

SB0215S02 compared with SB0215S01

~~text~~ shows text that was in SB0215S01 but was deleted in SB0215S02.

Inserted text shows text that was not in SB0215S01 but was inserted into SB0215S02.

DISCLAIMER: This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

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"~~terms;
- ▶ 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:

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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

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

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

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

(1) As used in this section:

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

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

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

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

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

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

(2) (a) ~~A person may not~~ engage in child placing, 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.

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(b) When a child-placing agency's license is suspended or revoked in accordance with that chapter, 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 attorney, physician, or other person may assist a parent in identifying or locating a person interested in adopting the parent's child, or in identifying or locating a child to be adopted. ~~[-However, no]~~

(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] the assistance described in Subsection (3)(a)(i).

(b) An attorney, physician, or other person 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] the assistance described in Subsection (3)(a)(i)~~;

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

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

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

[(iv) announce, cause, permit, or allow ~~an~~ a matching advertisement ~~by any other] means that [he] indicates or implies the attorney, physician, or other person is available to provide [that] the assistance[.] described in Subsection (3)(a), including; or~~

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

(A) "comprehensive";

(B) "complete";

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(C) "one-stop";

(D) "all-inclusive"; or

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

through (D).

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

~~[(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) 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

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placement of a child with the child's biological or adoptive parent.

Section 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;

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 following persons of the alleged violation:

(A) the 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.

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(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.

(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

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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.

(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.