

ADOPTION AMENDMENTS

2022 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Kera Birkeland

Senate Sponsor: _____

LONG TITLE

General Description:

This bill concerns adoption of a child who is involved in a child welfare case.

Highlighted Provisions:

This bill:

▸ requires a court to consider whether a relative who desires to adopt a child maintained or attempted to maintain contact with the child during the child's child welfare case; and

▸ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

78B-6-133, as last amended by Laws of Utah 2021, Chapter 262

80-4-305, as renumbered and amended by Laws of Utah 2021, Chapter 261

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

Section 1. Section **78B-6-133** is amended to read:

78B-6-133. Contested adoptions -- Rights of parties -- Determination of custody.



28 (1) If a person whose consent for an adoption is required [~~pursuant to~~] under
29 Subsection 78B-6-120(1)(b), (c), (d), (e), or (f) [~~refused~~] refuses to consent, the court shall
30 determine whether proper grounds exist for the termination of [~~that~~] the person's rights
31 [~~pursuant to the provisions of~~] under this chapter or Title 80, Chapter 4, Termination and
32 Restoration of Parental Rights.

33 (2) (a) If there are proper grounds to terminate the person's parental rights, the court
34 shall order that the person's rights [~~be~~] are terminated.

35 (b) If there are not proper grounds to terminate the person's parental rights, the court
36 shall:

37 (i) dismiss the adoption petition;

38 (ii) conduct an evidentiary hearing to determine who should have custody of the child;
39 and

40 (iii) award custody of the child in accordance with the child's best interest.

41 (c) Termination of a person's parental rights does not terminate the right of a relative of
42 the parent to seek adoption of the child.

43 (3) Evidence considered at the custody hearing may include:

44 (a) evidence of psychological or emotional bonds that the child has formed with a third
45 person, including the prospective adoptive parent; and

46 (b) any detriment that a change in custody may cause the child.

47 (4) If the court dismisses the adoption petition, the fact that a person relinquished a
48 child for adoption or consented to the adoption may not be considered [~~as evidence~~] in a
49 custody proceeding described in this section, or in any subsequent custody proceeding, as
50 evidence that it is not in the child's best interest for custody to be awarded to [~~such~~] the person
51 or that the person:

52 (a) [~~the person~~] is unfit or incompetent to be a parent;

53 (b) [~~the person~~] has neglected or abandoned the child;

54 (c) [~~the person~~] is not interested in having custody of the child; or

55 (d) [~~the person~~] has forfeited the person's parental presumption.

56 (5) Any custody order entered [~~pursuant to~~] under this section may also:

57 (a) include provisions for:

58 (i) parent-time; or

- 59 (ii) visitation by an interested third party; and
60 (b) provide for the financial support of the child.
- 61 (6) (a) If a person or entity whose consent is required for an adoption under Subsection
62 78B-6-120(1)(a) or (g) refuses to consent, the court shall proceed with an evidentiary hearing
63 and award custody as set forth in Subsection (2).
- 64 (b) The court may also finalize the adoption if doing so is in the best interest of the
65 child.
- 66 (7) (a) A person may not contest an adoption after the final decree of adoption is
67 entered, if ~~[that]~~ the person:
- 68 (i) was a party to the adoption proceeding;
69 (ii) was served with notice of the adoption proceeding; or
70 (iii) executed a consent to the adoption or relinquishment for adoption.
- 71 (b) ~~[No person may]~~ A person may not contest an adoption after one year from the day
72 on which the final decree of adoption is entered.
- 73 (c) The limitations on contesting an adoption action, described in this Subsection (7),
74 apply to all attempts to contest an adoption:
- 75 (i) regardless of whether the adoption is contested directly or collaterally; and
76 (ii) regardless of the basis for contesting the adoption, including claims of fraud,
77 duress, undue influence, lack of capacity or competency, mistake of law or fact, or lack of
78 jurisdiction.
- 79 (d) The limitations on contesting an adoption action, described in this Subsection (7),
80 do not prohibit a timely appeal of:
- 81 (i) a final decree of adoption; or
82 (ii) a decision in an action challenging an adoption, if the action was brought within the
83 time limitations described in Subsections (7)(a) and (b).
- 84 (8) A court that has jurisdiction over a child for whom more than one petition for
85 adoption is filed shall grant a hearing only under the following circumstances:
- 86 (a) to a petitioner:
- 87 (i) with whom the child is placed;
88 (ii) who has custody or guardianship of the child;
89 (iii) who has filed a written statement with the court within 120 days after the day on

90 which the shelter hearing is held:

91 (A) requesting immediate placement of the child with the petitioner; and

92 (B) expressing the petitioner's intention of adopting the child;

93 (iv) who is a relative with whom the child has a significant and substantial relationship
94 and who was unaware, within the first 120 days after the day on which the shelter hearing is
95 held, of the child's removal from the child's parent; or

96 (v) who is a relative with whom the child has a significant and substantial relationship
97 and, in a case where the child is not placed with a relative or is placed with a relative that is
98 unable or unwilling to adopt the child:

99 (A) was actively involved in the child's child welfare case with the division or the
100 juvenile court while the child's parent engaged in reunification services; and

101 (B) filed a written statement with the court that includes the information described in
102 Subsections (8)(a)(iii)(A) and (B) within 30 days after the day on which the court terminated
103 reunification services; or

104 (b) if the child:

105 (i) has been in the current placement for less than 180 days before the day on which the
106 petitioner files the petition for adoption; or

107 (ii) is placed with, or is in the custody or guardianship of, an individual who previously
108 informed the division or the court that the individual is unwilling or unable to adopt the child.

109 (9) (a) If the court grants a hearing on more than one petition for adoption, there is a
110 rebuttable presumption that it is in the best interest of a child to be placed for adoption with a
111 petitioner:

112 (i) who has fulfilled the requirements described in [~~Title 78B, Chapter 6, Part 1, Utah~~
113 ~~Adoption Act~~] this part; and

114 (ii) (A) with whom the child has continuously resided for six months;

115 (B) who has filed a written statement with the court within 120 days after the day on
116 which the shelter hearing is held, as described in Subsection (8)(a)(iii); or

117 (C) who is a relative described in Subsection (8)(a)(iv).

118 (b) The court may consider other factors relevant to the best interest of the child to
119 determine whether the presumption is rebutted, including whether a petitioner who is a relative
120 attempted to maintain contact with the child during the child's child welfare case.

121 (c) The court shall weigh the best interest of the child uniformly between petitioners if
122 more than one petitioner satisfies a rebuttable presumption condition described in Subsection
123 (9)(a).

124 (10) ~~[Nothing in this section shall be construed to]~~ This section does not prevent the
125 division or the child's guardian ad litem from appearing or participating in any proceeding for a
126 petition for adoption.

127 (11) The division shall use best efforts to provide a known relative with timely
128 information relating to the relative's rights or duties under this section.

129 Section 2. Section **80-4-305** is amended to read:

130 **80-4-305. Court disposition of child upon termination of parental rights --**
131 **Posttermination reunification.**

132 (1) ~~[As]~~ Except as provided in Subsection (6), as used in this section, "relative" means:

133 (a) an adult who is a grandparent, great-grandparent, aunt, great aunt, uncle, great
134 uncle, brother-in-law, sister-in-law, stepparent, first cousin, sibling, or stepsibling of a child;
135 and

136 (b) in the case of a child who is an Indian child, an extended family member as defined
137 in the Indian Child Welfare Act, 25 U.S.C. Sec. 1903.

138 (2) Upon entry of an order under this chapter, the juvenile court may:

139 (a) place the child in the legal custody and guardianship of a licensed child placement
140 agency or the division for adoption; or

141 (b) make any other disposition of the child authorized under Section [80-3-405](#).

142 (3) Subject to ~~[the requirements of]~~ Subsections (4) and (5), the division shall place all
143 adoptable children placed in the custody of the division ~~[shall be placed]~~ for adoption.

144 (4) If the parental rights of all parents of an adoptable child placed in the custody of the
145 division ~~[have been]~~ are terminated and a suitable adoptive placement is not already available,
146 the juvenile court:

147 (a) shall determine whether there is a relative who desires to adopt the child;

148 (b) may order the division to conduct a reasonable search to determine whether there

149 ~~[are relatives who are]~~ is a relative who is willing to adopt the child; and

150 (c) shall, if a relative desires to adopt the child:

151 (i) make a specific finding regarding the fitness of the relative to adopt the child; ~~[and]~~

152 (ii) consider the level of contact the relative maintained, or attempted to maintain, with
153 the child while the child was in the custody of the division; and

154 [~~it~~] (iii) place the child for adoption with ~~[that]~~ the relative unless the juvenile court
155 finds that adoption by the relative is not in the best interest of the child.

156 (5) This section does not guarantee that a relative will be permitted to adopt the child.

157 (6) A parent whose rights [~~were~~] are terminated under this chapter, or a relative of the
158 child, as defined by Section 80-3-102, may petition for guardianship of the child if:

159 (a) (i) following an adoptive placement, the child's adoptive parent returns the child to
160 the custody of the division; or

161 (ii) the child is in the custody of the division for one year following the day on which
162 the parent's rights were terminated, and no permanent placement has been found or is likely to
163 be found; and

164 (b) reunification with the child's parent, or guardianship by the child's relative, is in the
165 best interest of the child.