

ADOPTION SERVICE AGENCIES AMENDMENTS

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Luz Escamilla

House Sponsor: V. Lowry Snow

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LONG TITLE

General Description:

This bill modifies provisions relating to adoption services.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ clarifies provisions prohibiting advertisements for certain adoption-related services;
- ▶ requires the Office of Licensing within the Department of Human Services to provide notice to certain persons upon finding the person is providing certain adoption-related services without a license; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

**62A-4a-602**, as last amended by Laws of Utah 2017, Chapter 148

**62A-4a-603**, as renumbered and amended by Laws of Utah 1994, Chapter 260

**78B-6-124**, as last amended by Laws of Utah 2017, Chapter 148

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

29 Section 1. Section **62A-4a-602** is amended to read:

30 **62A-4a-602. Licensure requirements -- Prohibited acts.**

31 (1) As used in this section:

32 (a) (i) "Advertisement" means any written, oral, or graphic statement or representation  
33 made in connection with a solicitation of business.

34 (ii) "Advertisement" includes a statement or representation described in Subsection  
35 (1)(a)(i) by a noncable television system, radio, printed brochure, newspaper, leaflet, flyer,  
36 circular, billboard, banner, Internet website, social media, or sign.

37 (b) (i) "Matching advertisement" means any written, oral, or graphic statement or  
38 representation made in connection with a solicitation of business to provide the assistance  
39 described in Subsection (3)(a)(i), regardless of whether there is or will be an exchange  
40 described in Subsection (3)(a)(ii).

41 (ii) "Matching advertisement" includes a statement or representation described in  
42 Subsection (1)(b)(i) by a noncable television system, radio, printed brochure, newspaper,  
43 leaflet, flyer, circular, billboard, banner, Internet website, social media, or sign.

44 (c) "Clearly and conspicuously disclose" means the same as that term is defined in  
45 Section [13-11a-2](#).

46 ~~[(1) No person may]~~

47 (2) (a) A person may not engage in child placing, or solicit money or other assistance  
48 for child placing, without a valid license issued by the Office of Licensing, in accordance with  
49 Chapter 2, Licensure of Programs and Facilities.

50 (b) When a child-placing agency's license is suspended or revoked in accordance with  
51 that chapter, the care, control, or custody of any child who has been in the care, control, or  
52 custody of that agency shall be transferred to the division.

53 ~~[(2)]~~ (3) (a) (i) An attorney, physician, or other person may assist a parent in  
54 identifying or locating a person interested in adopting the parent's child, or in identifying or  
55 locating a child to be adopted.~~[-However, no]~~

56           (ii) No payment, charge, fee, reimbursement of expense, or exchange of value of any  
57 kind, or promise or agreement to make the same, may be made for [that] the assistance  
58 described in Subsection (3)(a)(i).

59           (b) An attorney, physician, or other person may not:

60           (i) issue or cause to be issued to any person a card, sign, or device indicating that [he]  
61 the attorney, physician, or other person is available to provide [that] the assistance described in  
62 Subsection (3)(a)(i);

63           (ii) cause, permit, or allow any sign or marking indicating that [he] the attorney,  
64 physician, or other person is available to provide [that] the assistance described in Subsection  
65 (3)(a)(i), on or in any building or structure;

66           (iii) announce [or], cause, permit, or allow an announcement indicating that [he] the  
67 attorney, physician, or other person is available to provide [that] the assistance described in  
68 Subsection (3)(a)(i), to appear in any newspaper, magazine, directory, [or] on radio or  
69 television, or an Internet website relating to a business; [or]

70           ~~[(iv) advertise by any other means that he is available to provide that assistance.]~~

71           (iv) announce, cause, permit, or allow a matching advertisement; or

72           (v) announce, cause, permit, or allow an advertisement that indicates or implies the  
73 attorney, physician, or other person is available to provide the assistance described in  
74 Subsection (3)(a)(i) as part of, or related to, other adoption-related services by using any of the  
75 following terms:

76           (A) "comprehensive";

77           (B) "complete";

78           (C) "one-stop";

79           (D) "all-inclusive"; or

80           (E) any other term similar to the terms described in Subsections (3)(b)(v)(A) through

81 (D).

82           (c) An attorney, physician, or other person who is not licensed by the Office of

83 Licensing within the department shall clearly and conspicuously disclose in any print media  
84 advertisement or written contract regarding adoption services or adoption-related services that  
85 the attorney, physician, or other person is not licensed to provide adoption services by the  
86 Office of Licensing within the department.

87 ~~[(3)]~~ (4) Nothing in this part:

88 (a) precludes payment of fees for medical, legal, or other lawful services rendered in  
89 connection with the care of a mother, delivery and care of a child, or lawful adoption  
90 proceedings~~[-; and no provision of this part];~~ or

91 (b) abrogates the right of procedures for independent adoption as provided by law.

92 ~~[(4)]~~ (5) In accordance with federal law, only agents or employees of the division and  
93 of licensed child placing agencies may certify to the United States Immigration and  
94 Naturalization Service that a family meets the division's preadoption requirements.

95 ~~[(5)(a) Beginning May 1, 2000, neither]~~

96 (6) (a) Neither a licensed child-placing agency nor any attorney practicing in this state  
97 may place a child for adoption, either temporarily or permanently, with any individual or  
98 individuals that would not be qualified for adoptive placement pursuant to the provisions of  
99 Sections 78B-6-117, 78B-6-102, and 78B-6-137.

100 (b) ~~[Beginning May 1, 2000, the]~~ The division, as a licensed child-placing agency, may  
101 not place a child in foster care with any individual or individuals that would not be qualified  
102 for adoptive placement pursuant to the provisions of Sections 78B-6-117, 78B-6-102, and  
103 78B-6-137. However, nothing in this Subsection ~~[(5)]~~ (6)(b) limits the placement of a child in  
104 foster care with the child's biological or adoptive parent.

105 (c) ~~[Beginning May 1, 2000, with]~~ With regard to children who are in the custody of  
106 the state, the division shall establish a policy providing that priority for foster care and adoptive  
107 placement shall be provided to families in which both a man and a woman are legally married  
108 under the laws of this state. However, nothing in this Subsection ~~[(5)]~~ (6)(c) limits the  
109 placement of a child with the child's biological or adoptive parent.

110 Section 2. Section **62A-4a-603** is amended to read:

111 **62A-4a-603. Injunction -- Enforcement by county attorney or attorney general.**

112 (1) The division, Office of Licensing within the department, or any interested person  
113 may commence an action in district court to enjoin any person, agency, firm, corporation, or  
114 association violating Section [62A-4a-602](#).

115 (2) The Office of Licensing shall:

116 (a) solicit information from the public relating to violations of Section [62A-4a-602](#);

117 and

118 (b) upon identifying a violation of Section [62A-4a-602](#):

119 (i) send a written notice to the person who violated Section [62A-4a-602](#) that describes  
120 the alleged violation; and

121 (ii) notify the following persons of the alleged violation:

122 (A) the local county attorney; and

123 (B) the Division of Occupational and Professional Licensing.

124 [~~2~~] (3) (a) A county attorney or the attorney general shall institute legal action as  
125 necessary to enforce the provisions of Section [62A-4a-602](#) [~~when informed of any~~] after being  
126 informed of an alleged violation.

127 (b) If [~~the~~] a county attorney does not take action within 30 days after [~~being informed~~]  
128 the day on which the county attorney is informed of an alleged violation of Section  
129 [62A-4a-602](#), the attorney general may be requested to take action, and shall then institute legal  
130 proceedings in place of the county attorney.

131 [~~3~~] (4) (a) In addition to the remedies provided in Subsections (1) and [~~2~~] (3), any  
132 person, agency, firm, corporation, or association found to be in violation of Section  
133 [62A-4a-602](#) shall forfeit all proceeds identified as resulting from the transaction, and may also  
134 be assessed a civil penalty of not more than \$10,000 for each violation. [~~Every~~]

135 (b) Each act in violation of Section [62A-4a-602](#), including each placement or  
136 attempted placement of a child, is a separate violation.

137           ~~[(4)]~~ (5) (a) All amounts recovered as penalties under Subsection ~~[(3)]~~ (4) shall be  
138 placed in the General Fund of the prosecuting county, or in the state General Fund if the  
139 attorney general prosecutes.

140           (b) If two or more governmental entities are involved in the prosecution, the penalty  
141 amounts recovered shall be apportioned by the court among the entities, according to their  
142 involvement.

143           ~~[(5)]~~ (6) A judgment ordering the payment of any penalty or forfeiture under  
144 Subsection ~~[(3) constitutes]~~ (4) is a lien when recorded in the judgment docket, and has the  
145 same effect and is subject to the same rules as a judgment for money in a civil action.

146           Section 3. Section **78B-6-124** is amended to read:

147           **78B-6-124. Persons who may take consents and relinquishments.**

148           (1) A consent or relinquishment by a birth mother or an adoptee shall be signed before:

149           (a) a judge of any court that has jurisdiction over adoption proceedings;

150           (b) subject to Subsection (6), a person appointed by the judge described in Subsection  
151 (1)(a) to take consents or relinquishments; or

152           (c) subject to Subsection (6), a person who is authorized by a child-placing agency to  
153 take consents or relinquishments, if the consent or relinquishment grants legal custody of the  
154 child to a child-placing agency or an extra-jurisdictional child-placing agency.

155           (2) If the consent or relinquishment of a birth mother or adoptee is taken out of state it  
156 shall be signed before:

157           (a) subject to Subsection (6), a person who is authorized by a child-placing agency to  
158 take consents or relinquishments, if the consent or relinquishment grants legal custody of the  
159 child to a child-placing agency or an extra-jurisdictional child-placing agency;

160           (b) subject to Subsection (6), a person authorized or appointed to take consents or  
161 relinquishments by a court of this state that has jurisdiction over adoption proceedings;

162           (c) a court that has jurisdiction over adoption proceedings in the state where the  
163 consent or relinquishment is taken; or

164 (d) a person authorized, under the laws of the state where the consent or relinquishment  
165 is taken, to take consents or relinquishments of a birth mother or adoptee.

166 (3) The consent or relinquishment of any other person or agency as required by Section  
167 78B-6-120 may be signed before a Notary Public or any person authorized to take a consent or  
168 relinquishment under Subsection (1) or (2).

169 (4) A person, authorized by Subsection (1) or (2) to take consents or relinquishments,  
170 shall certify to the best of his information and belief that the person executing the consent or  
171 relinquishment has read and understands the consent or relinquishment and has signed it freely  
172 and voluntarily.

173 (5) A person executing a consent or relinquishment is entitled to receive a copy of the  
174 consent or relinquishment.

175 (6) A signature described in Subsection (1)(b), (1)(c), (2)(a), or (2)(b), shall be:

176 (a) notarized; or

177 (b) witnessed by two individuals who are not members of the birth mother's or the  
178 adoptee's immediate family.

179 (7) Except as provided in Subsection 62A-4a-602[~~(1)~~](2), a transfer of relinquishment  
180 from one child-placing agency to another child-placing agency shall be signed before a Notary  
181 Public.