

ADOPTION SERVICE AGENCIES AMENDMENTS

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Luz Escamilla

House Sponsor: _____

LONG TITLE

General Description:

This bill modifies provisions relating to licensed adoption services.

Highlighted Provisions:

This bill:

- ▶ modifies the definition of "adoption services";
- ▶ requires a person engaging in certain adoption services to be licensed by the Office of Licensing within the Department of Human Services;
- ▶ prohibits certain unlicensed persons from using certain adoption terms to describe employees or services;
- ▶ prohibits an unlicensed person from charging a fee for adoptive services;
- ▶ requires the Office of Licensing to provide notice to certain persons upon finding the person is providing certain adoption 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-101, as last amended by Laws of Utah 2017, Chapters 209, 323, and 459



28 [62A-4a-602](#), as last amended by Laws of Utah 2017, Chapter 148

29 [62A-4a-603](#), as renumbered and amended by Laws of Utah 1994, Chapter 260



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

32 Section 1. Section **62A-4a-101** is amended to read:

33 **62A-4a-101. Definitions.**

34 As used in this chapter:

35 (1) "Abuse" means the same as that term is defined in Section [78A-6-105](#).

36 (2) "Adoption services" means:

37 (a) placing children for adoption;

38 (b) subsidizing adoptions under Section [62A-4a-105](#);

39 (c) supervising adoption placements until the adoption is finalized by the court;

40 (d) conducting adoption studies, with or without the supervision of a child placing
41 agency, as defined in Section [62A-2-101](#);

42 (e) preparing adoption reports upon request of the court, with or without the
43 supervision of a child placing agency, as defined in Section [62A-2-101](#); [and]

44 (f) providing postadoptive placement services, upon request of a family, for the
45 purpose of stabilizing a possible disruptive placement[-];

46 (g) assisting:

47 (i) a parent identify or locate an individual interested in adopting the parent's child; or

48 (ii) a prospective parent identify or locate a child to adopt; or

49 (h) managing, supervising, or facilitating the process of calculating, paying, or
50 reimbursing adoption related expenses, as defined in Section [76-7-203](#).

51 (3) "Child" means, except as provided in Part 7, Interstate Compact on Placement of
52 Children, [~~a person~~] an individual under 18 years of age.

53 (4) "Child protection team" means a team consisting of:

54 (a) the caseworker assigned to the case;

55 (b) the caseworker who made the decision to remove the child;

56 (c) a representative of the school or school district where the child attends school;

57 (d) the peace officer who removed the child from the home;

58 (e) a representative of the appropriate Children's Justice Center, if one is established

59 within the county where the child resides;

60 (f) if appropriate, and known to the division, a therapist or counselor who is familiar
61 with the child's circumstances;

62 (g) members of a child protection unit; and

63 (h) any other individuals determined appropriate and necessary by the team coordinator
64 and chair.

65 (5) "Child protection unit" means any unit created by a chief of police or a sheriff of a
66 city, town, metro township, or county that is composed of at least the following individuals
67 who are trained in the prevention, identification, and treatment of abuse or neglect:

68 (a) a law enforcement officer, as defined in Section 53-13-103; and

69 (b) a child advocate selected by the chief of police or a sheriff.

70 (6) "Chronic abuse" means repeated or patterned abuse.

71 (7) "Chronic neglect" means repeated or patterned neglect.

72 (8) "Consult" means an interaction between two persons in which the initiating person:

73 (a) provides information to another person;

74 (b) provides the other person an opportunity to respond; and

75 (c) takes the other person's response, if any, into consideration.

76 (9) "Consumer" means a person who receives services offered by the division in
77 accordance with this chapter.

78 (10) "Custody," with regard to the division, means the custody of a minor in the
79 division as of the date of disposition.

80 (11) "Day-care services" means care of a child for a portion of the day which is less
81 than 24 hours:

82 (a) in the child's own home by a responsible person; or

83 (b) outside of the child's home in a:

84 (i) day-care center;

85 (ii) family group home; or

86 (iii) family child care home.

87 (12) "Dependent child" or "dependency" means a child, or the condition of a child, who
88 is homeless or without proper care through no fault of the child's parent, guardian, or custodian.

89 (13) "Director" means the director of the Division of Child and Family Services.

90 (14) "Division" means the Division of Child and Family Services.

91 (15) "Domestic violence services" means:

92 (a) temporary shelter, treatment, and related services to:

93 (i) ~~[a person]~~ an individual who is a victim of abuse, as defined in Section 78B-7-102;

94 and

95 (ii) the dependent children of ~~[a person]~~ an individual described in Subsection

96 (12)~~(a)(i)~~; and

97 (b) treatment services for ~~[a person]~~ an individual who is alleged to have committed,
98 has been convicted of, or has pled guilty to, an act of domestic violence as defined in Section
99 77-36-1.

100 (16) "Harm" means the same as that term is defined in Section 78A-6-105.

101 (17) "Homemaking service" means the care of individuals in their domiciles, and help
102 given to individual caretaker relatives to achieve improved household and family management
103 through the services of a trained homemaker.

104 (18) "Incest" means the same as that term is defined in Section 78A-6-105.

105 (19) "Indian child" means the same as that term is defined in 25 U.S.C. Sec. 1903.

106 (20) "Indian tribe" means the same as that term is defined in 25 U.S.C. Sec. 1903.

107 (21) "Minor" means, except as provided in Part 7, Interstate Compact on Placement of
108 Children:

109 (a) a child; or

110 (b) a person:

111 (i) who is at least 18 years of age and younger than 21 years of age; and

112 (ii) for whom the division has been specifically ordered by the juvenile court to provide
113 services.

114 (22) "Molestation" means the same as that term is defined in Section 78A-6-105.

115 (23) "Mutual case" means a case that has been:

116 (a) opened by the division under the division's discretion and procedures;

117 (b) opened by the law enforcement agency with jurisdiction over the case; and

118 (c) accepted for investigation by the child protection unit established by the chief of
119 police or sheriff, as applicable.

120 (24) "Natural parent" means a minor's biological or adoptive parent, and includes a

121 minor's noncustodial parent.

122 (25) "Neglect" means the same as that term is defined in Section 78A-6-105.

123 (26) "Protective custody," with regard to the division, means the shelter of a child by
124 the division from the time the child is removed from the child's home until the earlier of:

125 (a) the shelter hearing; or

126 (b) the child's return home.

127 (27) "Protective services" means expedited services that are provided:

128 (a) in response to evidence of neglect, abuse, or dependency of a child;

129 (b) to a cohabitant who is neglecting or abusing a child, in order to:

130 (i) help the cohabitant develop recognition of the cohabitant's duty of care and of the
131 causes of neglect or abuse; and

132 (ii) strengthen the cohabitant's ability to provide safe and acceptable care; and

133 (c) in cases where the child's welfare is endangered:

134 (i) to bring the situation to the attention of the appropriate juvenile court and law
135 enforcement agency;

136 (ii) to cause a protective order to be issued for the protection of the child, when
137 appropriate; and

138 (iii) to protect the child from the circumstances that endanger the child's welfare
139 including, when appropriate:

140 (A) removal from the child's home;

141 (B) placement in substitute care; and

142 (C) petitioning the court for termination of parental rights.

143 (28) "Severe abuse" means the same as that term is defined in Section 78A-6-105.

144 (29) "Severe neglect" means the same as that term is defined in Section 78A-6-105.

145 (30) "Sexual abuse" means the same as that term is defined in Section 78A-6-105.

146 (31) "Sexual exploitation" means the same as that term is defined in Section
147 78A-6-105.

148 (32) "Shelter care" means the temporary care of a minor in a nonsecure facility.

149 (33) "Sibling" means a child who shares or has shared at least one parent in common
150 either by blood or adoption.

151 (34) "Sibling visitation" means services provided by the division to facilitate the

152 interaction between a child in division custody with a sibling of that child.

153 (35) "State" means:

154 (a) a state of the United States;

155 (b) the District of Columbia;

156 (c) the Commonwealth of Puerto Rico;

157 (d) the Virgin Islands;

158 (e) Guam;

159 (f) the Commonwealth of the Northern Mariana Islands; or

160 (g) a territory or possession administered by the United States.

161 (36) "State plan" means the written description of the programs for children, youth, and
162 family services administered by the division in accordance with federal law.

163 (37) "Status offense" means a violation of the law that would not be a violation but for
164 the age of the offender.

165 (38) "Substance abuse" means the same as that term is defined in Section [78A-6-105](#).

166 (39) "Substantiated" or "substantiation" means a judicial finding based on a
167 preponderance of the evidence that abuse or neglect occurred. Each allegation made or
168 identified in a given case shall be considered separately in determining whether there should be
169 a finding of substantiated.

170 (40) "Substitute care" means:

171 (a) the placement of a minor in a family home, group care facility, or other placement
172 outside the minor's own home, either at the request of a parent or other responsible relative, or
173 upon court order, when it is determined that continuation of care in the minor's own home
174 would be contrary to the minor's welfare;

175 (b) services provided for a minor awaiting placement; and

176 (c) the licensing and supervision of a substitute care facility.

177 (41) "Supported" means a finding by the division based on the evidence available at the
178 completion of an investigation that there is a reasonable basis to conclude that abuse, neglect,
179 or dependency occurred. Each allegation made or identified during the course of the
180 investigation shall be considered separately in determining whether there should be a finding of
181 supported.

182 (42) "Temporary custody," with regard to the division, means the custody of a child in

183 the division from the date of the shelter hearing until disposition.

184 (43) "Transportation services" means travel assistance given to an individual with
185 escort service, if necessary, to and from community facilities and resources as part of a service
186 plan.

187 (44) "Unsubstantiated" means a judicial finding that there is insufficient evidence to
188 conclude that abuse or neglect occurred.

189 (45) "Unsupported" means a finding at the completion of an investigation that there is
190 insufficient evidence to conclude that abuse, neglect, or dependency occurred. However, a
191 finding of unsupported means also that the division worker did not conclude that the allegation
192 was without merit.

193 (46) "Without merit" means a finding at the completion of an investigation by the
194 division, or a judicial finding, that the alleged abuse, neglect, or dependency did not occur, or
195 that the alleged perpetrator was not responsible for the abuse, neglect, or dependency.

196 Section 2. Section **62A-4a-602** is amended to read:

197 **62A-4a-602. Licensure requirements -- Prohibited acts.**

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

199 (1) Except as provided in Subsection (3), a person who is not licensed by the Office of
200 Licensing within the department to provide child placing or adoption services may not:

201 (a) engage in child placing or adoption services, or solicit money or other assistance for
202 child placing[, without a valid license issued by the Office of Licensing, in accordance with
203 Chapter 2, Licensure of Programs and Facilities.] or adoption services;

204 (b) describe the person or the person's employee or agent using a term that implies the
205 person, employee, or agent is able to provide adoption services; or

206 (c) transact business under a name that includes the terms "adoption" or "adopt," or a
207 derivative of the terms "adoption" or "adopt," unless:

208 (i) the person participates in an adoption that does not involve a child; or

209 (ii) the term is used:

210 (A) by a law firm;

211 (B) in a literary publication; or

212 (C) by a nonprofit organization that employs at least one person who is licensed by the
213 Office of Licensing to provide child placing or adoption services.

214 (2) When a child-placing agency's license is suspended or revoked in accordance with
 215 ~~[that chapter]~~ Chapter 2, Licensure of Programs and Facilities, the care, control, or custody of
 216 any child who has been in the care, control, or custody of that agency shall be transferred to the
 217 division.

218 ~~[(2)]~~ (3) (a) ~~[An]~~ Subject to Subsection (3)(b), an attorney, physician, or other person
 219 may, regardless of whether the attorney, physician, or person is licensed by the Office of
 220 Licensing within the department:

221 (i) assist a parent ~~[in identifying or locating]~~ identify or locate a person interested in
 222 adopting the parent's child ~~[, or in identifying or locating]~~ or a child to be adopted ~~[- However,~~
 223 ~~no payment, charge, fee, reimbursement of expense, or exchange of value of any kind, or~~
 224 ~~promise or agreement to make the same, may be made for that assistance.];~~ or

225 (ii) provide adoption-related services, including counseling, post-placement
 226 supervision, or expense management.

227 (b) An attorney, physician, or other person who is not licensed by the Office of
 228 Licensing within the department may not:

229 (i) charge, accept, or exchange value of any kind for the assistance or services
 230 described in Subsection (3)(a);

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

234 ~~[(ii)]~~ (iii) cause, permit, or allow any sign or marking indicating that ~~[he]~~ the attorney,
 235 physician, or other person is available to provide ~~[that assistance]~~ the assistance described in
 236 Subsection (3)(a), on or in any building or structure;

237 ~~[(iii)]~~ (iv) announce or cause, permit, or allow an announcement indicating that ~~[he]~~
 238 the attorney, physician, or other person is available to provide ~~[that assistance]~~ the assistance
 239 described in Subsection (3)(a), to appear in any newspaper, magazine, directory, or on radio or
 240 television; or

241 ~~[(iv)]~~ (v) advertise by any other means that ~~[he]~~ the attorney, physician, or other person
 242 is available to provide ~~[that assistance]~~ the assistance described in Subsection (3)(a).

243 ~~[(3)]~~ (4) Nothing in this part:

244 (a) precludes payment of fees for medical, legal, or other lawful services rendered in

245 connection with the care of a mother, delivery and care of a child, or lawful adoption
 246 proceedings; [~~and no provision of this part~~] or

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

248 [~~(4)~~] (5) In accordance with federal law, only agents or employees of the division and
 249 of licensed child placing agencies may certify to the United States Immigration and
 250 Naturalization Service that a family meets the division's preadoption requirements.

251 [~~(5)~~] (6) (a) [~~Beginning May 1, 2000, neither~~] Neither a licensed child-placing agency
 252 nor any attorney practicing in this state may place a child for adoption, either temporarily or
 253 permanently, with any individual or individuals that would not be qualified for adoptive
 254 placement pursuant to the provisions of Sections [78B-6-117](#), [78B-6-102](#), and [78B-6-137](#).

255 (b) [~~Beginning May 1, 2000, the~~] The division, as a licensed child-placing agency, may
 256 not place a child in foster care with any individual or individuals that would not be qualified
 257 for adoptive placement pursuant to the provisions of Sections [78B-6-117](#), [78B-6-102](#), and
 258 [78B-6-137](#). However, nothing in this Subsection [~~(5)~~] (6)(b) limits the placement of a child in
 259 foster care with the child's biological or adoptive parent.

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

265 Section 3. Section **62A-4a-603** is amended to read:

266 **62A-4a-603. Injunction -- Enforcement by county attorney or attorney general.**

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

270 (2) The Office of Licensing shall:

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

272 and

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

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

276 (ii) notify the local county attorney of the alleged violation.

277 ~~[(2)]~~ (3) (a) A county attorney or the attorney general shall institute legal action as
278 necessary to enforce the provisions of Section 62A-4a-602 ~~[when informed of any]~~ after being
279 informed of an alleged violation.

280 (b) If ~~[the]~~ a county attorney does not take action within 30 days after ~~[being informed]~~
281 the day on which the county attorney is informed of an alleged violation of Section
282 62A-4a-602, the attorney general may be requested to take action, and shall then institute legal
283 proceedings in place of the county attorney.

284 ~~[(3)]~~ (4) (a) In addition to the remedies provided in Subsections (1) and ~~[(2)]~~ (3), any
285 person, agency, firm, corporation, or association found to be in violation of Section
286 62A-4a-602 shall forfeit all proceeds identified as resulting from the transaction, and may also
287 be assessed a civil penalty of not more than \$10,000 for each violation. ~~[Every]~~

288 (b) Each act in violation of Section 62A-4a-602, including each placement or
289 attempted placement of a child, is a separate violation.

290 ~~[(4)]~~ (5) (a) All amounts recovered as penalties under Subsection ~~[(3)]~~ (4) shall be
291 placed in the General Fund of the prosecuting county, or in the state General Fund if the
292 attorney general prosecutes.

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

296 ~~[(5)]~~ (6) A judgment ordering the payment of any penalty or forfeiture under
297 Subsection ~~[(3) constitutes]~~ (4) is a lien when recorded in the judgment docket, and has the
298 same effect and is subject to the same rules as a judgment for money in a civil action.