

## HB0191S02 compared with HB0191S01

~~{deleted text}~~ shows text that was in HB0191S01 but was deleted in HB0191S02.

inserted text shows text that was not in HB0191S01 but was inserted into HB0191S02.

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**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;

~~{~~ → amends venue provisions for adoption proceedings;

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- ‡ ▶ 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

### Other Special Clauses:

None

### Utah Code Sections Affected:

AMENDS:

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) the individual is legitimized by the subsequent marriage of the individual's natural

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parents:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~[(2) If there is filed with the clerk of the court in an adoption proceeding a written consent to adoption by an agency licensed under the laws of the state to receive children for placement or adoption, the agency by its authorized representative shall prepare and complete the report of adoption and forward it to the state registrar immediately after entry of the decree of adoption.]~~

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

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

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

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

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

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

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

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

~~{~~ ~~78B-6-105. Venue -- Jurisdiction over nonresidents -- Time for filing.~~

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

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

~~----- [(b) if the prospective adoptive parent is not a resident of this state, in the district~~

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where:]

~~—— [(i) the adoptee was born;]~~

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

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

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

~~—— (1) (a) Notwithstanding Title 78B, Chapter 3, Part 3, Place of Trial -- Venue, an  
adoption proceeding shall be commenced by filing a petition for adoption:~~

~~—— (i) in the juvenile court in accordance with Section 78A-6-110 if the juvenile court has  
jurisdiction over the proceeding under Subsection 78A-6-103(2); or~~

~~—— (ii) in the district court where:~~

~~—— (A) the prospective adoptive parent resides;~~

~~—— (B) a child-placing agency with custody of the adoptee conducts the child-placing  
agency's business;~~

~~—— (C) the adoptee was born;~~

~~—— (D) the adoptee resides on the day on which petition is filed; or~~

~~—— (E) a parent of the proposed adoptee resides on the day on which the petition is filed.~~

~~—— (b) If a petition is filed in a district court that is not the proper court for the adoption  
proceeding, the district court may transfer the adoption proceeding to the proper court in  
accordance with the Utah Rules of Civil Procedure, Rule 42.~~

~~—— (2) All petitions, orders, decrees, agreements, and notices in [the proceedings] an  
adoption proceeding shall be filed with the clerk of the court [where the adoption proceedings  
were commenced under Subsection (1)] where the adoption proceeding is held.~~

~~—— (3) A petition for adoption:~~

~~—— (a) may be filed before the birth of a child;~~

~~—— (b) may be filed before or after the adoptee is placed in the home of the petitioner for  
the purpose of adoption; and~~

~~—— (c) shall be filed no later than 30 days after the day on which the adoptee is placed in  
the home of the petitioners for the purpose of adoption, unless:~~

~~—— (i) the time for filing has been extended by the court; or~~

~~—— (ii) the adoption is arranged by a child-placing agency in which case the agency may~~

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~~extend the filing time:~~

~~—— (4) (a) If a person whose consent for the adoption is required under Section 78B-6-120 or 78B-6-121 cannot be found within the state, the fact of the minor's presence within the state shall confer jurisdiction on the court in proceedings under this chapter as to such absent person, provided that due notice has been given in accordance with the Utah Rules of Civil Procedure.~~

~~—— (b) The notice may not include the name of:~~

~~—— (i) a prospective adoptive parent; or~~

~~—— (ii) an unmarried mother without her consent.~~

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

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

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

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

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

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

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

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

(i) provide personal protection;

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

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

(iv) carry out the activities of daily living;

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

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

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

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

- (a) (i) Section 78B-6-108;
- (ii) Section 78B-6-114;
- (iii) Section 78B-6-116;
- (iv) Section 78B-6-118;
- (v) Section 78B-6-124;
- (vi) Section 78B-6-136;
- (vii) Section 78B-6-137;
- (viii) Section 78B-6-138;
- (ix) Section 78B-6-139;
- (x) Section 78B-6-141; and
- (xi) Section 78B-6-142;

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

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

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

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

Section ~~6~~5. Section **78B-6-120.1** is amended to read:

### **78B-6-120.1. Implied consent.**

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

(a) "Abandonment" means failure of a father, with reasonable knowledge of the pregnancy, to offer and provide financial and emotional support to the birth mother for a period of six months before the day on which the adoptee is born.

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

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

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

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

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

(a) abandonment;

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

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

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

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

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

Section ~~77~~6. Section **78B-6-136.5** is amended to read:

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

(i) one of the prospective adoptive parents dies;

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

(iii) the decree is entered after the child has lived in the home of the surviving

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prospective adoptive parent for at least six months; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) pregnancy;

(ii) delivery of the child; or

(iii) care of the child;

(e) the state of residence of the:

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

(ii) prospective adoptive parent or parents;

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

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

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

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