

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

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;
- ▶ amends venue provisions for adoption proceedings;
- ▶ 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:



26 None

27 **Other Special Clauses:**

28 None

29 **Utah Code Sections Affected:**

30 AMENDS:

31 **26-2-10**, as last amended by Laws of Utah 2015, Chapter 137

32 **26-2-25**, as last amended by Laws of Utah 1995, Chapter 202

33 **26-2-28**, as last amended by Laws of Utah 2008, Chapter 3

34 **78B-6-105**, as last amended by Laws of Utah 2020, Chapter 214

35 **78B-6-115**, as last amended by Laws of Utah 2015, Chapter 137

36 **78B-6-120.1**, as enacted by Laws of Utah 2013, Chapter 458

37 **78B-6-136.5**, as last amended by Laws of Utah 2012, Chapter 340

38 **78B-6-140**, as last amended by Laws of Utah 2012, Chapter 340

39

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

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

42 **26-2-10. Supplementary certificate of birth.**

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

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

50 (a) the individual is legitimized by the subsequent marriage of the individual's natural
51 parents;

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

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

56 (2) The application for registration of a supplementary birth certificate may be made

57 by:

58 (a) the ~~[person]~~ individual requesting registration~~;~~ under Subsection (1) if the
59 ~~[person]~~ individual is of legal age~~;~~ by;

60 (b) a legal representative~~;~~ or by; or

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

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

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

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

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

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

73 **26-2-25. Divorce or adoption -- Duty of court clerk to file certificates or reports.**

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

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

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

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

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

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

87 ~~[(2) If there is filed with the clerk of the court in an adoption proceeding a written~~

88 ~~consent to adoption by an agency licensed under the laws of the state to receive children for~~
89 ~~placement or adoption, the agency by its authorized representative shall prepare and complete~~
90 ~~the report of adoption and forward it to the state registrar immediately after entry of the decree~~
91 ~~of adoption.]~~

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

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

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

99 **26-2-28. Birth certificate for foreign adoptees.**

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

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

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

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

108 **78B-6-105. Venue -- Jurisdiction over nonresidents -- Time for filing.**

109 ~~[(1) Adoption proceedings shall be commenced by filing a petition with the clerk of the~~
110 ~~district court either:]~~

111 ~~[(a) in the district where the prospective adoptive parent resides;]~~

112 ~~[(b) if the prospective adoptive parent is not a resident of this state, in the district~~
113 ~~where:]~~

114 ~~[(i) the adoptee was born;]~~

115 ~~[(ii) the adoptee resides on the day on which the petition is filed; or]~~

116 ~~[(iii) a parent of the proposed adoptee resides on the day on which the petition is filed;~~

117 ~~or]~~

118 ~~[(c) with the juvenile court as provided in Subsection 78A-6-103(2).]~~

- 119 (1) (a) Notwithstanding Title 78B, Chapter 3, Part 3, Place of Trial -- Venue, an
120 adoption proceeding shall be commenced by filing a petition for adoption:
- 121 (i) in the juvenile court in accordance with Section 78A-6-110 if the juvenile court has
122 jurisdiction over the proceeding under Subsection 78A-6-103(2); or
- 123 (ii) in the district court where:
- 124 (A) the prospective adoptive parent resides;
- 125 (B) a child-placing agency with custody of the adoptee conducts the child-placing
126 agency's business;
- 127 (C) the adoptee was born;
- 128 (D) the adoptee resides on the day on which petition is filed; or
- 129 (E) a parent of the proposed adoptee resides on the day on which the petition is filed.
- 130 (b) If a petition is filed in a district court that is not the proper court for the adoption
131 proceeding, the district court may transfer the adoption proceeding to the proper court in
132 accordance with the Utah Rules of Civil Procedure, Rule 42.
- 133 (2) All petitions, orders, decrees, agreements, and notices in [the proceedings] an
134 adoption proceeding shall be filed with the clerk of the court [where the adoption proceedings
135 were commenced under Subsection (1)] where the adoption proceeding is held.
- 136 (3) A petition for adoption:
- 137 (a) may be filed before the birth of a child;
- 138 (b) may be filed before or after the adoptee is placed in the home of the petitioner for
139 the purpose of adoption; and
- 140 (c) shall be filed no later than 30 days after the day on which the adoptee is placed in
141 the home of the petitioners for the purpose of adoption, unless:
- 142 (i) the time for filing has been extended by the court; or
- 143 (ii) the adoption is arranged by a child-placing agency in which case the agency may
144 extend the filing time.
- 145 (4) (a) If a person whose consent for the adoption is required under Section 78B-6-120
146 or 78B-6-121 cannot be found within the state, the fact of the minor's presence within the state
147 shall confer jurisdiction on the court in proceedings under this chapter as to such absent person,
148 provided that due notice has been given in accordance with the Utah Rules of Civil Procedure.
- 149 (b) The notice may not include the name of:

150 (i) a prospective adoptive parent; or

151 (ii) an unmarried mother without her consent.

152 (5) Service of notice [~~as provided~~] described in Subsection (6) shall vest the court with
153 jurisdiction over the person served in the same manner and to the same extent as if the person
154 served was served personally within the state.

155 (6) In the case of service outside the state, service completed not less than five days
156 before the time set in the notice for appearance of the person served shall be sufficient to confer
157 jurisdiction.

158 (7) Computation of periods of time not otherwise set forth in this section shall be made
159 in accordance with the Utah Rules of Civil Procedure.

160 Section 5. Section **78B-6-115** is amended to read:

161 **78B-6-115. Who may adopt -- Adoption of minor -- Adoption of adult.**

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

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

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

166 (i) provide personal protection;

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

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

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

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

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

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

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

177 (a) (i) Section **78B-6-108**;

178 (ii) Section **78B-6-114**;

179 (iii) Section **78B-6-116**;

180 (iv) Section **78B-6-118**;

- 181 (v) Section [78B-6-124](#);
- 182 (vi) Section [78B-6-136](#);
- 183 (vii) Section [78B-6-137](#);
- 184 (viii) Section [78B-6-138](#);
- 185 (ix) Section [78B-6-139](#);
- 186 (x) Section [78B-6-141](#); and
- 187 (xi) Section [78B-6-142](#);
- 188 (b) Subsections [~~78B-6-105(1)(a), (1)(b)(i), (1)(b)(ii), (2), and (7)~~] [78B-6-105\(1\)\(a\)\(i\),](#)
 189 [\(1\)\(a\)\(ii\)\(A\), \(1\)\(a\)\(ii\)\(C\), \(1\)\(a\)\(ii\)\(D\), \(1\)\(b\), \(2\), and \(7\)](#), except that the juvenile court does
 190 not have jurisdiction over a proceeding for adoption of an adult, unless the adoption arises from
 191 a case where the juvenile court has continuing jurisdiction over the mature adoptee; and
- 192 (c) if the mature adoptee is a vulnerable adult, Sections [78B-6-128](#) through [78B-6-131](#),
 193 regardless of whether the mature adoptee resides, or will reside, with the [~~adoptors~~] adopters,
 194 unless the court, based on a finding of good cause, waives the requirements of those sections.
- 195 (4) Before a court enters a final decree of adoption of a mature adoptee, the mature
 196 adoptee and the prospective adoptive parent or parents shall appear before the court presiding
 197 over the adoption [~~proceedings~~] proceeding and execute consent to the adoption.
- 198 (5) No provision of this part, other than those listed or described in this section or
 199 Section [78B-6-117](#), apply to the adoption of an adult.
- 200 Section 6. Section **78B-6-120.1** is amended to read:
- 201 **78B-6-120.1. Implied consent.**
- 202 (1) [~~(a)~~] As used in this section[~~,"abandonment"~~]:
- 203 (a) "Abandonment" means failure of a father, with reasonable knowledge of the
 204 pregnancy, to offer and provide financial and emotional support to the birth mother for a period
 205 of six months before the day on which the adoptee is born.
- 206 (b) "Emotional support" means a pattern of statements or actions that indicate to a
 207 reasonable person that a father intends to provide for the physical and emotional well-being of
 208 an unborn child.
- 209 [~~(b)~~] (2) (a) A court may not determine that a father abandoned the birth mother if the
 210 father failed to provide financial or emotional support because the birth mother refused to
 211 accept support.

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

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

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

219 (a) abandonment;

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

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

225 (d) receiving notification of a pending adoption proceeding under Subsection
226 78B-6-110(6) or of a termination proceeding under Section 78B-6-112 and failing to respond
227 as required.

228 (4) Implied consent under Subsection (3)~~(a)~~ may not be withdrawn.

229 (5) Nothing in this section negates the requirements of Section 78B-6-121 or
230 78B-6-122 for an unmarried biological father.

231 Section 7. Section 78B-6-136.5 is amended to read:

232 **78B-6-136.5. Timing of entry of final decree of adoption -- Posthumous adoption.**

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

235 (a) when the child has lived in the home of the prospective adoptive parent for six
236 months; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

266 and

267 (iii) the decree is entered after the child has lived in the home of the surviving
268 prospective adoptive parent for at least six months; or

269 (b) a spouse of a preexisting parent if after the child has lived with the spouse of the
270 preexisting parent:

271 (i) the preexisting parent, or the spouse of preexisting parent, dies;

272 (ii) the preexisting parent, or the spouse of the preexisting parent, requests that the
273 court enter the decree; and

274 (iii) the child has lived in the same home as the spouse of the preexisting parent for at
275 least one year.

276 (5) Upon request of a surviving [~~pre-existing~~] preexisting parent, or a surviving parent
277 for whom adoption of a child has been finalized, the court may enter a final decree of adoption
278 declaring that a child is adopted by a deceased adoptive parent who was the spouse of the
279 surviving parent at the time of the prospective adoptive parent's death.

280 (6) The court may enter a final decree of adoption declaring that a child is adopted by
281 both deceased prospective adoptive parents if:

282 (a) both of the prospective adoptive parents die after the child is placed in the
283 prospective adoptive parents' home; and

284 (b) it is in the best interests of the child to enter the decree.

285 (7) Nothing in this section shall be construed to grant any rights to the [~~pre-existing~~]
286 preexisting parents of a child to assert any interest in the child during the six-month or one-year
287 periods described in this section.

288 Section 8. Section **78B-6-140** is amended to read:

289 **78B-6-140. Itemization of fees and expenses.**

290 (1) Except as provided in Subsection (4), [~~prior to~~] before the date that a final decree of
291 adoption is entered, an affidavit regarding fees and expenses, signed by the prospective
292 adoptive parent or parents and the person or agency placing the child, shall be filed with the
293 court.

294 (2) The affidavit described in Subsection (1) shall itemize the following items in
295 connection with the adoption:

296 (a) all legal expenses, maternity expenses, medical or hospital expenses, and living
297 expenses that have been or will be paid to or on behalf of the [~~pre-existing~~] preexisting parents
298 of the child, including the source of payment;

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

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

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

304 (i) pregnancy;

- 305 (ii) delivery of the child; or
306 (iii) care of the child;
307 (e) the state of residence of the:
308 (i) birth mother or the [~~pre-existing~~] preexisting parents; and
309 (ii) prospective adoptive parent or parents;
310 (f) a description of services provided to the prospective adoptive parents or
311 [~~pre-existing~~] preexisting parents in connection with the adoption; and
312 (g) that Section 76-7-203 has not been violated.
313 (3) [A] If a child-placing agency, that is licensed by this state, placed the child, a copy
314 of the affidavit described in Subsection (1) shall be provided to the Office of Licensing within
315 the Department of Human Services.
316 (4) This section does not apply if the prospective adoptive parent is the legal spouse of
317 a [~~pre-existing~~] preexisting parent.