

HB0350S01 compared with HB0350

~~{deleted text}~~ shows text that was in HB0350 but was deleted in HB0350S01.

inserted text shows text that was not in HB0350 but was inserted into HB0350S01.

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Representative Stephanie Gricius proposes the following substitute bill:

ADOPTION MODIFICATIONS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Stephanie Gricius

Senate Sponsor: ~~{~~ Todd D. Weiler }

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.

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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~~

~~— **78B-6-121**, as last amended by Laws of Utah 2021, Chapter 262~~

~~‡ **78B-6-122**, as last amended by Laws of Utah 2013, Chapter 474~~

78B-6-140, as last amended by Laws of Utah 2021, Chapter 65

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

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

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

(1) 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 or, for a report of adoption, the state of the child's birth.

(2) The petitioner shall provide the clerk of the court with the information necessary to prepare the certificate or report under Subsection (1), including the form furnished by the child's state of birth if the child was born in another state.

(3) The clerk shall:

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

(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 the clerk during the preceding month to the state registrar, except for reports of adoption provided to an attorney or child-placing agency under Subsection (5)(b).

(5) (a) [A] In addition to the report of adoption that the clerk forwards to the state

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registrar under Subsection (4), the clerk shall also provide an original report of adoption under Subsection (1) [may be provided], upon request, 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 the child was born in another state, the clerk of court shall prepare and provide one original report of adoption, upon request, to the attorney who is providing representation of a party to the adoption, or the child-placing agency that is placing the child, and the attorney or child-placing agency shall be responsible for submitting the report to the state of the child's birth.

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

~~[(b)]~~ (d) ~~[If a]~~ If, pursuant to Subsection (5)(a), an original 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 2. Section ~~{78B-6-120}~~78B-6-122 is amended to read:

~~{~~ ~~78B-6-120. Necessary consent to adoption or relinquishment for adoption:~~

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

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

~~—— (b) a man or woman who:~~

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

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

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

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

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- ~~—— (ii) is the father of the adoptee by a previous legal adoption;~~
- ~~—— (c) the mother of the adoptee;~~
- ~~—— (d) a biological parent who has been adjudicated to be the child's biological father by a court of competent jurisdiction prior to the mother's execution of consent to adoption or her relinquishment of the child for adoption;~~
- ~~—— (e) consistent with Subsection (3), a biological parent who has executed and filed a voluntary declaration of paternity with the state registrar of vital statistics within the Department of Health and Human Services in accordance with Title 78B, Chapter 15, Utah Uniform Parentage Act, prior to the mother's execution of consent to adoption or her relinquishment of the child for adoption;~~
- ~~—— (f) an unmarried biological father, of an adoptee, whose consent is not required under Subsection (1)(d) or (1)(e), only if he fully and strictly complies with the requirements of Sections 78B-6-121 and 78B-6-122; and~~
- ~~—— (g) the person or agency to whom an adoptee has been relinquished and that is placing the child for adoption.~~
- ~~—— (2) (a) The consent of a person described in Subsections (1)(b) through (g) is not required if the adoptee is 18 years of age or older.~~
- ~~—— (b) The consent of a person described in Subsections (1)(b) through (f) is not required if the person's parental rights relating to the adoptee have been terminated.~~
- ~~—— (3) For purposes of Subsection (1)(e), a voluntary declaration of paternity is considered filed when it is entered into a database that:~~
 - ~~—— (a) can be accessed by the Department of Health and Human Services; and~~
 - ~~—— (b) is designated by the state registrar of vital statistics as the official database for voluntary declarations of paternity.~~
- ~~—— Section 3. Section 78B-6-121 is amended to read:~~
- ~~—— **78B-6-121. Consent of unmarried biological father:**~~
 - ~~—— (1) Except as provided in Subsections (2)(a) and 78B-6-122(1), and subject to Subsections (5) and (6), with regard to a child who is placed with prospective adoptive parents more than six months after birth, consent of an unmarried biological father is not required unless the unmarried biological father:~~
 - ~~—— (a) (i) developed a substantial relationship with the child by:~~

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

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

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

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

~~—— (b) (i) openly lived with the child immediately preceding placement of the child with prospective adoptive parents;~~

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

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

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

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

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

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

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

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~~adoption, the unmarried biological father:~~

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

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

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

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

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

~~—— (c) consistent with Subsection (4), files notice of the commencement of paternity proceedings, described in Subsection (3)(a), with the state registrar of vital statistics within the Department of Health and Human Services, in a confidential registry established by the department for that purpose; and~~

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

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

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

~~—— (iii) the mother refused to accept the unmarried biological father's offer to pay the expenses described in this Subsection (3)(d):~~

~~—— (4) (a) The notice described in Subsection (3)(c) is considered filed when received by the state registrar of vital statistics:~~

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

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

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

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

~~—— (b) (i) a declaration of paternity declaring the unmarried biological father to be the father of the child is rescinded under Section 78B-15-306; and~~

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

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

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

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

~~—— (b) (i) that no filing has been found pertaining to the father of the child in question; or~~

~~—— (ii) if a filing is found, the name of the putative father and the time and date of filing.~~

~~—— Section 4. Section 78B-6-122 is amended to read:~~

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

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

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

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

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

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

(A) in the state; or

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(B) under the laws of the state.

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

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

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

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

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

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

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

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

(A) his paternity of the child; or

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

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

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

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

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

(I) the last state where the unmarried biological father knew, or through the exercise of reasonable diligence should have known, that the mother resided in before the mother executed

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the consent to adoption or relinquishment of the child for adoption; or

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

(C) the unmarried biological father has demonstrated, based on the totality of the circumstances, a full commitment to his parental responsibilities, as described in Subsection (1)(b); or

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

(B) the unmarried biological father complied with the requirements of Section 78B-6-121 before the later of:

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

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

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

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

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

Section ~~5~~3. Section **78B-6-140** is amended to read:

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

(1) Except as provided in Subsection (4), 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, if the child was placed by a child-placing agency, 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 preexisting parents of the child, including the source of payment;

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

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adoption;

(c) all gifts, property, or other items that have been or will be provided to the 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 preexisting parents; and

(ii) prospective adoptive parent or parents;

(f) a description of services provided to the prospective adoptive parents or preexisting parents in connection with the adoption; and

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

(3) 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 Health and Human Services.

(4) This section does not apply if the prospective adoptive parent is the legal spouse of a preexisting parent.