

**ADOPTION MODIFICATIONS**

2023 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Stephanie Gricius**

Senate Sponsor: Todd D. Weiler

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**LONG TITLE**

**General Description:**

This bill amends provisions related to adoption.

**Highlighted Provisions:**

This bill:

- ▶ requires a clerk of the court to provide a report of adoption, upon request, to an attorney or child-placing agency in certain circumstances;
- ▶ addresses who must provide consent to the adoption of a child;
- ▶ amends the circumstances under which the consent of an unmarried biological father is required in relation to the adoption of a child;
- ▶ clarifies who must sign an affidavit of fees or expenses filed with the court before a final decree of adoption is entered; and
- ▶ makes technical and conforming changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**26-2-25**, as last amended by Laws of Utah 2021, Chapter 65

**78B-6-120**, as last amended by Laws of Utah 2017, Chapter 156



28 **78B-6-121**, as last amended by Laws of Utah 2021, Chapter 262  
29 **78B-6-122**, as last amended by Laws of Utah 2013, Chapter 474  
30 **78B-6-140**, as last amended by Laws of Utah 2021, Chapter 65



31  
32 *Be it enacted by the Legislature of the state of Utah:*

33 Section 1. Section **26-2-25** is amended to read:

34 **26-2-25. Divorce or adoption -- Duty of court clerk to file certificates or reports.**

35 (1) For each adoption, annulment of adoption, divorce, and annulment of marriage  
36 ordered or decreed in this state, the clerk of the court shall prepare a divorce certificate or  
37 report of adoption on a form furnished by the state registrar or, for a report of adoption, the  
38 state of the child's birth.

39 (2) The petitioner shall provide the information necessary to prepare the certificate or  
40 report under Subsection (1).

41 (3) The clerk shall:

42 (a) prepare the certificate or report under Subsection (1); and

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

45 (4) On or before the 15th day of each month, the clerk shall forward the divorce  
46 certificates and reports of adoption under Subsection (1) completed by the clerk during the  
47 preceding month to the state registrar, except for reports of adoption provided to an attorney or  
48 child-placing agency under Subsection (5)(b).

49 (5) (a) ~~[A]~~ In addition to the report of adoption that the clerk forwards to the state  
50 registrar under Subsection (4), the clerk shall also provide an original report of adoption under  
51 Subsection (1) ~~[may be provided], upon request,~~ to the attorney who is providing representation  
52 of a party to the adoption, or the child-placing agency, as defined in Section 78B-6-103, that is  
53 placing the child.

54 (b) If the child was born in another state, the clerk of court shall prepare and provide  
55 one original report of adoption, upon request, to the attorney who is providing representation of  
56 a party to the adoption, or the child-placing agency that is placing the child, and the attorney or  
57 child-placing agency shall be responsible for submitting the report to the state of the child's  
58 birth.

59 (c) If the attorney or child-placing agency does not request an original report of  
60 adoption under Subsection (5)(a) or (b), the clerk shall forward the report of adoption to the  
61 state registrar pursuant to Subsection (4).

62 ~~[(b)]~~ (d) ~~[If a]~~ If, pursuant to Subsection (5)(a), an original report of adoption is  
63 provided to the attorney or the child-placing agency, as defined in Section 78B-6-103, the  
64 attorney or the child-placing agency shall immediately provide the report of adoption to the  
65 state registrar.

66 Section 2. Section 78B-6-120 is amended to read:

67 **78B-6-120. Necessary consent to adoption or relinquishment for adoption.**

68 (1) Except as provided in Subsection (2), consent to adoption of a child, or  
69 relinquishment of a child for adoption, is required from:

70 (a) the adoptee, if the adoptee is more than 12 years ~~[of age]~~ old, unless the adoptee  
71 does not have the mental capacity to consent;

72 (b) a man or woman who:

73 (i) by operation of law under Section 78B-15-204, is recognized as the father or mother  
74 of the proposed adoptee, unless:

75 (A) the presumption is rebutted under Section 78B-15-607; ~~[or]~~

76 (B) the man or woman was not married to the mother of the proposed adoptee until  
77 after the mother consented to adoption, or relinquishment for adoption, of the proposed  
78 adoptee; or

79 (C) the marriage between the mother of the proposed adoptee and the man or woman is  
80 not a legally valid marriage; or

81 (ii) is the father of the adoptee by a previous legal adoption;

82 (c) the mother of the adoptee;

83 (d) a biological parent who has been adjudicated to be the child's biological father by a  
84 court of competent jurisdiction prior to the mother's execution of consent to adoption or her  
85 relinquishment of the child for adoption;

86 (e) consistent with Subsection (3), a biological parent who has executed and filed a  
87 voluntary declaration of paternity with the state registrar of vital statistics within the  
88 Department of Health and Human Services in accordance with Title 78B, Chapter 15, Utah  
89 Uniform Parentage Act, prior to the mother's execution of consent to adoption or her

90 relinquishment of the child for adoption;

91 (f) an unmarried biological father, of an adoptee, whose consent is not required under  
92 Subsection (1)(d) or (1)(e), only if he fully and strictly complies with the requirements of  
93 Sections [78B-6-121](#) and [78B-6-122](#); and

94 (g) the person or agency to whom an adoptee has been relinquished and that is placing  
95 the child for adoption.

96 (2) (a) The consent of a person described in Subsections (1)(b) through (g) is not  
97 required if the adoptee is 18 years of age or older.

98 (b) The consent of a person described in Subsections (1)(b) through (f) is not required  
99 if the person's parental rights relating to the adoptee have been terminated.

100 (3) For purposes of Subsection (1)(e), a voluntary declaration of paternity is considered  
101 filed when it is entered into a database that:

102 (a) can be accessed by the Department of Health and Human Services; and

103 (b) is designated by the state registrar of vital statistics as the official database for  
104 voluntary declarations of paternity.

105 Section 3. Section **78B-6-121** is amended to read:

106 **78B-6-121. Consent of unmarried biological father.**

107 (1) Except as provided in Subsections (2)(a) and [78B-6-122](#)(1), and subject to  
108 Subsections (5) and (6), with regard to a child who is placed with prospective adoptive parents  
109 more than six months after birth, consent of an unmarried biological father is not required  
110 unless the unmarried biological father:

111 (a) (i) developed a substantial relationship with the child by:

112 (A) visiting the child monthly, unless the unmarried biological father was physically or  
113 financially unable to visit the child on a monthly basis; or

114 (B) engaging in regular communication with the child or with the person or authorized  
115 agency that has lawful custody of the child;

116 (ii) took some measure of responsibility for the child and the child's future; and

117 (iii) demonstrated a full commitment to the responsibilities of parenthood by financial  
118 support of the child of a fair and reasonable sum in accordance with the father's ability; or

119 (b) (i) openly lived with the child immediately preceding placement of the child with  
120 prospective adoptive parents:

121 (A) [~~(f)~~ for a period of at least six months during the one-year period immediately  
122 preceding the day on which the child is placed with prospective adoptive parents; or]

123 [~~(H)~~] if the child is less than one year old, for a period of at least six months during the  
124 period of time beginning on the day on which the child is born and ending on the day on which  
125 the child is placed with prospective adoptive parents; [~~and~~] or

126 (B) if the child is one year old or older on the day on which the child is placed with  
127 prospective adoptive parents, for a period of at least six months during the one-year period  
128 immediately preceding [placement of the child] the day on which the child is placed with  
129 prospective adoptive parents; and

130 (ii) openly held himself out to be the father of the child during the six-month period  
131 described in Subsection (1)(b)(i)(A).

132 (2) (a) If an unmarried biological father was prevented from complying with a  
133 requirement of Subsection (1) by the person or authorized agency having lawful custody of the  
134 child, the unmarried biological father is not required to comply with that requirement.

135 (b) The subjective intent of an unmarried biological father, whether expressed or  
136 otherwise, that is unsupported by evidence that the requirements in Subsection (1) have been  
137 met, shall not preclude a determination that the father failed to meet the requirements of  
138 Subsection (1).

139 (3) Except as provided in Subsections (6) and 78B-6-122(1), and subject to Subsection  
140 (5), with regard to a child who is six months old or less at the time the child is placed with  
141 prospective adoptive parents, consent of an unmarried biological father is not required unless,  
142 prior to the time the mother executes her consent for adoption or relinquishes the child for  
143 adoption, the unmarried biological father:

144 (a) initiates proceedings in a district court of Utah to establish paternity under Title  
145 78B, Chapter 15, Utah Uniform Parentage Act;

146 (b) files with the court that is presiding over the paternity proceeding a sworn affidavit:

147 (i) stating that he is fully able and willing to have full custody of the child;

148 (ii) setting forth his plans for care of the child; and

149 (iii) agreeing to a court order of child support and the payment of expenses incurred in  
150 connection with the mother's pregnancy and the child's birth;

151 (c) consistent with Subsection (4), files notice of the commencement of paternity

152 proceedings, described in Subsection (3)(a), with the state registrar of vital statistics within the  
153 Department of Health and Human Services, in a confidential registry established by the  
154 department for that purpose; and

155 (d) offered to pay and paid, during the pregnancy and after the child's birth, a fair and  
156 reasonable amount of the expenses incurred in connection with the mother's pregnancy and the  
157 child's birth, in accordance with his financial ability, unless:

158 (i) he did not have actual knowledge of the pregnancy;

159 (ii) he was prevented from paying the expenses by the person or authorized agency  
160 having lawful custody of the child; or

161 (iii) the mother refused to accept the unmarried biological father's offer to pay the  
162 expenses described in this Subsection (3)(d).

163 (4) (a) The notice described in Subsection (3)(c) is considered filed when received by  
164 the state registrar of vital statistics.

165 (b) If the unmarried biological father fully complies with the requirements of  
166 Subsection (3), and an adoption of the child is not completed, the unmarried biological father  
167 shall, without any order of the court, be legally obligated for a reasonable amount of child  
168 support, pregnancy expenses, and child birth expenses, in accordance with his financial ability.

169 (5) Unless his ability to assert the right to consent has been lost for failure to comply  
170 with Section [78B-6-110.1](#), or lost under another provision of Utah law, an unmarried biological  
171 father shall have at least one business day after the child's birth to fully and strictly comply with  
172 the requirements of Subsection (3).

173 (6) Consent of an unmarried biological father is not required under this section if:

174 (a) the court determines, in accordance with the requirements and procedures of Title  
175 80, Chapter 4, Termination and Restoration of Parental Rights, that the unmarried biological  
176 father's rights should be terminated, based on the petition of any interested party;

177 (b) (i) a declaration of paternity declaring the unmarried biological father to be the  
178 father of the child is rescinded under Section [78B-15-306](#); and

179 (ii) the unmarried biological father fails to comply with Subsection (3) within 10  
180 business days after the day that notice of the rescission described in Subsection (6)(b)(i) is  
181 mailed by the Office of Vital Records within the Department of Health and Human Services as  
182 provided in Section [78B-15-306](#); or

183 (c) the unmarried biological father is notified under Section 78B-6-110.1 and fails to  
184 preserve his rights in accordance with the requirements of that section.

185 (7) Unless the adoptee is conceived or born within a marriage, the petitioner in an  
186 adoption proceeding shall, prior to entrance of a final decree of adoption, file with the court a  
187 certificate from the state registrar of vital statistics within the Department of Health and Human  
188 Services, stating:

189 (a) that a diligent search has been made of the registry of notices from unmarried  
190 biological fathers described in Subsection [~~(3)(d)~~] (3)(c); and

191 (b) (i) that no filing has been found pertaining to the father of the child in question; or  
192 (ii) if a filing is found, the name of the putative father and the time and date of filing.  
193 Section 4. Section 78B-6-122 is amended to read:

194 **78B-6-122. Qualifying circumstance.**

195 (1) (a) For purposes of this section, "qualifying circumstance" means that, at any point  
196 during the time period beginning at the conception of the child and ending at the time the  
197 mother executed a consent to adoption or relinquishment of the child for adoption:

198 (i) the child or the child's mother resided on a permanent basis, or a temporary basis of  
199 no less than 30 consecutive days, in the state;

200 (ii) the mother intended to give birth to the child in the state;

201 (iii) the child was born in the state; or

202 (iv) the mother intended to execute a consent to adoption or relinquishment of the child  
203 for adoption:

204 (A) in the state; or

205 (B) under the laws of the state.

206 (b) For purposes of Subsection (1)(c)(i)(C) only, when determining whether an  
207 unmarried biological father has demonstrated a full commitment to his parental  
208 responsibilities, a court shall consider the totality of the circumstances, including, if applicable:

209 (i) efforts he has taken to discover the location of the child or the child's mother;

210 (ii) whether he has expressed [~~or~~] and demonstrated an interest in taking responsibility  
211 for the child;

212 (iii) whether, and to what extent, he has developed, or attempted to develop, a  
213 relationship with the child;

214 (iv) whether he offered to provide and, [if] unless the offer was [~~accepted~~] rejected, did  
215 provide, financial support for the child or the child's mother;

216 (v) whether, and to what extent, he has communicated, or attempted to communicate,  
217 with the child or the child's mother;

218 (vi) whether he has timely filed legal proceedings to establish his paternity of, and take  
219 responsibility for, the child;

220 (vii) whether he has timely filed a notice with a public official or agency relating to:

221 (A) his paternity of the child; or

222 (B) legal proceedings to establish his paternity of the child; or

223 (viii) other evidence that [~~demonstrates that~~] shows whether he has demonstrated a full  
224 commitment to his parental responsibilities.

225 (c) Notwithstanding the provisions of Section 78B-6-121, the consent of an unmarried  
226 biological father is required with respect to an adoptee who is under the age of 18 if:

227 (i) (A) the unmarried biological father did not know, and through the exercise of  
228 reasonable diligence could not have known, before the time the mother executed a consent to  
229 adoption or relinquishment of the child for adoption, that a qualifying circumstance existed;

230 (B) before the mother executed a consent to adoption or relinquishment of the child for  
231 adoption, the unmarried biological father fully complied with the requirements to establish  
232 parental rights in the child, and to preserve the right to notice of a proceeding in connection  
233 with the adoption of the child, imposed by:

234 (I) the last state where the unmarried biological father knew, or through the exercise of  
235 reasonable diligence should have known, that the mother resided in before the mother executed  
236 the consent to adoption or relinquishment of the child for adoption; or

237 (II) the state where the child was conceived; and

238 (C) the unmarried biological father has demonstrated, based on the totality of the  
239 circumstances, a full commitment to his parental responsibilities, as described in Subsection

240 (1)(b); or

241 (ii) (A) the unmarried biological father knew, or through the exercise of reasonable  
242 diligence should have known, before the time the mother executed a consent to adoption or  
243 relinquishment of the child for adoption, that a qualifying circumstance existed; and

244 (B) the unmarried biological father complied with the requirements of Section



245 78B-6-121 before the later of:

246 (I) 20 days after the day that the unmarried biological father knew, or through the  
247 exercise of reasonable diligence should have known, that a qualifying circumstance existed; or

248 (II) the time that the mother executed a consent to adoption or relinquishment of the  
249 child for adoption.

250 (2) An unmarried biological father who does not fully and strictly comply with the  
251 requirements of Section 78B-6-121 and this section is considered to have waived and  
252 surrendered any right in relation to the child, including the right to:

253 (a) notice of any judicial proceeding in connection with the adoption of the child; and

254 (b) consent, or refuse to consent, to the adoption of the child.

255 Section 5. Section 78B-6-140 is amended to read:

256 **78B-6-140. Itemization of fees and expenses.**

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

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

263 (a) all legal expenses, maternity expenses, medical or hospital expenses, and living  
264 expenses that have been or will be paid to or on behalf of the preexisting parents of the child,  
265 including the source of payment;

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

268 (c) all gifts, property, or other items that have been or will be provided to the  
269 preexisting parents, including the source of the gifts, property, or other items;

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

271 (i) pregnancy;

272 (ii) delivery of the child; or

273 (iii) care of the child;

274 (e) the state of residence of the:

275 (i) birth mother or the preexisting parents; and

- 276 (ii) prospective adoptive parent or parents;
- 277 (f) a description of services provided to the prospective adoptive parents or preexisting
- 278 parents in connection with the adoption; and
- 279 (g) that Section [76-7-203](#) has not been violated.
- 280 (3) If a child-placing agency, that is licensed by this state, placed the child, a copy of
- 281 the affidavit described in Subsection (1) shall be provided to the Office of Licensing within the
- 282 Department of Health and Human Services.
- 283 (4) This section does not apply if the prospective adoptive parent is the legal spouse of
- 284 a preexisting parent.