

ADOPTION ACT AMENDMENTS

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Lyle W. Hillyard

House Sponsor: Val K. Potter

LONG TITLE

General Description:

This bill modifies the Utah Adoption Act relating to professional counselors.

Highlighted Provisions:

This bill:

- ▶ replaces "professional counselor" with "clinical mental health counselor"; and
- ▶ makes technical changes.

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

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:



28 (a) is the subject of an adoption proceeding; or

29 (b) has been legally adopted.

30 (2) "Adoption" means the judicial act that:

31 (a) creates the relationship of parent and child where it did not previously exist; and

32 (b) except as provided in Subsection 78B-6-138(2), terminates the parental rights of
33 any other person with respect to the child.

34 (3) "Adoption document" means an adoption-related document filed with the office, a
35 petition for adoption, a decree of adoption, an original birth certificate, or evidence submitted
36 in support of a supplementary birth certificate.

37 (4) "Adoption service provider" means a:

38 (a) child-placing agency; or

39 (b) licensed counselor who has at least one year of experience providing professional
40 social work services to:

41 (i) adoptive parents;

42 (ii) prospective adoptive parents; or

43 (iii) birth parents.

44 (5) "Adoptive parent" means ~~[a person]~~ an individual who has legally adopted an
45 adoptee.

46 (6) "Adult" means ~~[a person]~~ an individual who is 18 years of age or older.

47 (7) "Adult adoptee" means an adoptee who is 18 years of age or older and was adopted
48 as a minor.

49 (8) "Adult sibling" means ~~[a]~~ an adoptee's brother or sister ~~[of the adoptee]~~, who is 18
50 years of age or older and whose birth mother or father is the same as that of the adoptee.

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

52 (10) "Birth parent" means:

53 (a) a birth mother;

54 (b) a man whose paternity of a child is established;

55 (c) a man who:

56 (i) has been identified as the father of a child by the child's birth mother; and

57 (ii) has not denied paternity; or

58 (d) an unmarried biological father.

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

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

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

65 (14) "Extra-jurisdictional child-placing agency" means an agency licensed to place
66 children for adoption by a district, territory, or state of the United States, other than Utah.

67 (15) "Genetic and social history" means a comprehensive report, when obtainable, [~~on~~
68 ~~an adoptee's birth parents, aunts, uncles, and grandparents, which~~] that contains the following
69 information on an adoptee's birth parents, aunts, uncles, and grandparents:

70 (a) medical history;

71 (b) health status;

72 (c) cause of and age at death;

73 (d) height, weight, and eye and hair color;

74 (e) ethnic origins;

75 (f) where appropriate, levels of education and professional achievement; and

76 (g) religion, if any.

77 (16) "Health history" means a comprehensive report of the adoptee's health status at the
78 time of placement for adoption, and medical history, including neonatal, psychological,
79 physiological, and medical care history.

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

85 (18) "Licensed counselor" means [~~a person~~] an individual who is licensed by the state,
86 or another state, district, or territory of the United States as a:

87 (a) certified social worker;

88 (b) clinical social worker;

89 (c) psychologist;

- 90 (d) marriage and family therapist;
- 91 (e) [~~professional counselor~~] clinical mental health counselor; or
- 92 (f) an equivalent licensed professional of another state, district, or territory of the
- 93 United States.
- 94 (19) "Man" means a male individual, regardless of age.
- 95 (20) "Mature adoptee" means an adoptee who is adopted when the adoptee is an adult.
- 96 (21) "Office" means the Office of Vital Records and Statistics within the Department
- 97 of Health operating under Title 26, Chapter 2, Utah Vital Statistics Act.
- 98 (22) "Parent," for purposes of Section 78B-6-119, means any person described in
- 99 Subsections 78B-6-120(1)(b) through (f) from whom consent for adoption or relinquishment
- 100 for adoption is required under Sections 78B-6-120 through 78B-6-122.
- 101 (23) "Potential birth father" means a man who:
- 102 (a) is identified by a birth mother as a potential biological father of the birth mother's
- 103 child, but whose genetic paternity has not been established; and
- 104 (b) was not married to the biological mother of the child described in Subsection
- 105 (23)(a) at the time of the child's conception or birth.
- 106 (24) "Pre-existing parent" means:
- 107 (a) a birth parent; or
- 108 (b) [~~a person~~] an individual who, before an adoption decree is entered, is, due to an
- 109 earlier adoption decree, legally the parent of the child being adopted.
- 110 (25) "Prospective adoptive parent" means [~~a person~~] an individual who seeks to adopt
- 111 an adoptee.
- 112 (26) "Relative" means:
- 113 (a) an adult who is a grandparent, great grandparent, aunt, great aunt, uncle, great
- 114 uncle, brother-in-law, sister-in-law, stepparent, first cousin, stepsibling, sibling of a child, or
- 115 first cousin of [~~the~~] a child's parent; and
- 116 (b) in the case of a child defined as an "Indian child" under the Indian Child Welfare
- 117 Act, 25 U.S.C. Sec. 1903, an "extended family member" as defined by that statute.
- 118 (27) "Unmarried biological father" means a [~~person~~] man who:
- 119 (a) is the biological father of a child; and
- 120 (b) was not married to the biological mother of the child described in Subsection

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

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

123 **78B-6-128. Placement adoptive evaluations -- Exceptions.**

124 (1) (a) Except as otherwise provided in this section, a child may not be placed in an
125 adoptive home until a preplacement adoptive evaluation, assessing the prospective adoptive
126 parent and the prospective adoptive home, has been conducted in accordance with the
127 requirements of this section.

128 (b) Except as provided in Section **78B-6-131**, the court may, at any time, authorize
129 temporary placement of a child in a potential adoptive home pending completion of a
130 preplacement adoptive evaluation described in this section.

131 (c) Subsection (1)(a) does not apply if a pre-existing parent has legal custody of the
132 child to be adopted and the prospective adoptive parent is related to that child or the
133 pre-existing parent as a stepparent, sibling by half or whole blood or by adoption, grandparent,
134 aunt, uncle, or first cousin, unless the evaluation is otherwise requested by the court. The
135 prospective adoptive parent described in this Subsection (1)(c) shall obtain the information
136 described in Subsections (2)(a) and (b)[;] and file that documentation with the court prior to
137 finalization of the adoption.

138 (d) The required preplacement adoptive evaluation must be completed or updated
139 within the 12-month period immediately preceding the placement of a child with the
140 prospective adoptive parent. If the prospective adoptive parent has previously received custody
141 of a child for the purpose of adoption, the preplacement adoptive evaluation must be completed
142 or updated within the 12-month period immediately preceding the placement of a child with the
143 prospective adoptive parent and after the placement of the previous child with the prospective
144 adoptive parent.

145 (2) The preplacement adoptive evaluation shall include:

146 (a) criminal history record information regarding each prospective adoptive parent and
147 any other adult living in the prospective home, prepared no earlier than 18 months immediately
148 preceding placement of the child in accordance with the following:

149 (i) if the child is in state custody, each prospective adoptive parent and any other adult
150 living in the prospective home shall:

151 (A) submit fingerprints for a Federal Bureau of Investigation national criminal history

152 record check through the Criminal and Technical Services Division of the Department of
153 Public Safety in accordance with the provisions of Section [62A-2-120](#); or

154 (B) submit to a fingerprint based Federal Bureau of Investigation national criminal
155 history record check through a law enforcement agency in another state, district, or territory of
156 the United States; or

157 (ii) subject to Subsection (3), if the child is not in state custody, each prospective
158 adoptive parent and any other adult living in the prospective home shall:

159 (A) submit fingerprints for a Federal Bureau of Investigation national criminal history
160 records check as a personal records check; or

161 (B) complete a criminal records check, if available, for each state and country where
162 the prospective adoptive parent and any adult living in the prospective adoptive home resided
163 during the five years immediately preceding the day on which the adoption petition is to be
164 finalized;

165 (b) a report containing all information regarding reports and investigations of child
166 abuse, neglect, and dependency, with respect to each prospective adoptive parent and any other
167 adult living in the prospective home, obtained no earlier than 18 months immediately preceding
168 the day on which the child is placed in the prospective home, pursuant to waivers executed by
169 each prospective adoptive parent and any other adult living in the prospective home, that:

170 (i) if the prospective adoptive parent or the adult living in the prospective adoptive
171 parent's home is a resident of Utah, is prepared by the Department of Human Services from the
172 records of the Department of Human Services; or

173 (ii) if the prospective adoptive parent or the adult living in the prospective adoptive
174 parent's home is not a resident of Utah, prepared by the Department of Human Services, or a
175 similar agency in another state, district, or territory of the United States, where each
176 prospective adoptive parent and any other adult living in the prospective home resided in the
177 five years immediately preceding the day on which the child is placed in the prospective
178 adoptive home;

179 (c) in accordance with Subsection (6), an evaluation conducted by:

180 (i) an expert in family relations approved by the court;

181 (ii) a certified social worker;

182 (iii) a clinical social worker;

- 183 (iv) a marriage and family therapist;
- 184 (v) a psychologist;
- 185 (vi) a social service worker, if supervised by a certified or clinical social worker; or
- 186 (vii) a ~~professional counselor~~ clinical mental health counselor; and

187 (d) in accordance with Subsection (7), if the child to be adopted is a child who is in the
188 custody of any public child welfare agency, and is a child who has a special need as defined in
189 Section 62A-4a-902, the preplacement evaluation shall be conducted by the Department of
190 Human Services or a child-placing agency that has entered into a contract with the department
191 to conduct the preplacement evaluations for children with special needs.

192 (3) For purposes of Subsection (2)(a)(ii):

193 (a) if the adoption is being handled by a human services program, as defined in Section
194 62A-2-101:

195 (i) the criminal history check described in Subsection (2)(a)(ii)(A) shall be submitted
196 through the Criminal Investigations and Technical Services Division of the Department of
197 Public Safety, in accordance with the provisions of Section 62A-2-120; and

198 (ii) subject to Subsection (4), the criminal history check described in Subsection
199 (2)(a)(ii)(B) shall be submitted in a manner acceptable to the court that will:

200 (A) preserve the chain of custody of the results; and

201 (B) not permit tampering with the results by a prospective adoptive parent or other
202 interested party; and

203 (b) if the adoption is being handled by a private attorney, and not a human services
204 program, the criminal history checks described in Subsection (2)(a)(ii) shall be:

205 (i) submitted in accordance with procedures established by the Criminal Investigations
206 and Technical Services Division of the Department of Public Safety; or

207 (ii) subject to Subsection (4), submitted in a manner acceptable to the court that will:

208 (A) preserve the chain of custody of the results; and

209 (B) not permit tampering with the results by a prospective adoptive parent or other
210 interested party.

211 (4) In order to comply with Subsection (3)(a)(ii) or (b)(ii), the manner in which the
212 criminal history check is submitted shall be approved by the court.

213 (5) Except as provided in Subsection 78B-6-131(2), in addition to the other

214 requirements of this section, before a child in state custody is placed with a prospective foster
215 parent or a prospective adoptive parent, the Department of Human Services shall comply with
216 Section 78B-6-131.

217 (6) (a) A ~~person~~ professional described in Subsection (2)(c) shall be licensed to
218 practice under the laws of:

219 (i) this state; or

220 (ii) the state, district, or territory of the United States where the prospective adoptive
221 parent or other person living in the prospective adoptive home resides.

222 (b) The evaluation described in Subsection (2)(c) shall be in a form approved by the
223 Department of Human Services.

224 (c) Neither the Department of Human Services nor any of its divisions may proscribe
225 who qualifies as an expert in family relations or who may conduct evaluations under
226 Subsection (2)(c).

227 (7) Any fee assessed by the evaluating agency described in Subsection (2)(d) is the
228 responsibility of the adopting parent or parents.

229 (8) The person ~~or agency~~ conducting the preplacement adoptive evaluation shall, in
230 connection with the evaluation, provide the prospective adoptive parent or parents with
231 literature approved by the Division of Child and Family Services relating to adoption, including
232 information relating to:

233 (a) the adoption process;

234 (b) developmental issues that may require early intervention; and

235 (c) community resources that are available to the prospective adoptive parent or
236 parents.

237 (9) A copy of the preplacement adoptive evaluation shall be filed with the court.

Legislative Review Note
Office of Legislative Research and General Counsel