

**Representative Merrill F. Nelson** proposes the following substitute bill:

**ADOPTION AMENDMENTS**

2021 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Merrill F. Nelson**

Senate Sponsor: Todd D. Weiler

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**LONG TITLE**

**General Description:**

This bill amends and enacts provisions relating to adoption.

**Highlighted Provisions:**

This bill:

- ▶ clarifies that a new birth certificate may be issued after the adoption of an adult;
- ▶ allows an attorney in the adoption or the child-placing agency to be provided the adoption report;
- ▶ allows the attorney in the adoption or the child-placing agency to take the adoption report to the state registrar;
- ▶ clarifies that a new birth certificate may be issued for a foreign-born individual who is adopted as an adult;
- ▶ allows the spouse of a preexisting parent to adopt a child after the child's death;
- ▶ if a child-placing agency placed a child for adoption, provides that the child-placing agency file an affidavit regarding fees and expenses with the Office of Licensing within the Department of Human Services; and
- ▶ makes technical and conforming changes.

**Money Appropriated in this Bill:**

None



26 **Other Special Clauses:**

27 None

28 **Utah Code Sections Affected:**

29 AMENDS:

30 **26-2-10**, as last amended by Laws of Utah 2015, Chapter 137

31 **26-2-25**, as last amended by Laws of Utah 1995, Chapter 202

32 **26-2-28**, as last amended by Laws of Utah 2008, Chapter 3

33 **78B-6-115**, as last amended by Laws of Utah 2015, Chapter 137

34 **78B-6-120.1**, as enacted by Laws of Utah 2013, Chapter 458

35 **78B-6-136.5**, as last amended by Laws of Utah 2012, Chapter 340

36 **78B-6-140**, as last amended by Laws of Utah 2012, Chapter 340



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

39 Section 1. Section **26-2-10** is amended to read:

40 **26-2-10. Supplementary certificate of birth.**

41 ~~[(1) Any person born in this state who is legitimized by the subsequent marriage of the~~  
42 ~~person's natural parents, or whose parentage has been determined by any U.S. state court or~~  
43 ~~Canadian provincial court having jurisdiction, or who has been legally adopted under the law~~  
44 ~~of this or any other state or any province of Canada, may request the state registrar to register a~~  
45 ~~supplementary birth certificate on the basis of that status.]~~

46 (1) An individual born in this state may request the state registrar to register a  
47 supplementary birth certificate for the individual if:

48 (a) the individual is ~~§~~→ **legitimized by the subsequent marriage of the individual's natural**  
49 **parents;** **legally recognized as a child of the individual's natural parents when the individual's**  
49a **natural parents are subsequently married;** ~~←~~§

50 (b) the individual's parentage has been determined by a state court of the United States  
51 or a Canadian provincial court with jurisdiction; or

52 (c) the individual has been legally adopted, as a child or as an adult, under the law of  
53 this state, any other state, or any province of Canada.

54 (2) The application for registration of a supplementary birth certificate may be made  
55 by:

56 (a) the ~~[person]~~ individual requesting registration[;] under Subsection (1) if the

57 ~~[person]~~ individual is of legal age~~[-by]~~;

58 (b) a legal representative~~[-or-by]~~; or

59 (c) any agency authorized to receive children for placement or adoption under the laws  
60 of this or any other state.

61 (3) (a) The state registrar shall require that an applicant submit identification and proof  
62 according to department rules.

63 (b) In the case of an adopted ~~[person]~~ individual, that proof may be established by  
64 order of the court in which the adoption proceedings were held.

65 (4) (a) After the supplementary birth certificate is registered, any information disclosed  
66 from the record shall be from the supplementary birth certificate.

67 (b) Access to the original birth certificate and to the evidence submitted in support of  
68 the supplementary birth certificate are not open to inspection except upon the order of a Utah  
69 district court or ~~[as provided under]~~ as described in Section 78B-6-141 or Section 78B-6-144.

70 Section 2. Section **26-2-25** is amended to read:

71 **26-2-25. Divorce or adoption -- Duty of court clerk to file certificates or reports.**

72 (1) ~~[(a)]~~ For each adoption, annulment of adoption, divorce, and annulment of marriage  
73 ordered or decreed in this state, the clerk of the court shall prepare a divorce certificate or  
74 report of adoption on a form furnished by the state registrar.

75 (2) The petitioner shall provide the information necessary to prepare the certificate or  
76 report ~~[when he files the petition with the clerk]~~ under Subsection (1).

77 ~~[(b)]~~ (3) The clerk shall:

78 (a) prepare the certificate or report ~~[and, immediately after the decree or order becomes~~  
79 ~~final, shall]~~ under Subsection (1); and

80 (b) complete the remaining entries for the certificate or report immediately after the  
81 decree or order becomes final.

82 (4) On or before the 15th day of each month, the clerk shall forward the divorce  
83 certificates and reports of adoption under Subsection (1) completed by ~~[him]~~ the clerk during  
84 the preceding month to the state registrar.

85 ~~[(2) If there is filed with the clerk of the court in an adoption proceeding a written~~  
86 ~~consent to adoption by an agency licensed under the laws of the state to receive children for~~  
87 ~~placement or adoption, the agency by its authorized representative shall prepare and complete~~

88 ~~the report of adoption and forward it to the state registrar immediately after entry of the decree~~  
89 ~~of adoption.]~~

90 (5) (a) A report of adoption under Subsection (1) may be provided to the attorney who  
91 is providing representation of a party to the adoption or the child-placing agency, as defined in  
92 Section 78B-6-103, that is placing the child.

93 (b) If a report of adoption is provided to the attorney or the child-placing agency, as  
94 defined in Section 78B-6-103, the attorney or the child-placing agency shall immediately  
95 provide the report of adoption to the state registrar.

96 Section 3. Section 26-2-28 is amended to read:

97 **26-2-28. Birth certificate for foreign adoptees.**

98 Upon presentation of a court order of adoption and an order establishing the fact, time,  
99 and place of birth under Section 26-2-15, the department shall prepare a birth certificate for  
100 ~~[any person]~~ an individual who:

101 (1) was adopted under the laws of this state; and

102 (2) was at the time of adoption, as a child or as an adult, considered an alien child or  
103 adult for whom the court received documentary evidence of ~~[legal residence]~~ lawful admission  
104 under Section 78B-6-108.

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

106 **78B-6-115. Who may adopt -- Adoption of minor -- Adoption of adult.**

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

108 (a) ~~[a person 65 years of age]~~ an individual who is 65 years old or older; or

109 (b) an adult~~[-18 years of age]~~ who is 18 years old or older, and who has a mental or  
110 physical impairment ~~[which]~~ that substantially affects that ~~[person's]~~ adult's ability to:

111 (i) provide personal protection;

112 (ii) provide necessities such as food, shelter, clothing, or medical or other health care;

113 (iii) obtain services necessary for health, safety, or welfare;

114 (iv) carry out the activities of daily living;

115 (v) manage the adult's own resources; or

116 (vi) comprehend the nature and consequences of remaining in a situation of abuse,  
117 neglect, or exploitation.

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

119 adult.

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

122 (a) (i) Section [78B-6-108](#);

123 (ii) Section [78B-6-114](#);

124 (iii) Section [78B-6-116](#);

125 (iv) Section [78B-6-118](#);

126 (v) Section [78B-6-124](#);

127 (vi) Section [78B-6-136](#);

128 (vii) Section [78B-6-137](#);

129 (viii) Section [78B-6-138](#);

130 (ix) Section [78B-6-139](#);

131 (x) Section [78B-6-141](#); and

132 (xi) Section [78B-6-142](#);

133 (b) Subsections ~~[[78B-6-105](#)(1)(a), (1)(b)(i), (1)(b)(ii), (2), and (7)]~~ [78B-6-105](#)(1)(a)(i),  
134 [\(1\)\(a\)\(ii\)\(A\)](#), [\(1\)\(a\)\(ii\)\(C\)](#), [\(1\)\(a\)\(ii\)\(D\)](#), [\(1\)\(b\)](#), [\(2\)](#), and [\(7\)](#), except that the juvenile court does  
135 not have jurisdiction over a proceeding for adoption of an adult, unless the adoption arises from  
136 a case where the juvenile court has continuing jurisdiction over the mature adoptee; and

137 (c) if the mature adoptee is a vulnerable adult, Sections [78B-6-128](#) through [78B-6-131](#),  
138 regardless of whether the mature adoptee resides, or will reside, with the ~~[adoptors]~~ adopters,  
139 unless the court, based on a finding of good cause, waives the requirements of those sections.

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

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

145 Section 5. Section [78B-6-120.1](#) is amended to read:

146 **[78B-6-120.1. Implied consent.](#)**

147 (1) ~~[(a)]~~ As used in this section~~["abandonment"]~~:

148 (a) "Abandonment" means failure of a father, with reasonable knowledge of the  
149 pregnancy, to offer and provide financial and emotional support to the birth mother for a period

150 of six months before the day on which the adoptee is born.

151 (b) "Emotional support" means a pattern of statements or actions that indicate to a  
152 reasonable person that a father intends to provide for the physical and emotional well-being of  
153 an unborn child.

154 ~~[(b)] (2) (a)~~ A court may not determine that a father abandoned the birth mother if the  
155 father failed to provide financial or emotional support because the birth mother refused to  
156 accept support.

157 ~~[(2) (a) As used in this section, "emotional support" means a pattern of statements or~~  
158 ~~actions that indicate to a reasonable person that a father intends to provide for the physical and~~  
159 ~~emotional well-being of an unborn child.]~~

160 (b) A court may not find that a father failed to provide emotional support if the father's  
161 failure was due to impossibility of performance.

162 (3) Consent or relinquishment, as required by Subsection 78B-6-120(1), may be  
163 implied by any of the following acts:

164 (a) abandonment;

165 (b) leaving the adoptee with a third party, without providing the third party with the  
166 parent's identification, for 30 consecutive days;

167 (c) knowingly leaving the adoptee with another person, without providing for support,  
168 communicating, or otherwise maintaining a substantial relationship with the adoptee, for six  
169 consecutive months; or

170 (d) receiving notification of a pending adoption proceeding under Subsection  
171 78B-6-110(6) or of a termination proceeding under Section 78B-6-112 and failing to respond  
172 as required.

173 (4) Implied consent under Subsection (3)~~[(a)]~~ may not be withdrawn.

174 (5) Nothing in this section negates the requirements of Section 78B-6-121 or  
175 78B-6-122 for an unmarried biological father.

176 Section 6. Section 78B-6-136.5 is amended to read:

177 **78B-6-136.5. Timing of entry of final decree of adoption -- Posthumous adoption.**

178 (1) Except as provided in Subsection (2), a final decree of adoption may not be entered  
179 until the earlier of:

180 (a) when the child has lived in the home of the prospective adoptive parent for six

181 months; or

182 (b) when the child has been placed for adoption with the prospective adoptive parent  
183 for six months.

184 (2) (a) If the prospective adoptive parent is the spouse of the ~~[pre-existing]~~ preexisting  
185 parent, a final decree of adoption may not be entered until the child has lived in the home of  
186 that prospective adoptive parent for one year, unless, based on a finding of good cause, the  
187 court orders that the final decree of adoption may be entered at an earlier time.

188 (b) The court may, based on a finding of good cause, order that the final decree of  
189 adoption be entered at an earlier time than described in Subsection (1).

190 (3) ~~[If the child dies during the time that the child is placed in the home of a~~  
191 ~~prospective adoptive parent or parents for the purpose of adoption, the]~~ The court has authority  
192 to enter a final decree of adoption after ~~[the]~~ a child's death upon the request of the prospective  
193 adoptive parent or parents~~[:]~~ of the child if:

194 (a) the child dies during the time that the child is placed in the home of a prospective  
195 adoptive parent or parents for the purpose of adoption; or

196 (b) the prospective adoptive parent is the spouse of a preexisting parent of the child and  
197 the child lived with the prospective adoptive parent before the child's death.

198 ~~[(4) The court may enter a final decree of adoption declaring that a child is adopted by~~  
199 ~~both a deceased and a surviving adoptive parent if, after the child is placed in the home of the~~  
200 ~~child's prospective adoptive parents:]~~

201 ~~[(a) one of the prospective adoptive parents dies;]~~

202 ~~[(b) the surviving prospective adoptive parent requests that the court enter the decree;~~  
203 ~~and]~~

204 ~~[(c) the decree is entered after the child has lived in the home of the surviving~~  
205 ~~prospective adoptive parent for at least six months.]~~

206 (4) The court may enter a final decree of adoption declaring that a child is adopted by:

207 (a) both a deceased and a surviving adoptive parent if after the child is placed in the  
208 home of the child's prospective adoptive parents:

209 (i) one of the prospective adoptive parents dies;

210 (ii) the surviving prospective adoptive parent requests that the court enter the decree;

211 and

- 212 (iii) the decree is entered after the child has lived in the home of the surviving
- 213 prospective adoptive parent for at least six months; or
- 214 (b) a spouse of a preexisting parent if after the child has lived with the spouse of the
- 215 preexisting parent:
- 216 (i) the preexisting parent, or the spouse of preexisting parent, dies;
- 217 (ii) the preexisting parent, or the spouse of the preexisting parent, requests that the
- 218 court enter the decree; and
- 219 (iii) the child has lived in the same home as the spouse of the preexisting parent for at
- 220 least one year.

221 (5) Upon request of a surviving [~~pre-existing~~] preexisting parent, or a surviving parent

222 for whom adoption of a child has been finalized, the court may enter a final decree of adoption

223 declaring that a child is adopted by a deceased adoptive parent who was the spouse of the

224 surviving parent at the time of the prospective adoptive parent's death.

225 (6) The court may enter a final decree of adoption declaring that a child is adopted by

226 both deceased prospective adoptive parents if:

- 227 (a) both of the prospective adoptive parents die after the child is placed in the
- 228 prospective adoptive parents' home; and
- 229 (b) it is in the best interests of the child to enter the decree.

230 (7) Nothing in this section shall be construed to grant any rights to the [~~pre-existing~~]

231 preexisting parents of a child to assert any interest in the child during the six-month or one-year

232 periods described in this section.

233 Section 7. Section **78B-6-140** is amended to read:

234 **78B-6-140. Itemization of fees and expenses.**

235 (1) Except as provided in Subsection (4), [~~prior to~~] before the date that a final decree of

236 adoption is entered, an affidavit regarding fees and expenses, signed by the prospective

237 adoptive parent or parents and the person or agency placing the child, shall be filed with the

238 court.

239 (2) The affidavit described in Subsection (1) shall itemize the following items in

240 connection with the adoption:

- 241 (a) all legal expenses, maternity expenses, medical or hospital expenses, and living
- 242 expenses that have been or will be paid to or on behalf of the [~~pre-existing~~] preexisting parents



243 of the child, including the source of payment;

244 (b) fees paid by the prospective adoptive parent or parents in connection with the  
245 adoption;

246 (c) all gifts, property, or other items that have been or will be provided to the  
247 ~~[pre-existing]~~ preexisting parents, including the source of the gifts, property, or other items;

248 (d) all public funds used for any medical or hospital costs in connection with the:

249 (i) pregnancy;

250 (ii) delivery of the child; or

251 (iii) care of the child;

252 (e) the state of residence of the:

253 (i) birth mother or the ~~[pre-existing]~~ preexisting parents; and

254 (ii) prospective adoptive parent or parents;

255 (f) a description of services provided to the prospective adoptive parents or  
256 ~~[pre-existing]~~ preexisting parents in connection with the adoption; and

257 (g) that Section 76-7-203 has not been violated.

258 (3) [A] If a child-placing agency, that is licensed by this state, placed the child, a copy  
259 of the affidavit described in Subsection (1) shall be provided to the Office of Licensing within  
260 the Department of Human Services.

261 (4) This section does not apply if the prospective adoptive parent is the legal spouse of  
262 a ~~[pre-existing]~~ preexisting parent.