

Representative Karianne Lisonbee proposes the following substitute bill:

CHILD WELFARE REVISIONS

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 demonstrated an interest in the child during the 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:



26 **78B-6-133. Contested adoptions -- Rights of parties -- Determination of custody.**

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

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

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

36 (i) dismiss the adoption petition;

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

38 and

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

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

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

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

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

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

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

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

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

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

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

56 (a) include provisions for:

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

88 (iii) who has filed a written statement with the court within 120 days after the day on
89 which the shelter hearing is held:

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

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

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

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

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

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

103 (b) if the child:

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

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

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

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

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

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

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

117 (b) (i) The court may consider other factors relevant to the best interest of the child to
118 determine whether the presumption is rebutted, including whether a petitioner who is a relative

119 of the child demonstrated an interest in the child after the day on which the petitioner received
 120 notice from the division that the petitioner is a relative of the child.

121 (ii) A petitioner's interest in the child described in Subsection (9)(b)(i) may be shown
 122 by the petitioner maintaining or attempting to maintain contact with the child.

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

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

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

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

132 **80-4-305. Court disposition of child upon termination of parental rights --**

133 **Posttermination reunification.**

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

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

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

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

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

143 (b) make any other disposition of the child authorized under Section **80-3-405**.

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

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

149 [~~(a)~~] (i) shall determine whether there is a relative who desires to adopt the child;

150 ~~[(b)]~~ (ii) may order the division to conduct a reasonable search to determine whether
151 there ~~[are relatives who are]~~ is a relative who is willing to adopt the child; and

152 ~~[(c)]~~ (iii) shall, if a relative desires to adopt the child:

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

154 ~~[and]~~

155 (B) consider whether the relative demonstrated an interest in the child after the day on
156 which the relative received notice from the division that the relative is a relative of the child;

157 and

158 ~~[(ii)]~~ (C) place the child for adoption with ~~[that]~~ the relative unless the juvenile court
159 finds that adoption by the relative is not in the best interest of the child.

160 (b) A relative's interest in the child under Subsection (4)(a)(iii)(B) may be shown by
161 the relative maintaining or attempting to maintain contact with the child.

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

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

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

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

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