

HB0131S01 compared with HB0131

~~{deleted text}~~ shows text that was in HB0131 but was deleted in HB0131S01.

Inserted text shows text that was not in HB0131 but was inserted into HB0131S01.

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Representative Kay J. Christofferson proposes the following substitute bill:

CHILD PLACEMENT REVISIONS

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Kay J. Christofferson

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends provisions relating to the placement of a child in division custody and the adoption of a child from division custody.

Highlighted Provisions:

This bill:

- ▶ requires the division to make an ongoing child placement that is in the child's best interests without the division giving undue preference to the child's emergency placement;
- ▶ ~~{allows a child's relative to petition the juvenile court to review the division's}~~creates a review process of an ongoing placement decision;~~{}~~
- ▶ gives~~{adoption}~~ placement preference to married ~~{relatives of a child}~~couples over an unmarried ~~{relative}~~individual; and

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- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

[63G-4-102, as last amended by Laws of Utah 2015, Chapter 441](#)

[78A-6-307.5, as enacted by Laws of Utah 2008, Chapter 17](#)

~~[78B-6-117, as enacted by Laws of Utah 2008, Chapter 3](#)~~

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

[Section 1. Section 63G-4-102 is amended to read:](#)

63G-4-102. Scope and applicability of chapter.

(1) Except as set forth in Subsection (2), and except as otherwise provided by a statute superseding provisions of this chapter by explicit reference to this chapter, the provisions of this chapter apply to every agency of the state and govern:

(a) state agency action that determines the legal rights, duties, privileges, immunities, or other legal interests of an identifiable person, including agency action to grant, deny, revoke, suspend, modify, annul, withdraw, or amend an authority, right, or license; and

(b) judicial review of the action.

(2) This chapter does not govern:

(a) the procedure for making agency rules, or judicial review of the procedure or rules;

(b) the issuance of a notice of a deficiency in the payment of a tax, the decision to waive a penalty or interest on taxes, the imposition of and penalty or interest on taxes, or the issuance of a tax assessment, except that this chapter governs an agency action commenced by a taxpayer or by another person authorized by law to contest the validity or correctness of the action;

(c) state agency action relating to extradition, to the granting of a pardon or parole, a commutation or termination of a sentence, or to the rescission, termination, or revocation of parole or probation, to the discipline of, resolution of a grievance of, supervision of,

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confinement of, or the treatment of an inmate or resident of a correctional facility, the Utah State Hospital, the Utah State Developmental Center, or a person in the custody or jurisdiction of the Division of Substance Abuse and Mental Health, or a person on probation or parole, or judicial review of the action;

(d) state agency action to evaluate, discipline, employ, transfer, reassign, or promote a student or teacher in a school or educational institution, or judicial review of the action;

(e) an application for employment and internal personnel action within an agency concerning its own employees, or judicial review of the action;

(f) the issuance of a citation or assessment under Title 34A, Chapter 6, Utah Occupational Safety and Health Act, and Title 58, Occupations and Professions, except that this chapter governs an agency action commenced by the employer, licensee, or other person authorized by law to contest the validity or correctness of the citation or assessment;

(g) state agency action relating to management of state funds, the management and disposal of school and institutional trust land assets, and contracts for the purchase or sale of products, real property, supplies, goods, or services by or for the state, or by or for an agency of the state, except as provided in those contracts, or judicial review of the action;

(h) state agency action under Title 7, Chapter 1, Part 3, Powers and Duties of Commissioner of Financial Institutions, Title 7, Chapter 2, Possession of Depository Institution by Commissioner, Title 7, Chapter 19, Acquisition of Failing Depository Institutions or Holding Companies, and Title 63G, Chapter 7, Governmental Immunity Act of Utah, or judicial review of the action;

(i) the initial determination of a person's eligibility for unemployment benefits, the initial determination of a person's eligibility for benefits under Title 34A, Chapter 2, Workers' Compensation Act, and Title 34A, Chapter 3, Utah Occupational Disease Act, or the initial determination of a person's unemployment tax liability;

(j) state agency action relating to the distribution or award of a monetary grant to or between governmental units, or for research, development, or the arts, or judicial review of the action;

(k) the issuance of a notice of violation or order under Title 26, Chapter 8a, Utah Emergency Medical Services System Act, Title 19, Chapter 2, Air Conservation Act, Title 19, Chapter 3, Radiation Control Act, Title 19, Chapter 4, Safe Drinking Water Act, Title 19,

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Chapter 5, Water Quality Act, Title 19, Chapter 6, Part 1, Solid and Hazardous Waste Act, Title 19, Chapter 6, Part 4, Underground Storage Tank Act, or Title 19, Chapter 6, Part 7, Used Oil Management Act, or Title 19, Chapter 6, Part 10, Mercury Switch Removal Act, except that this chapter governs an agency action commenced by a person authorized by law to contest the validity or correctness of the notice or order;

(l) state agency action, to the extent required by federal statute or regulation, to be conducted according to federal procedures;

(m) the initial determination of a person's eligibility for government or public assistance benefits;

(n) state agency action relating to wildlife licenses, permits, tags, and certificates of registration;

(o) a license for use of state recreational facilities;

(p) state agency action under Title 63G, Chapter 2, Government Records Access and Management Act, except as provided in Section 63G-2-603;

(q) state agency action relating to the collection of water commissioner fees and delinquency penalties, or judicial review of the action;

(r) state agency action relating to the installation, maintenance, and repair of headgates, caps, valves, or other water controlling works and weirs, flumes, meters, or other water measuring devices, or judicial review of the action;

(s) the issuance and enforcement of an initial order under Section 73-2-25;

(t) (i) a hearing conducted by the Division of Securities under Section 61-1-11.1; and

(ii) an action taken by the Division of Securities under a hearing conducted under Section 61-1-11.1, including a determination regarding the fairness of an issuance or exchange of securities described in Subsection 61-1-11.1(1); ~~and~~

(u) state agency action relating to water well driller licenses, water well drilling permits, water well driller registration, or water well drilling construction standards, or judicial review of the action~~[-]; or~~

(v) except as provided in Section 62A-4a-206, review of an ongoing child placement decision made by the Division of Child and Family Services within the Department of Human Services under Section 78A-6-307.5.

(3) This chapter does not affect a legal remedy otherwise available to:

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(a) compel an agency to take action; or

(b) challenge an agency's rule.

(4) This chapter does not preclude an agency, prior to the beginning of an adjudicative proceeding, or the presiding officer during an adjudicative proceeding from:

(a) requesting or ordering a conference with parties and interested persons to:

(i) encourage settlement;

(ii) clarify the issues;

(iii) simplify the evidence;

(iv) facilitate discovery; or

(v) expedite the proceeding; or

(b) granting a timely motion to dismiss or for summary judgment if the requirements of Rule 12(b) or Rule 56 of the Utah Rules of Civil Procedure are met by the moving party, except to the extent that the requirements of those rules are modified by this chapter.

(5) (a) A declaratory proceeding authorized by Section 63G-4-503 is not governed by this chapter, except as explicitly provided in that section.

(b) Judicial review of a declaratory proceeding authorized by Section 63G-4-503 is governed by this chapter.

(6) This chapter does not preclude an agency from enacting a rule affecting or governing an adjudicative proceeding or from following the rule, if the rule is enacted according to the procedures outlined in Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and if the rule conforms to the requirements of this chapter.

(7) (a) If the attorney general issues a written determination that a provision of this chapter would result in the denial of funds or services to an agency of the state from the federal government, the applicability of the provision to that agency shall be suspended to the extent necessary to prevent the denial.

(b) The attorney general shall report the suspension to the Legislature at its next session.

(8) Nothing in this chapter may be interpreted to provide an independent basis for jurisdiction to review final agency action.

(9) Nothing in this chapter may be interpreted to restrict a presiding officer, for good cause shown, from lengthening or shortening a time period prescribed in this chapter, except

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the time period established for judicial review.

(10) Notwithstanding any other provision of this section, this chapter does not apply to a special adjudicative proceeding, as defined in Section 19-1-301.5, except to the extent expressly provided in Section 19-1-301.5.

Section ~~{1}~~2. Section **78A-6-307.5** is amended to read:

78A-6-307.5. Post-shelter hearing placement of a child who is in division custody.

(1) If the court awards custody of a child to the division under Section 78A-6-307, or as otherwise permitted by law, the division shall determine ongoing placement of the child.

(2) In placing a child under Subsection (1), the division:

(a) except as provided in Subsections (2)(b) and (d), shall comply with the applicable background check provisions described in Section 78A-6-307;

(b) is not required to receive approval from the court prior to making the placement;

(c) shall ~~[;]~~ within three days, excluding weekends and holidays, after making the placement, give written notice that the placement has been made to the court~~[;]~~ and all parties to the proceedings~~[; that the placement has been made]~~; and

(d) may place the child with a noncustodial parent or relative of the child, using the same criteria established for an emergency placement under Section 62A-4a-209, pending the results of:

(i) the background check described in Subsection 78A-6-307(16)(a); and

(ii) evaluation with the noncustodial parent or relative to determine the noncustodial parent's or relative's capacity to provide ongoing care to the child.

(3) When determining an ongoing placement under Subsection (1), the division:

(a) may not give undue preference to keeping a child ~~{with}~~ in the location of an emergency placement made under Section 62A-4a-209 if another placement option that better serves the best interests of the child is available~~;~~

~~{; and~~

(b) shall give preferential consideration to a married couple over an unmarried individual when both placement options would satisfy the child's best interests.

(4) A noncustodial parent or a relative of the child ~~{as defined in Section 78A-6-307}~~ may ~~{petition}~~ request the ~~{juvenile court}~~ division to ~~{review}~~ reconsider the division's ongoing placement ~~{decision under Subsection (1) on the grounds that:~~

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- ~~_____ (a) the division did not follow prescribed vetting or placement procedures; or~~
- ~~_____ (b) the best interests of the child would be better served by a different placement.~~
- ~~_____ (5) After review of the division's placement under Subsection (1), a juvenile court may:~~
- ~~_____ (a) affirm the division's} determination if:~~
- (a) (i) before the division made the ongoing placement determination, the individual expressed willingness to the division to have the child placed in the individual's home; or
 - (ii) before the division made the ongoing placement decision, the individual did not express willingness to have the child placed in the individual's home because the individual did not receive notice that the child was in need of an ongoing placement;
- ~~_____ (b) } direct placement elsewhere; or~~
- ~~_____ (c) order the division to determine an alternate placement in accordance with prescribed vetting and placement procedures.~~
- ~~_____ Section 2. Section **78B-6-117** is amended to read:~~
- ~~_____ **78B-6-117. Who may adopt -- Adoption of a child.**~~
- ~~_____ [(1) A minor child may be adopted by an adult person, in accordance with the provisions and requirements of this section and this part.]~~
- ~~_____ [(2)] (1) A child may be adopted by:~~
- ~~_____ (a) adults who are legally married to each other in accordance with the laws of this state, including adoption by a stepparent; or~~
- ~~_____ (b) subject to Subsection [(4)] (3), any single adult, except as provided in Subsection [(3)] (2);~~
- ~~_____ [(3)] (2) A child may not be adopted by a person who is cohabiting in a relationship that is not a legally valid and binding marriage under the laws of this state.~~
- ~~_____ [(4)] (3) In order to provide a child who is in the custody of the division with the most beneficial family structure, when a child in the custody of the division is placed for adoption, the division or child-placing agency shall place the child with a man and a woman who are married to each other, unless:~~
- ~~_____ (a) there are no qualified married couples who:~~
- ~~_____ (i) have applied to adopt a child;~~
- ~~_____ (ii) are willing to adopt the child; and~~
- ~~_____ (iii) are an} the individual demonstrates in the request that the individual is a willing~~

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and appropriate placement for the child; and

~~{(b)}~~ (c) the individual communicates the request:

(i) no less than 30 days after receipt of a denial letter from the division informing the individual that the child was placed elsewhere, if the individual had previously expressed willingness to the division to have the child placed in the individual's home; or

(ii) no less than 30 days after the child is placed ~~{with [a] an unmarried relative [of the child;]~~ and there are no married couples related to the child who:

~~—— (i) are willing to adopt the child; and~~

~~—— (ii) are an appropriate placement for the child;~~

~~—— (c) the child is placed with a person who has already developed a substantial relationship with the child;~~

~~—— (d) the child is placed with a person who:~~

~~—— (i) is selected by a parent or former parent of the child, if the parent or former parent consented to the adoption of the child; and~~

~~—— (ii) the parent or former parent; into an ongoing placement, if the individual did not have an opportunity to express willingness to have the child placed in the individual's home because the individual did not receive notice, before the division made the ongoing placement decision, that the child was in need of an ongoing placement.~~

(5) When the division receives a timely request for reconsideration described in Subsection (4) ~~{(d)(i)}~~:

~~—— (A) knew the person with whom the child is placed before the parent consented to the adoption; or~~

~~—— (B) became aware of the person with whom the child is placed through a source other than the division or the child-placing agency that assists with the adoption of the child; or~~

~~—— (e) it is in; the division shall:~~

(a) review the ongoing placement determination;

(b) review the qualifications of the relative making the request for reconsideration;

(c) make a determination regarding whether to maintain or change the ongoing placement for the child based upon the best interests of the child ~~{to place the child with a single person.~~

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Office of Legislative Research and General Counsel; and the child placement requirements and procedures required by law or rule;

(d) make a determination within 15 working days after the day on which the division receives the request for reconsideration; and

(e) send to the relative who made the request for reconsideration and to the current placement for the child, by certified mail:

(i) the final decision of the division;

(ii) a statement of the factors relied upon by the decision to support the division's placement determination; and

(iii) citations for the policies, rules, or statutes that were considered in making the decision.

(6) If the relative who made a request for reconsideration disagrees with the division's final decision, the relative may, within 15 days after the day on which the division sends the certified letter, file a petition with the juvenile court that has jurisdiction over the child to review the division's final decision, as described in Subsection (5)(e), to determine if the decision was reached in an arbitrary, capricious, or illegal manner. The petition shall include:

(a) a statement describing the petitioner's relationship to the child;

(b) a statement of the petitioner's ongoing willingness to have the child placed in the petitioner's home;

(c) a demonstration that the petitioner met the requirements of Subsection (4);

(d) the final division decision described in Subsection (5); and

(e) the basis of the petitioner's belief that the division's decision was arbitrary, capricious, or illegal.

(7) Upon receipt of notice of the filing of the petition with the court, the division shall file the summary reports relating to the placement decision with the juvenile court and provide the summary reports to the parties to the proceeding.

(8) After reviewing the petition described in Subsection (6), the placement decision summary reports, and any response from the division, the juvenile court shall:

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(a) make a finding regarding whether the placement decision was arbitrary, capricious, or illegal and specify the reasons for the finding; and

(b) (i) affirm the division's ongoing placement determination; or

(ii) order the division to reconsider the division's placement determination.

(9) When ordered to reconsider a placement determination, the division shall make a subsequent placement determination that is in accordance with:

(a) all legal requirements;

(b) the findings of the juvenile court; and

(c) the best interests of the child.