

## SB0093S02 compared with SB0093

~~{deleted text}~~ shows text that was in SB0093 but was deleted in SB0093S02.

inserted text shows text that was not in SB0093 but was inserted into SB0093S02.

**DISCLAIMER:** This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

~~{VITAL RECORDS}~~ Representative Brady Brammer proposes the following substitute bill:

### BIRTH CERTIFICATE MODIFICATIONS

2023 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Daniel McCay**

House Sponsor: ~~{\_\_\_\_\_}~~ Brady Brammer

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#### LONG TITLE

#### General Description:

This bill enacts provisions regarding amending ~~{vital records}~~ birth certificates.

#### Highlighted Provisions:

This bill:

- ▶ modifies the rulemaking authority of the Department of Health and Human Services (department) regarding when an error or omission to a vital record may be corrected; ~~{and}~~
- ▶ allows the department to amend a birth certificate without a court order under certain circumstances;
- ▶ creates the procedure a court must follow to grant a petition to amend the sex designation of a birth certificate;
- ▶ requires the court to appoint a guardian ad litem before granting a petition to amend

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the sex designation of a birth certificate;

▶ requires the department to issue an amended birth certificate ~~{for an individual only if the individual is older than 18 years old.}~~ that does not identify the fields that were amended; and

▶ requires the department to issue an amendment history with a birth certificate.

### Money Appropriated in this Bill:

None

### Other Special Clauses:

~~{None}~~ This bill provides a special effective date.

This bill provides a coordination clause.

### Utah Code Sections Affected:

AMENDS:

26-2-2, as last amended by Laws of Utah 2022, Chapter 415

26-2-7, as last amended by Laws of Utah 2022, Chapter 231

### REPEALS AND REENACTS:

26-2-11, as last amended by Laws of Utah 1995, Chapter 202

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

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

#### **26-2-2. Definitions.**

As used in this chapter:

(1) "Adoption document" means an adoption-related document filed with the office, a petition for adoption, a decree of adoption, an original birth certificate, or evidence submitted in support of a supplementary birth certificate.

(2) "Biological sex at birth" means an individual's sex, as being male or female, according to distinct reproductive roles as manifested by sex and reproductive organ anatomy, chromosomal makeup, and endogenous hormone profiles.

~~[(2)]~~ (3) "Certified nurse midwife" means an individual who:

(a) is licensed to practice as a certified nurse midwife under Title 58, Chapter 44a, Nurse Midwife Practice Act; and

(b) has completed an education program regarding the completion of a certificate of

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death developed by the department by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

~~[(3)]~~1(4) "Custodial funeral service director" means a funeral service director who:

- (a) is employed by a licensed funeral establishment; and
- (b) has custody of a dead body.

~~[(4)]~~1(5) "Dead body" or "decedent" means a human body or parts of the human body from the condition of which it reasonably may be concluded that death occurred.

~~[(5)]~~1(6) "Dead fetus" means a product of human conception, other than those circumstances described in Subsection 76-7-301(1):

- (a) of 20 weeks' gestation or more, calculated from the date the last normal menstrual period began to the date of delivery; and
- (b) that was not born alive.

~~[(6)]~~1(7) "Declarant father" means a male who claims to be the genetic father of a child, and, along with the biological mother, signs a voluntary declaration of paternity to establish the child's paternity.

~~[(7)]~~1(8) "Dispositioner" means:

(a) a person designated in a written instrument, under Subsection 58-9-602(1), as having the right and duty to control the disposition of the decedent, if the person voluntarily acts as the dispositioner; or

(b) the next of kin of the decedent, if:

(i) (A) a person has not been designated as described in Subsection ~~[(7)]~~1(8)(a); or

(B) the person described in Subsection ~~[(7)]~~1(8)(a) is unable or unwilling to exercise the right and duty described in Subsection ~~[(7)]~~1(8)(a); and

(ii) the next of kin voluntarily acts as the dispositioner.

~~[(8)]~~1(9) "Fetal remains" means:

- (a) an aborted fetus as that term is defined in Section 26-21-33; or
- (b) a miscarried fetus as that term is defined in Section 26-21-34.

~~[(9)]~~1(10) "File" means the submission of a completed certificate or other similar document, record, or report as provided under this chapter for registration by the state registrar or a local registrar.

~~[(10)]~~1(11) "Funeral service director" means the same as that term is defined in Section

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58-9-102.

~~[(11)]~~ [(12)] "Health care facility" means the same as that term is defined in Section 26-21-2.

~~[(12)]~~ [(13)] "Health care professional" means a physician, physician assistant, nurse practitioner, or certified nurse midwife.

[(14)] "Intersex individual" means an individual who:

(a) is born with external biological sex characteristics that are irresolvably ambiguous;

(b) is born with 46, XX chromosomes with virilization;

(c) is born with 46, XY chromosomes with undervirilization;

(d) has both ovarian and testicular tissue; or

(e) has been diagnosed by a physician, based on genetic or biochemical testing, with abnormal:

(i) sex chromosome structure;

(ii) sex steroid hormone production; or

(iii) sex steroid hormone action for a male or female.

~~[(13)]~~ [(15)] "Licensed funeral establishment" means:

(a) if located in Utah, a funeral service establishment, as that term is defined in Section 58-9-102, that is licensed under Title 58, Chapter 9, Funeral Services Licensing Act; or

(b) if located in a state, district, or territory of the United States other than Utah, a funeral service establishment that complies with the licensing laws of the jurisdiction where the establishment is located.

~~[(14)]~~ [(16)] "Live birth" means the birth of a child who shows evidence of life after the child is entirely outside of the mother.

~~[(15)]~~ [(17)] "Local registrar" means a person appointed under Subsection 26-2-3(3)(b).

~~[(16)]~~ [(18)] "Nurse practitioner" means an individual who:

(a) is licensed to practice as an advanced practice registered nurse under Title 58, Chapter 31b, Nurse Practice Act; and

(b) has completed an education program regarding the completion of a certificate of death developed by the department by administrative rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

~~[(17)]~~ [(19)] "Office" means the Office of Vital Records and Statistics within the

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Department of Health, operating under Title 26, Chapter 2, Utah Vital Statistics Act.

~~[(18)]~~ (20) "Physician" means a person licensed to practice as a physician or osteopath in this state under Title 58, Chapter 67, Utah Medical Practice Act, or Title 58, Chapter 68, Utah Osteopathic Medical Practice Act.

~~[(19)]~~ (21) "Physician assistant" means an individual who:

(a) is licensed to practice as a physician assistant under Title 58, Chapter 70a, Utah Physician Assistant Act; and

(b) has completed an education program regarding the completion of a certificate of death developed by the department by administrative rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

~~[(20)]~~ (22) "Presumed father" means the father of a child conceived or born during a marriage as defined in Section 30-1-17.2.

~~[(21)]~~ (23) "Registration" or "register" means acceptance by the local or state registrar of a certificate and incorporation of the certificate into the permanent records of the state.

~~[(22)]~~ (24) "State registrar" means the state registrar of vital records appointed under Subsection 26-2-3(2)(e).

~~[(23)]~~ (25) "Vital records" means:

(a) registered certificates or reports of birth, death, fetal death, marriage, divorce, dissolution of marriage, or annulment;

(b) amendments to any of the registered certificates or reports described in Subsection ~~[(23)]~~ (25)(a);

(c) an adoption document; and

(d) other similar documents.

~~[(24)]~~ (26) "Vital statistics" means the data derived from registered certificates and reports of birth, death, fetal death, induced termination of pregnancy, marriage, divorce, dissolution of marriage, or annulment.

Section ~~[(1)]~~ 2. Section 26-2-7 is amended to read:

**26-2-7. Correction of errors or omissions in vital records -- Conflicting birth and founding certificates -- Administrative birth certificate amendment -- Rulemaking.**

(1) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the department may make rules:

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~~[(1)]~~ (a) governing applications to correct alleged errors or omissions on any vital record;

~~[(2)]~~ (b) establishing procedures to resolve conflicting birth and founding certificates;

~~[and]~~

~~[(3)]~~ (c) allowing for the correction and reissuance of a vital record that was originally created omitting a diacritical mark~~†~~.

~~— (2) The~~ ~~[-]; and~~

(d) notwithstanding any other provision of law, allowing for the change of a child's name on the child's birth certificate within one year from the day the child is born.

(2) For a birth certificate, the department may correct an error or omission under Subsection (1)(a) if ~~the correction is made no later than one year from the day the vital record is created.~~

~~— Section 2~~ ~~};~~

(a) the error or omission is a result of a scrivener's error or a data entry error; and

(b) the department receives:

(i) (A) an affidavit from the applicant attesting that there is an error on the birth certificate;

(B) supporting documentation from the health care facility or attending health care provider; and

(C) an affidavit from the health care facility or health care provider described in Subsection (2)(b)(i)(B) attesting to the accuracy of the supporting documentation; or

(ii) documentation deemed sufficient by the state registrar to establish the facts of the error or omission.

(3) The department may amend a birth certificate's sex designation for an intersex individual at the request of the individual or the guardian of the individual if:

(a) the sex designation indicating the biological sex at birth of the individual was misidentified on the original certificate due to the individual's condition; and

(b) the department receives:

(i) a correction affidavit attesting the individual is intersex;

(ii) chromosomal, molecular, karyotypic, DNA, or genetic testing results that confirm the individual is intersex; and

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(iii) an affidavit from the health care facility, health care professional, or laboratory testing facility that conducted the test or analyzed the test results, attesting to the test results and accuracy.

Section 3. Section 26-2-11 is ~~{amended}~~repealed and reenacted to read:

**26-2-11. ~~{Name}~~Birth certificate name or sex designation change -- Registration of court order and amendment of birth certificate.**

~~(1) ~~{[When] Except as provided under Section 26-2-10 for a supplementary}~~An individual may obtain a court order in accordance with Title 42, Names, to change the name on the individual's birth certificate~~, when a person born in this state has a name change or sex change approved by an order of a Utah district court or a court of competent jurisdiction of another state or a province of Canada, a certified copy of the order may be filed with the state registrar with an application form provided by the registrar.~~~~

~~———— (2) (a) ~~[Upon] Subject to Subsection (3), upon receipt of the application, a certified copy of the order, and payment of the required fee, the state registrar shall review the application, and if complete, register it and note the fact of the amendment on the otherwise unaltered original certificate.~~~~

~~———— (b) ~~The amendment shall be registered with and become a part of the original certificate and a certified copy shall be issued to the applicant without additional cost.~~~~

~~———— (3) ~~The state registrar may process an application submitted}~~.~~

(2) (a) A court may grant a petition ordering a sex designation change on a birth certificate if the court determines by clear and convincing evidence that the individual seeking the sex designation change:

(i) is not involved in any kind of lawsuit;

(ii) is not on probation or parole;

(iii) is not seeking the amendment:

(A) to commit a crime;

(B) to interfere with the rights of others;

(C) to avoid creditors;

(D) to influence the sentence, fine, or conditions of imprisonment in a criminal case;

(E) to commit fraud on the public; or

(F) for any other fraudulent purpose;

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(iv) has transitioned from the sex designation of the biological sex at birth to the sex sought in the petition;

(v) has outwardly expressed as the sex sought in the petition in a consistent and uniform manner for at least six months; and

(vi) suffers from clinically significant distress or impairment due to the current sex designation on the birth certificate.

(b) The court shall consider the following when making the determination described in Subsection (2)(a)(iv):

(i) evidence of medical history, care, or treatment related to sex transitioning; and

(ii) evidence that the sex sought in the petition is sincerely held and part of the individual's core identity.

(3) (a) (i) When determining whether to grant a sex designation change for a child who is at least 15 years and six months old, unless the child is emancipated, the court shall appoint, notwithstanding Subsection 78A-2-703(1), a guardian ad litem for the child.

(ii) Notwithstanding Subsection 78A-2-703(7), the child's parent or guardian is responsible for the costs of the guardian ad litem's services unless the court determines the parent or guardian is indigent in accordance with Section 78A-2-302.

(b) The guardian ad litem shall provide the court relevant evidence, whether submitted by the child or other sources of evidence, regarding the following:

(i) whether the child is capable of making decisions with long-term consequences independently of the child's parent or guardian;

(ii) whether the child is mature and capable of appreciating the implications of the decision to change the sex designation on the child's birth certificate; and

(iii) whether the child meets the other requirements of this section.

(c) The guardian of a child described in Subsection (3)(a) shall:

(i) give notice of the proceeding to any known parent of the child; and

(ii) provide the court with a declaration of the status of any divorce or custody matter pertaining to the child including the case name, case number, court, judge, and current status of the case.

(d) The court shall:

(i) consider any objection given by a parent;



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(ii) close the hearing on a petition for a sex designation change;

(iii) receive all evidence; and

(iv) make a determination as to whether:

(A) all of the requirements of Subsection (2) have been met; and

(B) the evidence supports a finding by clear and convincing evidence that the sex designation change is in the best interest of the child and would not create a risk of harm to the minor.

(4) (a) A court may not grant a petition for a sex designation change if:

(i) the birth certificate is for a child who is younger than 15 years and six months old;

or

(ii) the child's parent or guardian with legal custody has not given permission.

(b) An order granting a sex designation change under this section ~~if the application is for an individual who is older than 18 years old.~~

~~is not effective until the individual is at least 16 years old.~~

(5) A petition for a sex designation under this section may be combined with a petition under Title 42, Names.

(6) (a) Upon the receipt of a certified order granting a birth certificate amendment, any required application, and an appropriate fee, the department shall issue:

(i) a birth certificate that does not indicate which fields were amended unless requested by the individual; and

(ii) an amendment history of the birth certificate, including the fields of the birth certificate that have been amended and the date of the amendment.

(b) The department shall retain a record of all amendments to a birth certificate, including any amendment history issued by the department.

(7) The provisions of this section are severable.

(8) This section only applies to birth certificates issued by the state.

### Section 4. Effective date.

If approved by two-thirds of all the members elected to each house, this bill takes effect upon approval by the governor, or the day following the constitutional time limit of Utah Constitution, Article VII, Section 8, without the governor's signature, or in the case of a veto, the date of veto override.

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### **Section 5. Coordinating S.B. 93 with H.B. 209 -- Substantive and technical amendments.**

If this S.B. 93 and H.B. 209, Participation in Extracurricular Activities Amendments, both pass and become law, it is the intent of the Legislature that the Office of Legislative Research and General Counsel shall prepare the Utah Code database for publication by replacing each reference to "birth certificate" in Section 53G-7-1102 with "birth certificate and birth certificate amendment history".