

## SB0215S01 compared with SB0215

~~{deleted text}~~ shows text that was in SB0215 but was deleted in SB0215S01.

Inserted text shows text that was not in SB0215 but was inserted into SB0215S01.

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Senator Luz Escamilla proposes the following substitute bill:

### ADOPTION SERVICE AGENCIES AMENDMENTS

2019 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Luz Escamilla**

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

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#### 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}~~ defines "advertisement";
- ▶ clarifies provisions prohibiting advertisements for certain ~~{adoption}~~ adoption-related 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}~~ under

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### 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}~~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-101~~, as last amended by Laws of Utah 2017, Chapters 209, 323, and 459
- ~~}~~ ~~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:*

Section 1. Section ~~{62A-4a-101}~~62A-4a-602 is amended to read:

~~{~~ ~~62A-4a-101. Definitions.~~

~~As used in this chapter:~~

- ~~(1) "Abuse" means the same as that term is defined in Section 78A-6-105.~~
- ~~(2) "Adoption services" means:~~
  - ~~(a) placing children for adoption;~~
  - ~~(b) subsidizing adoptions under Section 62A-4a-105;~~
  - ~~(c) supervising adoption placements until the adoption is finalized by the court;~~
  - ~~(d) conducting adoption studies, with or without the supervision of a child placing agency, as defined in Section 62A-2-101;~~
  - ~~(e) preparing adoption reports upon request of the court, with or without the supervision of a child placing agency, as defined in Section 62A-2-101; [and]~~
  - ~~(f) providing postadoptive placement services, upon request of a family, for the purpose of stabilizing a possible disruptive placement[.];~~

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- ~~—— (g) assisting;~~
- ~~—— (i) a parent identify or locate an individual interested in adopting the parent's child, or~~
- ~~—— (ii) a prospective parent identify or locate a child to adopt; or~~
- ~~—— (h) managing, supervising, or facilitating the process of calculating, paying, or reimbursing adoption related expenses, as defined in Section 76-7-203.~~
- ~~—— (3) "Child" means, except as provided in Part 7, Interstate Compact on Placement of Children, [a person] an individual under 18 years of age.~~
- ~~—— (4) "Child protection team" means a team consisting of:~~
  - ~~—— (a) the caseworker assigned to the case;~~
  - ~~—— (b) the caseworker who made the decision to remove the child;~~
  - ~~—— (c) a representative of the school or school district where the child attends school;~~
  - ~~—— (d) the peace officer who removed the child from the home;~~
  - ~~—— (e) a representative of the appropriate Children's Justice Center, if one is established within the county where the child resides;~~
  - ~~—— (f) if appropriate, and known to the division, a therapist or counselor who is familiar with the child's circumstances;~~
  - ~~—— (g) members of a child protection unit; and~~
  - ~~—— (h) any other individuals determined appropriate and necessary by the team coordinator and chair.~~
- ~~—— (5) "Child protection unit" means any unit created by a chief of police or a sheriff of a city, town, metro township, or county that is composed of at least the following individuals who are trained in the prevention, identification, and treatment of abuse or neglect:~~
  - ~~—— (a) a law enforcement officer, as defined in Section 53-13-103; and~~
  - ~~—— (b) a child advocate selected by the chief of police or a sheriff.~~
- ~~—— (6) "Chronic abuse" means repeated or patterned abuse.~~
- ~~—— (7) "Chronic neglect" means repeated or patterned neglect.~~
- ~~—— (8) "Consult" means an interaction between two persons in which the initiating person:~~
  - ~~—— (a) provides information to another person;~~
  - ~~—— (b) provides the other person an opportunity to respond; and~~
  - ~~—— (c) takes the other person's response, if any, into consideration.~~
- ~~—— (9) "Consumer" means a person who receives services offered by the division in~~

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~~accordance with this chapter:~~

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

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

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

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

~~—— (i) day-care center;~~

~~—— (ii) family group home; or~~

~~—— (iii) family child care home.~~

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

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

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

~~—— (15) "Domestic violence services" means:~~

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

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

~~—— (ii) the dependent children of [a person] an individual described in Subsection (12)[(a)(i)]; and~~

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

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

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

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

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

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

~~—— (21) "Minor" means, except as provided in Part 7, Interstate Compact on Placement of~~

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### Children:

- ~~\_\_\_\_\_ (a) a child; or~~
- ~~\_\_\_\_\_ (b) a person:~~
  - ~~\_\_\_\_\_ (i) who is at least 18 years of age and younger than 21 years of age; and~~
  - ~~\_\_\_\_\_ (ii) for whom the division has been specifically ordered by the juvenile court to provide services:~~
- ~~\_\_\_\_\_ (22) "Molestation" means the same as that term is defined in Section 78A-6-105.~~
- ~~\_\_\_\_\_ (23) "Mutual case" means a case that has been:~~
  - ~~\_\_\_\_\_ (a) opened by the division under the division's discretion and procedures;~~
  - ~~\_\_\_\_\_ (b) opened by the law enforcement agency with jurisdiction over the case; and~~
  - ~~\_\_\_\_\_ (c) accepted for investigation by the child protection unit established by the chief of police or sheriff, as applicable.~~
- ~~\_\_\_\_\_ (24) "Natural parent" means a minor's biological or adoptive parent, and includes a minor's noncustodial parent.~~
- ~~\_\_\_\_\_ (25) "Neglect" means the same as that term is defined in Section 78A-6-105.~~
- ~~\_\_\_\_\_ (26) "Protective custody," with regard to the division, means the shelter of a child by the division from the time the child is removed from the child's home until the earlier of:~~
  - ~~\_\_\_\_\_ (a) the shelter hearing; or~~
  - ~~\_\_\_\_\_ (b) the child's return home.~~
- ~~\_\_\_\_\_ (27) "Protective services" means expedited services that are provided:~~
  - ~~\_\_\_\_\_ (a) in response to evidence of neglect, abuse, or dependency of a child;~~
  - ~~\_\_\_\_\_ (b) to a cohabitant who is neglecting or abusing a child, in order to:~~
    - ~~\_\_\_\_\_ (i) help the cohabitant develop recognition of the cohabitant's duty of care and of the causes of neglect or abuse; and~~
    - ~~\_\_\_\_\_ (ii) strengthen the cohabitant's ability to provide safe and acceptable care; and~~
    - ~~\_\_\_\_\_ (c) in cases where the child's welfare is endangered:~~
      - ~~\_\_\_\_\_ (i) to bring the situation to the attention of the appropriate juvenile court and law enforcement agency;~~
      - ~~\_\_\_\_\_ (ii) to cause a protective order to be issued for the protection of the child, when appropriate; and~~
      - ~~\_\_\_\_\_ (iii) to protect the child from the circumstances that endanger the child's welfare~~

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~~including, when appropriate:~~

~~—— (A) removal from the child's home;~~

~~—— (B) placement in substitute care; and~~

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

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

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

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

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

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

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

~~—— (34) "Sibling visitation" means services provided by the division to facilitate the interaction between a child in division custody with a sibling of that child.~~

~~—— (35) "State" means:~~

~~—— (a) a state of the United States;~~

~~—— (b) the District of Columbia;~~

~~—— (c) the Commonwealth of Puerto Rico;~~

~~—— (d) the Virgin Islands;~~

~~—— (e) Guam;~~

~~—— (f) the Commonwealth of the Northern Mariana Islands; or~~

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

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

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

~~—— (38) "Substance abuse" means the same as that term is defined in Section 78A-6-105.~~

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

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~~———— (40) "Substitute care" means:~~

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

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

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

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

~~———— (42) "Temporary custody," with regard to the division, means the custody of a child in the division from the date of the shelter hearing until disposition.~~

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

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

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

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

~~———— Section 2. Section ~~62A-4a-602~~ is amended to read:~~

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

(1) As used in this section:

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

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

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

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

~~—— (a) }2) (a) A person may not engage in child placing ~~{ or adoption services }~~, or solicit money or other assistance for child placing ~~{ }~~, without a valid license issued by the Office of Licensing, in accordance with Chapter 2, Licensure of Programs and Facilities. ~~{ } or adoption services:~~~~

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

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

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

~~—— (ii) the term is used:~~

~~—— (A) by a law firm;~~

~~—— (B) in a literary publication; or~~

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

~~—— (2)~~

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

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

~~—— (i) } assist a parent ~~{ }~~ in identifying or locating ~~{ } identify or locate }~~ a person interested in adopting the parent's child ~~{ }~~, or in identifying or locating ~~{ } or }~~ a child to be adopted. ~~[ { }]~~~~

~~However, no ]~~



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(ii) No payment, charge, fee, reimbursement of expense, or exchange of value of any kind, or promise or agreement to make the same, may be made for ~~[that {assistance.}; or~~  
~~— (ii) provide adoption-related services, including counseling, post-placement supervision, or expense management.}]~~ the assistance described in Subsection (3)(a)(i).

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

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

~~— [(i) (ii)]~~ may not:

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

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

~~{(iii) (iv)}~~ announce ~~[or]~~, cause, permit, or allow an announcement indicating that ~~[he]~~ the attorney, physician, or other person is available to provide ~~[that {assistance}]~~ the assistance described in Subsection (~~{3}2~~)(a), to appear in any newspaper, magazine, directory, ~~[or]~~ on radio or television ~~{; or~~

~~— [(iv) (v) advertise by any other}, or an Internet website; or~~

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

(A) "comprehensive";

(B) "complete";

(C) "one-stop";

(D) "all-inclusive"; or

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

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(D).

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

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

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

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

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

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

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

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

Section ~~[(3)]~~ 2. Section **62A-4a-603** is amended to read:

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

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

(2) The Office of Licensing shall:

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

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and

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

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

(ii) notify the ~~local county attorney~~ following persons of the alleged violation ~~f.i.~~:

(A) local county attorney; and

(B) the Division of Occupational and Professional Licensing.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) notarized; or

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

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