and whether basic health and safety standards are maintained.

(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 preplacement adoptive 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 3. Section **78B-6-130** is amended to read:

78B-6-130. Preplacement and postplacement adoptive evaluations -- Review by court.

(1) (a) If the person [~~or agency~~] conducting the preplacement adoptive evaluation or postplacement adoptive evaluation disapproves the adoptive placement, [~~either in the~~

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~~preplacement or postplacement adoptive evaluation,]~~ the court may dismiss the petition for adoption. ~~[However,]~~

(b) Upon request ~~[of]~~ by a prospective adoptive parent, the court shall order that an additional preplacement adoptive evaluation or postplacement adoptive evaluation be conducted, and shall hold a hearing on the suitability of the adoption, including testimony of interested parties.

(2) Prior to finalization of a petition for adoption the court shall review and consider the information and recommendations contained in the preplacement adoptive evaluation and postplacement adoptive ~~[studies required by]~~ evaluation described in Sections 78B-6-128 and 78B-6-129.

(3) With respect to the home study required as part of the preplacement adoptive evaluation described in Subsection 78B-6-128(2)(c), a court may review and consider information other than the information contained in the home study described in Subsection 78B-6-128(6)(c).

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Legislative Review Note

Office of Legislative Research and General Counsel†