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**ADOPTION REVISIONS**

2019 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Wayne A. Harper**

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

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**LONG TITLE**

**General Description:**

This bill modifies the Utah Adoption Act.

**Highlighted Provisions:**

This bill:

- ▶ modifies provisions related to:
  - notice in an adoption proceeding;
  - who may adopt a child or adult;
  - a postadoption contact agreement; and
- ▶ makes technical changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

- 78B-6-110**, as last amended by Laws of Utah 2018, Chapter 359
- 78B-6-110.1**, as last amended by Laws of Utah 2017, Chapter 148
- 78B-6-112**, as last amended by Laws of Utah 2018, Chapter 359
- 78B-6-115**, as last amended by Laws of Utah 2015, Chapter 137
- 78B-6-117**, as last amended by Laws of Utah 2018, Chapter 43 and further amended by



28 Revisor Instructions, Laws of Utah 2018, Chapter 446  
 29 **78B-6-136**, as last amended by Laws of Utah 2012, Chapter 340  
 30 **78B-6-146**, as enacted by Laws of Utah 2013, Chapter 438



31  
 32 *Be it enacted by the Legislature of the state of Utah:*

33 Section 1. Section **78B-6-110** is amended to read:

34 **78B-6-110. Notice of adoption proceedings.**

35 (1) (a) An unmarried biological father, by virtue of the fact that he has engaged in a  
 36 sexual relationship with a woman:

37 (i) is considered to be on notice that a pregnancy and an adoption proceeding regarding  
 38 the child may occur; and

39 (ii) has a duty to protect his own rights and interests.

40 (b) An unmarried biological father is entitled to actual notice of a birth or an adoption  
 41 proceeding with regard to his child only as provided in this section or Section **78B-6-110.5**.

42 (2) Notice of an adoption proceeding shall be served on each of the following persons:

43 (a) any person or agency whose consent or relinquishment is required under Section  
 44 **78B-6-120** or **78B-6-121**, unless that right has been terminated by:

45 (i) waiver;

46 (ii) relinquishment;

47 (iii) actual consent, as described in Subsection (12); or

48 (iv) judicial action;

49 (b) any person who has initiated a paternity proceeding and filed notice of that action  
 50 with the state registrar of vital statistics within the Department of Health, in accordance with  
 51 Subsection (3);

52 (c) any legally appointed custodian or guardian of the adoptee;

53 (d) the petitioner's spouse, if any, only if the petitioner's spouse has not joined in the  
 54 petition;

55 (e) the adoptee's spouse, if any;

56 (f) any ~~[person]~~ individual who, ~~[prior to]~~ before the time at which the mother executes  
 57 her consent for adoption or relinquishes the child for adoption, is recorded on the birth  
 58 certificate as the child's father, with the knowledge and consent of the mother;

59 (g) [~~a person~~] an individual who is:

60 (i) openly living in the same household with the child at the time the consent is  
61 executed or relinquishment made; and

62 (ii) holding himself out to be the child's father; and

63 (h) [~~any person~~] an individual who is married to the child's mother at the time she  
64 executes her consent to the adoption or relinquishes the child for adoption, unless the court  
65 finds that the mother's spouse is not the child's father under Section 78B-15-607.

66 (3) (a) In order to preserve any right to notice, an unmarried biological father shall,  
67 consistent with Subsection (3)(d):

68 (i) initiate proceedings in a district court of Utah to establish paternity under Title 78B,  
69 Chapter 15, Utah Uniform Parentage Act; and

70 (ii) file a notice of commencement of the proceedings described in Subsection (3)(a)(i)  
71 with the office of vital statistics within the Department of Health.

72 (b) If the unmarried, biological father does not know the county in which the birth  
73 mother resides, he may initiate his action in any county, subject to a change in trial pursuant to  
74 Section 78B-3-307.

75 (c) The Department of Health shall provide forms for the purpose of filing the notice  
76 described in Subsection (3)(a)(ii), and make those forms available in the office of the county  
77 health department in each county.

78 (d) When the state registrar of vital statistics receives a completed form, the registrar  
79 shall:

80 (i) record the date and time the form was received; and

81 (ii) immediately enter the information provided by the unmarried biological father in  
82 the confidential registry established by Subsection 78B-6-121(3)(c).

83 (e) The action and notice described in Subsection (3)(a):

84 (i) may be filed before or after the [~~child's birth~~] day on which the child is born; and

85 (ii) shall be filed prior to the mother's:

86 (A) execution of consent to adoption of the child; or

87 (B) relinquishment of the child for adoption.

88 (4) Notice provided in accordance with this section need not disclose the name of the  
89 mother of the child who is the subject of an adoption proceeding.

90 (5) The notice required by this section:

91 (a) may be served at any time after the day on which the petition for adoption is filed,  
92 but may not be served on a birth mother before she has given birth to the child who is the  
93 subject of the petition for adoption;

94 (b) shall be served at least [~~30~~] 60 days [~~prior to~~] before the day on which the final  
95 dispositional hearing is held;

96 (c) shall specifically state that the person served shall fulfill the requirements of  
97 Subsection (6)(a) within [~~30~~] 60 days after the day on which the person receives service if the  
98 person intends to intervene in or contest the adoption;

99 (d) shall state the consequences, described in Subsection (6)(b), for failure of a person  
100 to file a motion for relief within [~~30~~] 60 days after the day on which the person is served with  
101 notice of an adoption proceeding;

102 (e) is not required to include, nor be accompanied by, a summons or a copy of the  
103 petition for adoption;

104 (f) shall state where the person may obtain a copy of the petition for adoption; and

105 (g) shall indicate the right to the appointment of counsel for a party whom the court  
106 determines is indigent and at risk of losing the party's parental rights.

107 (6) (a) A person who [~~has been~~] is served with notice of an adoption proceeding and  
108 who wishes to contest the adoption shall file a motion to intervene in the adoption proceeding:

109 (i) within [~~30~~] 60 days after the day on which the person [~~was~~] is served with notice of  
110 the adoption proceeding;

111 (ii) setting forth specific relief sought; and

112 (iii) accompanied by a memorandum specifying the factual and legal grounds upon  
113 which the motion is based.

114 (b) A person who fails to fully and strictly comply with all of the requirements  
115 described in Subsection (6)(a) within [~~30~~] 60 days after the day on which the person [~~was~~] is  
116 served with notice of the adoption proceeding:

117 (i) waives any right to further notice in connection with the adoption;

118 (ii) forfeits all rights in relation to the adoptee; and

119 (iii) is barred from thereafter bringing or maintaining any action to assert any interest in  
120 the adoptee.

121 (7) Service of notice under this section shall be made as follows:

122 (a) (i) Subject to Subsection (5)(e), service on a person whose consent is necessary  
123 under Section 78B-6-120 or 78B-6-121 shall be in accordance with the provisions of the Utah  
124 Rules of Civil Procedure.

125 (ii) If service of a person described in Subsection (7)(a)(i) is by publication, the court  
126 shall designate the content of the notice regarding the identity of the parties.

127 (iii) The notice described in this Subsection (7)(a) may not include the name of a  
128 person seeking to adopt the adoptee.

129 (b) (i) Except as provided in Subsection (7)(b)(ii) to any other person for whom notice  
130 is required under this section, service by certified mail, return receipt requested, is sufficient.

131 (ii) If the service described in Subsection (7)(b)(i) cannot be completed after two  
132 attempts, the court may issue an order providing for service by publication, posting, or by any  
133 other manner of service.

134 (c) Notice to a person who has initiated a paternity proceeding and filed notice of that  
135 action with the state registrar of vital statistics in the Department of Health in accordance with  
136 the requirements of Subsection (3), shall be served by certified mail, return receipt requested, at  
137 the last address filed with the registrar.

138 (8) The notice required by this section may be waived in writing by the person entitled  
139 to receive notice.

140 (9) Proof of service of notice on all persons for whom notice is required by this section  
141 shall be filed with the court before the final dispositional hearing on the adoption.

142 (10) Notwithstanding any other provision of law, neither the notice of an adoption  
143 proceeding nor any process in ~~that~~ the proceeding is required to contain the name of the  
144 person or persons seeking to adopt the adoptee.

145 (11) Except as to those persons whose consent to an adoption is required under Section  
146 78B-6-120 or 78B-6-121, the sole purpose of notice under this section is to enable the person  
147 served to:

148 (a) intervene in the adoption; and

149 (b) present evidence to the court relevant to the best interest of the child.

150 (12) In order to be excused from the requirement to provide notice as described in  
151 Subsection (2)(a) on the grounds that the person has provided consent to the adoption

152 proceeding under Subsection (2)(a)(iii), the consent may not be implied consent, as described  
153 in Section 78B-6-120.1.

154 Section 2. Section 78B-6-110.1 is amended to read:

155 **78B-6-110.1. Prebirth notice to presumed father of intent to place a child for**  
156 **adoption.**

157 (1) As used in this section, "birth father" means:

158 (a) a potential biological father; or

159 (b) an unmarried biological father.

160 (2) Before the birth of a child, the following individuals may notify a birth father of the  
161 child that the mother of the child is considering an adoptive placement for the child:

162 (a) the child's mother;

163 (b) a licensed child-placing agency;

164 (c) an attorney representing a prospective adoptive parent of the child; or

165 (d) an attorney representing the mother of the child.

166 (3) Providing a birth father with notice under Subsection (2) does not obligate the  
167 mother of the child to proceed with an adoptive placement of the child.

168 (4) The notice described in Subsection (2) shall include the name, address, and  
169 telephone number of the person providing the notice, and shall include the following  
170 information:

171 (a) the mother's intent to place the child for adoption;

172 (b) that the mother has named the person receiving this notice as a potential birth father  
173 of her child;

174 (c) the requirements to contest the adoption, including taking the following steps  
175 within ~~[30]~~ 60 days after the day on which the notice is served:

176 (i) initiating proceedings to establish or assert paternity in a district court of Utah  
177 within ~~[30]~~ 60 days after the day on which the notice is served, including filing an affidavit  
178 stating:

179 (A) that the birth father is fully able and willing to have full custody of the child;

180 (B) the birth father's plans to care for the child; and

181 (C) that the birth father agrees to pay for child support and expenses incurred in  
182 connection with the pregnancy and birth; and

183 (ii) filing a notice of commencement of paternity proceedings with the state registrar of  
184 vital statistics within the Utah Department of Health;

185 (d) the consequences for failure to comply with Subsection (4)(c), including that:

186 (i) the birth father's ability to assert the right, if any, to consent or refuse to consent to  
187 the adoption is irrevocably lost;

188 (ii) the birth father will lose the ability to assert the right to contest any future adoption  
189 of the child; and

190 (iii) the birth father will lose the right, if any, to notice of any adoption proceedings  
191 related to the child;

192 (e) that the birth father may consent to the adoption, if any, within ~~[30]~~ 60 days after  
193 the day on which the notice is received, and that his consent is irrevocable; and

194 (f) that no communication between the mother of the child and the birth father changes  
195 the rights and responsibilities of the birth father described in the notice.

196 (5) If the recipient of the notice described in Subsection (2) does not fully and strictly  
197 comply with the requirements of Subsection (4)(c) within ~~[30]~~ 60 days after the day on which  
198 ~~[he]~~ the recipient receives the notice, ~~[he]~~ the recipient will lose:

199 (a) the ability to assert the right to consent or refuse to consent to an adoption of the  
200 child described in the notice;

201 (b) the ability to assert the right to contest any future adoption of the child described in  
202 the notice; and

203 (c) the right to notice of any adoption proceedings relating to the child described in the  
204 notice.

205 (6) If an individual described in Subsection (2) chooses to notify a birth father under  
206 this section, the notice shall be served on a birth father in a manner consistent with the Utah  
207 Rules of Civil Procedure or by certified mail.

208 Section 3. Section **78B-6-112** is amended to read:

209 **78B-6-112. District court jurisdiction over termination of parental rights**  
210 **proceedings.**

211 (1) A district court has jurisdiction to terminate parental rights in a child if the party  
212 who filed the petition is seeking to terminate parental rights in the child for the purpose of  
213 facilitating the adoption of the child.

214 (2) A petition to terminate parental rights under this section may be:  
215 (a) joined with a proceeding on an adoption petition; or  
216 (b) filed as a separate proceeding before or after a petition to adopt the child is filed.  
217 (3) A court may enter a final order terminating parental rights before a final decree of  
218 adoption is entered.  
219 (4) (a) Nothing in this section limits the jurisdiction of a juvenile court relating to  
220 proceedings to terminate parental rights as described in Section 78A-6-103.  
221 (b) This section does not grant jurisdiction to a district court to terminate parental  
222 rights in a child if the child is under the jurisdiction of the juvenile court in a pending abuse,  
223 neglect, dependency, or termination of parental rights proceeding.  
224 (5) The district court may terminate an individual's parental rights in a child if:  
225 (a) the individual executes a voluntary consent to adoption, or relinquishment for  
226 adoption, of the child, in accordance with:  
227 (i) the requirements of this chapter; or  
228 (ii) the laws of another state or country, if the consent is valid and irrevocable;  
229 (b) the individual is an unmarried biological father who is not entitled to consent to  
230 adoption, or relinquishment for adoption, under Section 78B-6-120 or 78B-6-121;  
231 (c) the individual:  
232 (i) received notice of the adoption proceeding relating to the child under Section  
233 78B-6-110; and  
234 (ii) failed to file a motion for relief, under Subsection 78B-6-110(6), within [30] 60  
235 days after the day on which the individual was served with notice of the adoption proceeding;  
236 (d) the court finds, under Section 78B-15-607, that the individual is not a parent of the  
237 child; or  
238 (e) the individual's parental rights are terminated on grounds described in Title 78A,  
239 Chapter 6, Part 5, Termination of Parental Rights Act, if terminating the person's parental  
240 rights is in the best interests of the child.  
241 (6) The court shall appoint counsel designated by the county where the petition is filed  
242 to represent a party who faces any action initiated by a private party under Title 78A, Chapter  
243 6, Part 5, Termination of Parental Rights Act or whose parental rights are subject to  
244 termination under this section, if:



- 245 (a) the court determines that the party is indigent under Section 77-32-202; and  
246 (b) the party does not, after being fully advised of the right to counsel, knowingly,  
247 intelligently and voluntarily waive the right to counsel.

248 (7) If a county incurs expenses in providing defense services to indigent individuals  
249 facing any action initiated by a private party under Title 78A, Chapter 6, Part 5, Termination of  
250 Parental Rights Act or termination of parental rights under this section, the county may apply  
251 for a grant for reimbursement from the Utah Indigent Defense Commission under Section  
252 77-32-806.

253 Section 4. Section 78B-6-115 is amended to read:

254 **78B-6-115. Who may adopt -- Adoption of minor -- Adoption of adult.**

255 (1) [~~For purposes of~~] As used in this section, "vulnerable adult" means:

- 256 (a) [~~a person~~] an individual 65 years of age or older; or  
257 (b) an [~~adult~~] individual, 18 years of age or older, who has a mental or physical  
258 impairment which substantially affects that [~~person's~~] individual's ability to:  
259 (i) provide personal protection;  
260 (ii) provide necessities such as food, shelter, clothing, or medical or other health care;  
261 (iii) obtain services necessary for health, safety, or welfare;  
262 (iv) carry out the activities of daily living;  
263 (v) manage the [~~adult's~~] individual's own resources; or  
264 (vi) comprehend the nature and consequences of remaining in a situation of abuse,  
265 neglect, or exploitation.

266 (2) Subject to this section and Section 78B-6-117, any adult may be adopted by another  
267 adult.

268 (3) The following provisions of this part apply to the adoption of an adult just as  
269 though the [~~person~~] adult being adopted were a minor:

- 270 (a) (i) Section 78B-6-108;  
271 (ii) Section 78B-6-114;  
272 (iii) Section 78B-6-116;  
273 (iv) Section 78B-6-118;  
274 (v) Section 78B-6-124;  
275 (vi) Section 78B-6-136;

276 (vii) Section 78B-6-137;

277 (viii) Section 78B-6-138;

278 (ix) Section 78B-6-139;

279 (x) Section 78B-6-141; and

280 (xi) Section 78B-6-142;

281 (b) Subsections 78B-6-105(1)(a), (1)(b)(i), (1)(b)(ii), (2), and (7), except that the  
282 juvenile court does not have jurisdiction over a proceeding for adoption of an adult, unless the  
283 adoption arises from a case where the juvenile court has continuing jurisdiction over the mature  
284 adoptee; and

285 (c) if the mature adoptee is a vulnerable adult, Sections 78B-6-128 through 78B-6-131,  
286 regardless of whether the mature adoptee resides, or will reside, with the adoptors, unless the  
287 court, based on a finding of good cause, waives the requirements of those sections.

288 (4) An adult may not adopt a prospective mature adoptee, unless at least one of the  
289 following is a resident of the state for at least six consecutive months before the day on which  
290 the adoption petition is filed:

291 (a) a prospective adoptive parent;

292 (b) a biological parent of the prospective mature adoptee; or

293 (c) the prospective mature adoptee.

294 [~~4~~] (5) Before a court enters a final decree of adoption of a mature adoptee, the  
295 mature adoptee and the prospective adoptive parent or parents shall appear before the court  
296 presiding over the adoption proceedings and execute consent to the adoption.

297 [~~5~~] (6) No provision of this part, other than those listed or described in this section or  
298 Section 78B-6-117, apply to the adoption of an adult.

299 Section 5. Section 78B-6-117 is amended to read:

300 **78B-6-117. Who may adopt -- Adoption of minor.**

301 (1) A minor child may be adopted by an adult [~~person~~], in accordance with this section  
302 and this part.

303 (2) A child may be adopted by:

304 (a) adults who are legally married to each other in accordance with the laws of this  
305 state, including adoption by a stepparent; or

306 (b) subject to Subsection (4), a single adult, except as provided in Subsection (3).

307 (3) A child may not be adopted by [~~a person~~] an adult who is cohabiting in a  
308 relationship that is not a legally valid and binding marriage under the laws of this state.

309 (4) To provide a child who is in the custody of the division with the most beneficial  
310 family structure, when a child in the custody of the division is placed for adoption, the division  
311 or child-placing agency shall place the child with a man and a woman who are married to each  
312 other, unless:

313 (a) there are no qualified married couples who:

314 (i) have applied to adopt a child;

315 (ii) are willing to adopt the child; and

316 (iii) are an appropriate placement for the child;

317 (b) the child is placed with a relative of the child;

318 (c) the child is placed with [~~a person~~] an adult who has already developed a substantial  
319 relationship with the child;

320 (d) the child is placed with [~~a person~~] an adult who:

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

323 (ii) the parent or former parent described in Subsection (4)(d)(i):

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

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

328 (e) it is in the best interests of the child to place the child with a single [~~person~~] adult.

329 (5) (a) Except as provided in Subsection (5)(b), an adult may not adopt a child, unless  
330 at least one of the following is a resident of the state for at least six consecutive months before  
331 the day on which the adoption petition is filed:

332 (i) a prospective adoptive parent;

333 (ii) a biological parent of the child; or

334 (iii) the child.

335 (b) Subsection (5)(a) does not apply under circumstances when the division makes an  
336 out-of-state placement under Title 62A, Chapter 4a, Part 7, Interstate Compact on Placement of  
337 Children.

338           ~~[(5)]~~ (6) Except as provided in Subsection ~~[(6)]~~ (7), an adult may not adopt a child if,  
339 before adoption is finalized, the adult has been convicted of, pleaded guilty to, or pleaded no  
340 contest to a felony or attempted felony involving conduct that constitutes any of the following:

- 341           (a) child abuse, as described in Section 76-5-109;  
342           (b) child abuse homicide, as described in Section 76-5-208;  
343           (c) child kidnapping, as described in Section 76-5-301.1;  
344           (d) human trafficking of a child, as described in Section 76-5-308.5;  
345           (e) sexual abuse of a minor, as described in Section 76-5-401.1;  
346           (f) rape of a child, as described in Section 76-5-402.1;  
347           (g) object rape of a child, as described in Section 76-5-402.3;  
348           (h) sodomy on a child, as described in Section 76-5-403.1;  
349           (i) sexual abuse of a child or aggravated sexual abuse of a child, as described in  
350 Section 76-5-404.1;  
351           (j) sexual exploitation of a minor, as described in Section 76-5b-201; or  
352           (k) an offense in another state that, if committed in this state, would constitute an  
353 offense described in this Subsection ~~[(5)]~~ (6).

354           ~~[(6)]~~ (7) (a) For purpose of this Subsection ~~[(6)]~~ (7), "disqualifying offense" means an  
355 offense listed in Subsection ~~[(5)]~~ (6) that prevents a court from considering a person for  
356 adoption of a child except as provided in this Subsection ~~[(6)]~~ (7).

357           (b) ~~[A person]~~ An adult described in Subsection ~~[(5)]~~ (6) may only be considered for  
358 adoption of a child if the following criteria are met by clear and convincing evidence:

- 359           (i) at least 10 years have elapsed from the day on which the ~~[person]~~ adult is  
360 successfully released from prison, jail, parole, or probation related to a disqualifying offense;  
361           (ii) during the 10 years before the day on which the ~~[person]~~ adult files a petition with  
362 the court seeking adoption, the person has not been convicted, pleaded guilty, or pleaded no  
363 contest to an offense greater than an infraction or traffic violation that would likely impact the  
364 health, safety, or well-being of the child;  
365           (iii) the ~~[person]~~ adult can provide evidence of successful treatment or rehabilitation  
366 directly related to the disqualifying offense;  
367           (iv) the court determines that the risk related to the disqualifying offense is unlikely to  
368 cause harm, as defined in Section 78A-6-105, or potential harm to the child currently or at any

369 time in the future when considering all of the following:

370 (A) the child's age;

371 (B) the child's gender;

372 (C) the child's development;

373 (D) the nature and seriousness of the disqualifying offense;

374 (E) the preferences of a child 12 years of age or older;

375 (F) any available assessments, including custody evaluations, home studies,

376 pre-placement adoptive evaluations, parenting assessments, psychological or mental health

377 assessments, and bonding assessments; and

378 (G) any other relevant information;

379 (v) the [person] adult can provide evidence of all of the following:

380 (A) the relationship with the child is of long duration;

381 (B) that an emotional bond exists with the child; and

382 (C) that adoption by the [person] adult who has committed the disqualifying offense

383 ensures the best interests of the child are met; and

384 (vi) the adoption is by:

385 (A) a stepparent whose spouse is the adoptee's parent and consents to the adoption;

386 (B) subject to Subsection ~~[(6)]~~ (7)(d), a relative of the child as defined in Section

387 78A-6-307 and there is not another relative without a disqualifying offense filing an adoption

388 petition.

389 (c) The [person] adult with the disqualifying offense bears the burden of proof

390 regarding why adoption with that [person] adult is in the best interest of the child over another

391 responsible relative or equally situated person who does not have a disqualifying offense.

392 (d) If there is an alternative responsible relative who does not have a disqualifying

393 offense filing an adoption petition, the following applies:

394 (i) preference for adoption shall be given to a relative who does not have a

395 disqualifying offense; and

396 (ii) before the court may grant adoption to the [person] adult who has the disqualifying

397 offense over another responsible, willing, and able relative:

398 (A) an impartial custody evaluation shall be completed; and

399 (B) a guardian ad litem shall be assigned.

400           ~~[(7)]~~ (8) Subsections ~~[(5)]~~ (6) and ~~[(6)]~~ (7) apply to a case pending on March 25, 2017  
401 for which a final decision on adoption has not been made and to a case filed on or after March  
402 25, 2017.

403           Section 6. Section **78B-6-136** is amended to read:

404           **78B-6-136. Final decree of adoption -- Agreement by adoptive parent or parents.**

405           (1) Except as provided in Subsection (2), before the court enters a final decree of  
406 adoption:

407           (a) the prospective adoptive parent or parents and the child being adopted shall appear  
408 before the appropriate court; and

409           (b) the prospective adoptive parent or parents shall execute an agreement stating that  
410 the child shall be adopted and treated in all respects as the adoptive parent's or parents' own  
411 lawful child.

412           (2) Except as provided in Subsection **78B-6-115**~~[(4)]~~(5), a court may waive the  
413 requirement described in Subsection (1)(a) if:

414           (a) the adoption is not contested;

415           (b) the prospective adoptive parent or parents:

416           (i) execute an agreement stating that the child shall be adopted and treated in all  
417 respects as the parent's or parents' own lawful child;

418           (ii) have the agreement described in Subsection (2)(b)(i) notarized; and

419           (iii) file the agreement described in Subsection (2)(b)(i) with the court; and

420           (c) all requirements of this chapter to obtain a final decree of adoption are otherwise  
421 complied with.

422           Section 7. Section **78B-6-146** is amended to read:

423           **78B-6-146. Postadoption contact agreements.**

424           (1) As used in this section:

425           (a) "Postadoption contact agreement" means a document, agreed upon ~~[prior to the~~  
426 ~~finalization of]~~ before the day on which an adoption of a child ~~[in the custody of the division]~~

427 is finalized, that outlines the relationship between an adoptive parent, birth parent, or other  
428 birth relative, and an adopted child after the finalization of adoption.

429           (b) "Other birth relative" means a grandparent, stepparent, sibling, stepsibling, aunt, or  
430 uncle of the prospective adoptive child.

431 (2) (a) Notwithstanding any other provision in this chapter, if a child [~~in the custody of~~  
432 ~~the division~~] is placed for adoption, the prospective adoptive parent and birth parent, or other  
433 birth relative, may enter into a postadoption contact agreement as provided in this section.

434 (b) A birth parent is not required to be a party to a postadoption contact agreement in  
435 order to permit an open adoption agreement between a prospective adoptive parent and another  
436 birth relative of the child.

437 (3) In order to be legally enforceable, a postadoption contact agreement shall be:

438 (a) approved by the court before the finalization of the adoption, with the court making  
439 a specific finding that the agreement is in the best interest of the child;

440 (b) signed by each party claiming a right or obligation in the agreement; and

441 (c) if the adopted child is 12 years old or older, approved by the child.

442 (4) A postadoption contact agreement shall:

443 (a) describe:

444 (i) visits, if any, that shall take place between the birth parent, other birth relative,  
445 adoptive parent, and adopted child;

446 (ii) the degree of supervision, if any, that shall be required during a visit between a  
447 birth parent, other birth relative, and adopted child;

448 (iii) the information, if any, that shall be provided to a birth parent, or other birth  
449 relative, about the adopted child and how often that information shall be provided;

450 (iv) the grounds, if any, on which the adoptive parent may:

451 (A) decline to permit visits, described in Subsection (4)(a)(i), between the birth parent,  
452 or other birth relative, and adopted child; or

453 (B) cease providing the information described in Subsection (4)(a)(iii) to the birth  
454 parent or other birth relative; and

455 (b) state that following the adoption, the court shall presume that the adoptive parent's  
456 judgment about the best interest of the child is correct in any action seeking to enforce, modify,  
457 or terminate the agreement.

458 (5) A postadoption contact agreement may not limit the adoptive parent's ability to  
459 move out of state.

460 (6) A postadoption contact agreement may only be modified with the consent of the  
461 adoptive parent.

- 462 (7) In an action seeking enforcement of a postadoption contact agreement:  
463 (a) an adoptive parent's judgment about the best interest of the child is entitled to a  
464 presumption of correctness;  
465 (b) if the party seeking to enforce the postadoption contact agreement successfully  
466 rebuts the presumption described in Subsection (7)(a), the court shall consider whether:  
467 (i) the parties performed the duties outlined in the open adoption agreement in good  
468 faith;  
469 (ii) there is a reasonable alternative that fulfills the spirit of the open adoption  
470 agreement without ordering mandatory compliance with the open adoption agreement; and  
471 (iii) enforcement of the open adoption agreement is in the best interest of the adopted  
472 child; and  
473 (c) the court shall order the parties to attend mediation, if the presumption in  
474 Subsection (7)(a) is successfully rebutted and mediation is in the child's best interest.  
475 (8) An open adoption agreement that has been found not to be in the best interest of the  
476 adopted child shall not be enforced.  
477 (9) Violation of an open adoption agreement is not grounds:  
478 (a) to set aside an adoption; or  
479 (b) for an award of money damages.  
480 (10) Nothing in this section shall be construed to mean that an open adoption  
481 agreement is required before an adoption may be finalized.  
482 (11) Refusal or failure to agree to a postadoption contact agreement is not admissible  
483 in any adoption proceeding.  
484 (12) The court that approves a postadoption contact agreement retains jurisdiction over  
485 modification, termination, and enforcement of an approved postadoption contact agreement.