

## SB0054S02 compared with SB0054S01

~~deleted text~~ shows text that was in SB0054S01 but was deleted in SB0054S02.

Inserted text shows text that was not in SB0054S01 but was inserted into SB0054S02.

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Senator Todd Weiler proposes the following substitute bill:

### ADOPTION REVISIONS

2017 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Todd Weiler**

House Sponsor: \_\_\_\_\_

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#### 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 releasing the pre-existing parent from parental rights and duties;
- ▶ provides that any documents filed in connection with a petition for adoption are sealed; and
- ▶ permits a child-placing agency to provide certain information, except identifying

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information, to an adult adoptee.

### Money Appropriated in this Bill:

None

### Other Special Clauses:

None

### Utah Code Sections Affected:

AMENDS:

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

**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

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*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]~~ Subsections 78B-6-138(2) and (4), 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) child-placing agency; or
- (b) licensed counselor who has at least one year of experience providing professional

social work services to:

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- (i) adoptive parents;
  - (ii) prospective adoptive parents; or
  - (iii) birth parents.
- (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 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;

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- (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, 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

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(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.

(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-6-110.5** is amended to read:

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

The procedural and substantive requirements of this section shall be required only to the extent that they do not exceed the requirements of the state of conception or the birth mother's state of residence.

(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~~

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~~the time a petition for adoption is filed with the court].~~

(b) The ~~[birth mother]~~ child-placing agency or prospective 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.

(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

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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;

(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] Except as provided in Subsection (5), 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).

(5) A court may only order the notice requirements in Subsection (3) to the extent that they do not exceed the notice requirements of:

(a) the state of conception; or

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(b) the birth mother's state of residence.

Section 3. 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 rights and duties toward and all responsibilities for the adopted child, including residual parental rights and duties as defined in Section 78A-6-105, and has no further parental rights or duties with regard to that adopted 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 parental rights and duties of a pre-existing parent [~~described in Subsection (1)~~] who, at 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 parental 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~~] released [as provided in] under Subsection (1)(b).

(4) (a) Notwithstanding the provisions of this section, the court may allow a prospective adoptive parent to adopt a child without releasing the pre-existing parent from parental rights and duties under 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 releasing the pre-existing parent from parental rights and duties.

(b) This Subsection (4) does not permit a child to have more than two natural parents, as that term is defined in Section 78A-6-105.

Section 4. Section **78B-6-141** is amended to read:



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### 78B-6-141. Court hearings closed -- Petition, report, and documents sealed --

#### Exceptions.

(1) Court hearings in adoption cases are closed to the public and only the following individuals may be admitted:

(a) a party to the proceeding;

(b) the adoptee;

(c) a representative of an agency having custody of the adoptee;

(d) in a hearing to relinquish parental rights, the individual whose rights are to be relinquished and invitees of that individual to provide emotional support;

(e) in a hearing on the termination of parental rights, the individual whose rights may be terminated;

(f) in a hearing on a petition to intervene, the proposed intervenor;

(g) in a hearing to finalize an adoption, invitees of the petitioner; and

(h) other individuals for good cause, upon order of the court.

[~~(1)~~] (2) An adoption document [~~is~~], the written report described in Section 78B-6-135, and any other documents filed in connection with a petition for adoption are sealed.

[~~(2) An adoption document]~~

(3) The documents described in Subsection (2) may only be open to inspection and copying [as follows]:

(a) in accordance with Subsection [~~(4)~~] (5)(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)~~] (5)(b), if a court enters an order permitting access to the documents by [~~a person]~~ an individual who has appealed the denial of that [~~person's~~] individual's motion to intervene;

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

(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

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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)]~~ (4).

~~[(3)]~~ (4) (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)]~~ (4)(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).

~~[(4)(a) A person]~~

(5) (a) An individual 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)]~~ (2), unless the motion to intervene is granted.

(b) An order described in Subsection ~~[(2)]~~ (3)(b) shall:

(i) prohibit the ~~[person]~~ individual described in Subsection ~~[(2)]~~ (3)(b) from inspecting a document described in Subsection ~~[(1)]~~ (2) that contains identifying information of the adoptive or prospective adoptive parent; and

(ii) permit the ~~[person]~~ individual described in Subsection ~~[(4)]~~ (5)(b)(i) to review a copy of a document described in Subsection ~~[(4)]~~ (5)(b)(i) after the identifying information described in Subsection ~~[(4)]~~ (5)(b)(i) is redacted from the document.

Section 5. Section **78B-6-143** is amended to read:

**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

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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 report~~]

(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 identifying information or any information [~~which~~] that identifies the adoptee's birth parents or members of their families.

(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 identifying information or 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 the child-placing agency's files, except identifying information, to an adult adoptee, a birth parent, or an adoptive parent.

(8) Notwithstanding Subsection (7), identifying information may be released to the extent that the individual who is the subject of the information provides written authorization of the information's release.