

SB0223S02 compared with SB0223S01

~~deleted text~~ shows text that was in SB0223S01 but was deleted in SB0223S02.

inserted text shows text that was not in SB0223S01 but was inserted into SB0223S02.

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Representative V. Lowry Snow proposes the following substitute bill:

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

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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

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

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

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

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

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

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

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

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

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

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

(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.

(2) The declaration filed under Subsection (1) regarding a potential birth father shall include, for each potential birth father, the following information:

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

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

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

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

(c) 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;

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

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

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

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

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

(i) 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;

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

(k) 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

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

(3) Based on the declaration regarding the potential birth father, the court shall order the birth mother to serve a potential birth father notice that she intends to consent or has consented 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, including by filing a legal action to establish paternity or filing with a state's putative father registry; 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.

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

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

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

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

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

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

(2) The rights and duties of a pre-existing parent described in Subsection (1) who, at

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the time the child is adopted, is lawfully married to the person adopting the child are not released or terminated under Subsection (1)(b).

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

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

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

(ii) the pre-existing parent consents to the prospective adoptive parent's adoption of the child, or is unable to consent because the pre-existing parent is deceased or incapacitated;

(iii) notice of the adoption proceeding is provided in accordance with Section 78B-6-110;

(iv) consent to the adoption is provided in accordance with Section 78B-6-120; and

(v) the court finds that it is in the best interest of the child to grant the adoption without terminating the rights and duties of the pre-existing parent.

(b) Nothing in this Subsection (4) shall be construed to allow a child to have more than two legal parents.

Section ~~{2}~~3. Section **78B-6-141** is amended to read:

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

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

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

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

(i) while the proceeding is pending; or

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

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

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

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

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

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

(g) to a mature adoptee or a parent who adopted the mature adoptee, without a court order, unless the final decree of adoption is entered by the juvenile court under Subsection 78B-6-115(3)(b); or

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

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

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

(i) change the election described in Subsection (3)(a); or

(ii) elect to make other information about the birth parent, including an updated medical history, available for inspection by an adult adoptee.

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

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

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

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

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

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

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

Section ~~3~~4. Section **78B-6-143** is amended to read:

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

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

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

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

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

(4) The report [~~filed with the office under~~] described in Subsection (1)(a) shall only be available upon request, and upon presentation of positive identification, to the following persons:

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

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

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

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