

Senator Luz Escamilla proposes the following substitute bill:

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:

- ▶ defines "advertisement";
- ▶ clarifies provisions prohibiting advertisements for certain adoption-related services under certain circumstances;
- ▶ 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



26 62A-4a-603, as renumbered and amended by Laws of Utah 1994, Chapter 260

27 78B-6-124, as last amended by Laws of Utah 2017, Chapter 148

28

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

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

31 **62A-4a-602. Licensure requirements -- Prohibited acts.**

32 (1) As used in this section:

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

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

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

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

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

45 [~~(2)~~] (3) (a) (i) An attorney, physician, or other person may assist a parent in
46 identifying or locating a person interested in adopting the parent's child, or in identifying or
47 locating a child to be adopted.[~~However, no~~]

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

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

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

55 (ii) cause, permit, or allow any sign or marking indicating that [~~he~~] the attorney,
56 physician, or other person is available to provide [that] the assistance described in Subsection

57 (3)(a), on or in any building or structure;

58 (iii) announce ~~[or]~~, cause, permit, or allow an announcement indicating that ~~[he]~~ the
59 attorney, physician, or other person is available to provide ~~[that]~~ the assistance described in
60 Subsection (2)(a), to appear in any newspaper, magazine, directory, ~~[or]~~, on radio or television,
61 or an Internet website; or

62 (iv) ~~[advertise]~~ announce, cause, permit, or allow an advertisement by any ~~[other]~~
63 means that ~~[he]~~ indicates or implies the attorney, physician, or other person is available to
64 provide ~~[that]~~ the assistance[-] described in Subsection (3)(a), including an advertisement that
65 indicates or implies the attorney, physician, or other person is available to provide the
66 assistance described in Subsection (3)(a) as part of, or related to, other adoption-related
67 services by using any of the following terms:

68 (A) "comprehensive";

69 (B) "complete";

70 (C) "one-stop";

71 (D) "all-inclusive"; or

72 (E) any other term similar to the terms described in Subsections (3)(b)(iv)(A) through
73 (D).

74 ~~[(3)]~~ (4) Nothing in this part:

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

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

79 ~~[(4)]~~ (5) In accordance with federal law, only agents or employees of the division and
80 of licensed child placing agencies may certify to the United States Immigration and
81 Naturalization Service that a family meets the division's preadoption requirements.

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

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

87 (b) ~~[Beginning May 1, 2000, the]~~ The division, as a licensed child-placing agency, may

88 not place a child in foster care with any individual or individuals that would not be qualified
89 for adoptive placement pursuant to the provisions of Sections 78B-6-117, 78B-6-102, and
90 78B-6-137. However, nothing in this Subsection [(5)] (6)(b) limits the placement of a child in
91 foster care with the child's biological or adoptive parent.

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

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

98 **62A-4a-603. Injunction -- Enforcement by county attorney or attorney general.**

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

102 (2) The Office of Licensing shall:

103 (a) solicit information from the public relating to violations of Section 62A-4a-602;

104 and

105 (b) upon identifying a violation of Section 62A-4a-602:

106 (i) send a written notice to the person who violated Section 62A-4a-602 that describes
107 the alleged violation; and

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

109 (A) local county attorney; and

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

111 [(2)] (3) (a) A county attorney or the attorney general shall institute legal action as
112 necessary to enforce the provisions of Section 62A-4a-602 [~~when informed of any~~] after being
113 informed of an alleged violation.

114 (b) If [~~the~~] a county attorney does not take action within 30 days after [~~being informed~~]
115 the day on which the county attorney is informed of an alleged violation of Section
116 62A-4a-602, the attorney general may be requested to take action, and shall then institute legal
117 proceedings in place of the county attorney.

118 [(3)] (4) (a) In addition to the remedies provided in Subsections (1) and [(2)] (3), any

119 person, agency, firm, corporation, or association found to be in violation of Section
120 62A-4a-602 shall forfeit all proceeds identified as resulting from the transaction, and may also
121 be assessed a civil penalty of not more than \$10,000 for each violation. [~~Every~~]

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

124 [~~(4)~~] (5) (a) All amounts recovered as penalties under Subsection [~~(3)~~] (4) shall be
125 placed in the General Fund of the prosecuting county, or in the state General Fund if the
126 attorney general prosecutes.

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

130 [~~(5)~~] (6) A judgment ordering the payment of any penalty or forfeiture under
131 Subsection [~~(3)~~ constitutes] (4) is a lien when recorded in the judgment docket, and has the
132 same effect and is subject to the same rules as a judgment for money in a civil action.

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

134 **78B-6-124. Persons who may take consents and relinquishments.**

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

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

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

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

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

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

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

149 (c) a court that has jurisdiction over adoption proceedings in the state where the

150 consent or relinquishment is taken; or

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

153 (3) The consent or relinquishment of any other person or agency as required by Section
154 78B-6-120 may be signed before a Notary Public or any person authorized to take a consent or
155 relinquishment under Subsection (1) or (2).

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

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

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

163 (a) notarized; or

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

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