

ADOPTION AMENDMENTS

2016 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:

- ▶ amends provisions related to a birth mother's declaration regarding potential birth fathers;
- ▶ provides that, under certain circumstances, a court may allow a prospective adoptive parent to adopt a child without terminating the rights and duties of a pre-existing parent;
- ▶ provides that any documents filed in connection with a petition for adoption are sealed; and
- ▶ provides that a child-placing agency may provide certain information, except identifying information, to an adult adoptee.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

78B-6-110.5, as enacted by Laws of Utah 2014, Chapter 410



28 78B-6-138, as last amended by Laws of Utah 2010, Chapter 237

29 78B-6-141, as last amended by Laws of Utah 2015, Chapters 137 and 322

30 78B-6-143, as last amended by Laws of Utah 2012, Chapter 340

31

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

33 Section 1. Section 78B-6-110.5 is amended to read:

34 **78B-6-110.5. Out-of-state birth mothers and adoptive parents -- Declaration**
35 **regarding potential birth fathers.**

36 (1) (a) For a child who is six months of age or less at the time the child is placed with
37 prospective adoptive parents, the birth mother shall sign, and the adoptive parents shall file
38 with the court, a declaration regarding each potential birth father, in accordance with this
39 section, before or at the time a petition for adoption is filed with the court, if, at any point
40 during the time period beginning at the conception of the child and ending at the time the
41 mother executes consent to adoption or relinquishment of the child for adoption, neither the
42 birth mother [or] nor at least one of the adoptive parents has [not] resided in the state for 90
43 total days or more, as described in Subsection (1)(c)~~[, the birth mother shall file with the court~~
44 ~~a declaration regarding each potential birth father, in accordance with this section, before or at~~
45 ~~the time a petition for adoption is filed with the court].~~

46 (b) The ~~[birth mother]~~ child-placing agency or adoptive parents shall search the
47 putative father registry of each state where the birth mother believes the child may have been
48 conceived and each state where the birth mother lived during her pregnancy, if the state has a
49 putative father registry, to determine whether a potential birth father registered with the state's
50 putative father registry.

51 (c) In determining whether the 90-day requirement is satisfied, the following apply:

- 52 (i) the 90 days are not required to be consecutive;
- 53 (ii) no absence from the state may be for more than seven consecutive days;
- 54 (iii) any day on which the individual is absent from the state does not count toward the
- 55 total 90-day period; and
- 56 (iv) the 90-day period begins and ends during a period that is no more than 120
- 57 consecutive days.

58 (2) The declaration filed under Subsection (1) regarding a potential birth father shall

59 include, for each potential birth father, the following information:

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

62 (b) with regard to a state's putative father registry in each state described in Subsection
63 (1)(b):

64 (i) whether the state has a putative father registry; and

65 (ii) for each state that has a putative father registry, with the declaration, a certificate or
66 written statement from the state's putative father registry that a search of the state's putative
67 father registry was made and disclosing the results of the search;

68 (c) whether the potential birth father was notified of:

69 (i) the birth mother's pregnancy;

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

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

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

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

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

77 (g) whether the birth mother has contacted the potential birth father while she was
78 located in Utah;

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

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

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

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

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

88 (3) Based on the declaration regarding the potential birth father, the court shall order
89 the birth mother to serve a potential birth father notice that she intends to consent or has

90 consented to adoption or relinquishment of the child for adoption, if the court finds that the
91 potential birth father:

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

93 (b) has taken sufficient action to attempt to preserve his legal rights as a birth father,
94 including by filing a legal action to establish paternity or filing with a state's putative father
95 registry; or

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

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

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

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

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

102 (4) Notice under this section shall be made in accordance with Subsections
103 [78B-6-110](#)(7) through (12).

104 Section 2. Section **78B-6-138** is amended to read:

105 **78B-6-138. Pre-existing parent's rights and duties dissolved.**

106 (1) A pre-existing parent of an adopted child is released from all parental duties toward
107 and all responsibilities for the adopted child, including residual rights, and has no further rights
108 with regard to that child at the earlier of:

109 (a) the time the pre-existing parent's parental rights are terminated; or

110 (b) except as provided in Subsection (2), and subject to ~~[Subsection]~~ Subsections (3)
111 and (4), the time the final decree of adoption is entered.

112 (2) The rights and duties of a pre-existing parent described in Subsection (1) who, at
113 the time the child is adopted, is lawfully married to the person adopting the child are not
114 released or terminated under Subsection (1)(b).

115 (3) The rights and duties of a pre-existing parent described in Subsection (1) who, at
116 the time the child is adopted, is not lawfully married to the person adopting the child are
117 terminated as provided in Subsection (1)(b).

118 (4) Notwithstanding the provisions of this section, the court may allow a prospective
119 adoptive parent to adopt a child without terminating the rights and duties of a pre-existing
120 parent, as described in Subsection (1)(b), if:

121 (a) the pre-existing parent and the prospective adoptive parent were lawfully married at
 122 some time during the child's life;

123 (b) the pre-existing parent consents to the prospective adoptive parent's adoption of the
 124 child, or is unable to consent because the pre-existing parent is deceased or incapacitated; ~~§~~→ **[and]**

124a **(c) notice of the adoption proceeding is provided in accordance with Section 78B-6-110;**

124b **(d) consent to the adoption is provided in accordance with Section 78B-6-120; and ~~←~~§**

125 ~~§~~→ **(e)** ~~←~~§ the court finds that it is in the best interest of the child to grant the adoption
 125a without

126 terminating the rights and duties of the pre-existing parent.

127 Section 3. Section **78B-6-141** is amended to read:

128 **78B-6-141. Petition, report, and documents sealed -- Exceptions.**

129 (1) An adoption document [~~is~~] and any other documents filed in connection with a
 130 petition for adoption are sealed.

131 (2) An adoption document may only be open to inspection and copying as follows:

132 (a) in accordance with Subsection (4)(a), by a party to the adoption proceeding:

133 (i) while the proceeding is pending; or

134 (ii) within six months after the day on which the adoption decree is entered;

135 (b) subject to Subsection (4)(b), if a court enters an order permitting access to the
 136 documents by a person who has appealed the denial of that person's motion to intervene;

137 (c) upon order of the court expressly permitting inspection or copying, after good cause
 138 has been shown;

139 (d) as provided under Section **78B-6-144**;

140 (e) when the adoption document becomes public on the one hundredth anniversary of
 141 the date the final decree of adoption was entered;

142 (f) when the birth certificate becomes public on the one hundredth anniversary of the
 143 date of birth;

144 (g) to a mature adoptee or a parent who adopted the mature adoptee, without a court
 145 order, unless the final decree of adoption is entered by the juvenile court under Subsection

146 **78B-6-115(3)(b)**; or

147 (h) to an adult adoptee, to the extent permitted under Subsection (3).

148 (3) (a) For an adoption finalized on or after January 1, 2016, a birth parent may elect,
 149 on a written consent form provided by the office, to permit identifying information about the
 150 birth parent to be made available for inspection by an adult adoptee.

151 (b) A birth parent may, at any time, file a written document with the office to:

152 (i) change the election described in Subsection (3)(a); or
153 (ii) elect to make other information about the birth parent, including an updated
154 medical history, available for inspection by an adult adoptee.

155 (c) A birth parent may not access any identifying information or an adoption document
156 under this Subsection (3).

157 (4) (a) A person who files a motion to intervene in an adoption proceeding:

158 (i) is not a party to the adoption proceeding, unless the motion to intervene is granted;
159 and

160 (ii) may not be granted access to the documents described in Subsection (1), unless the
161 motion to intervene is granted.

162 (b) An order described in Subsection (2)(b) shall:

163 (i) prohibit the person described in Subsection (2)(b) from inspecting a document
164 described in Subsection (1) that contains identifying information of the adoptive or prospective
165 adoptive parent; and

166 (ii) permit the person described in Subsection (4)(b)(i) to review a copy of a document
167 described in Subsection (4)(b)(i) after the identifying information described in Subsection
168 (4)(b)(i) is redacted from the document.

169 Section 4. Section **78B-6-143** is amended to read:

170 **78B-6-143. Nonidentifying health history of adoptee filed with office -- Limited**
171 **availability.**

172 (1) (a) Upon finalization of an adoption in this state, the person who proceeded on
173 behalf of the petitioner for adoption, or a child-placing agency if an agency is involved in the
174 adoption, shall file a report with the office, in the form established by the office. [~~That~~]

175 (b) The report described in Subsection (1)(a) shall include a detailed health history, and
176 a genetic and social history of the adoptee.

177 (2) The report [~~filed under~~] described in Subsection (1)(a) may not contain [~~any~~
178 ~~information which identifies the adoptee's birth parents or members of their families~~]
179 identifying information.

180 (3) When the report described in Subsection (1)(a) is filed, a duplicate report shall be
181 provided to the adoptive parents.

182 (4) The report [~~filed with the office under~~] described in Subsection (1)(a) shall only be

183 available upon request, and upon presentation of positive identification, to the following
184 persons:

- 185 (a) the adoptive parents;
- 186 (b) in the event of the death of the adoptive parents, the adoptee's legal guardian;
- 187 (c) the adoptee;
- 188 (d) in the event of the death of the adoptee, the adoptee's spouse, if the spouse is the
189 parent or guardian of the adoptee's child;
- 190 (e) the adoptee's child or descendant;
- 191 (f) the adoptee's birth parent; and
- 192 (g) the adoptee's adult sibling.

193 (5) No information [~~which~~] that identifies a birth parent or [~~his~~] the birth parent's
194 family may be disclosed under this section.

195 (6) The actual cost of providing information under this section shall be paid by the
196 person requesting the information.

197 (7) A child-placing agency may provide a copy of the report described in Subsection
198 (1)(a) and information in its files, except identifying information, to an adult adoptee.

Legislative Review Note
Office of Legislative Research and General Counsel