

# HB0194S01 compared with HB0194

~~{deleted text}~~ shows text that was in HB0194 but was deleted in HB0194S01.

inserted text shows text that was not in HB0194 but was inserted into HB0194S01.

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Representative Christine F. Watkins proposes the following substitute bill:

## CHILD PLACEMENT AMENDMENTS

2024 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor:** ~~{}~~ Christine F. Watkins

**Senate Sponsor:** ~~{}~~ \_\_\_\_\_

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### LONG TITLE

#### General Description:

This bill amends provisions relating to adoption and child placement.

#### Highlighted Provisions:

This bill:

- ▶ amends the definition of "relative" for purposes of child placement, including adoption; and
- ▶ ~~{addresses when a court holds a hearing concerning a contested adoption}~~ makes technical changes.

#### Money Appropriated in this Bill:

None

#### Other Special Clauses:

None

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### Utah Code Sections Affected:

#### AMENDS:

**78B-6-103**, as last amended by Laws of Utah 2023, Chapter 330

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

+ **80-2a-101**, as enacted by Laws of Utah 2022, Chapter 334 and last amended by  
Coordination Clause, Laws of Utah 2022, Chapter 334

**80-3-102**, as last amended by Laws of Utah 2022, Chapters 287, 334

**80-4-305**, as last amended by Laws of Utah 2022, Chapters 287, 334

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

Section 1. Section **78B-6-103** is amended to read:

#### **78B-6-103. Definitions.**

As used in this part:

(1) "Adoptee" means a person who:

- (a) is the subject of an adoption proceeding; or
- (b) has been legally adopted.

(2) "Adoption" means the judicial act that:

- (a) creates the relationship of parent and child where it did not previously exist; and
- (b) except as provided in Subsections 78B-6-138(2) and (4), terminates the parental

rights of any other person with respect to the child.

(3) "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.

(4) "Adoption service provider" means:

- (a) a child-placing agency;
- (b) a licensed counselor who has at least one year of experience providing professional

social work services to:

- (i) adoptive parents;
- (ii) prospective adoptive parents; or
- (iii) birth parents; or
- (c) the Office of Licensing within the Department of Health and Human Services.

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- (5) "Adoptive parent" means an individual who has legally adopted an adoptee.
- (6) "Adult" means an individual who is 18 years [~~of age~~] old or older.
- (7) "Adult adoptee" means an adoptee who is 18 years [~~of age~~] old or older and was adopted as a minor.
- (8) "Adult sibling" means an adoptee's brother or sister, who is 18 years [~~of age~~] old or older and whose birth mother or father is the same as that of the adoptee.
- (9) "Birth mother" means the biological mother of a child.
- (10) "Birth parent" means:
- (a) a birth mother;
  - (b) a man whose paternity of a child is established;
  - (c) a man who:
    - (i) has been identified as the father of a child by the child's birth mother; and
    - (ii) has not denied paternity; or
  - (d) an unmarried biological father.
- (11) "Child-placing agency" means an agency licensed to place children for adoption under Title 26B, Chapter 2, Part 1, Human Services Programs and Facilities.
- (12) "Cohabiting" means residing with another person and being involved in a sexual relationship with that person.
- (13) "Division" means the Division of Child and Family Services, within the Department of Health and Human Services, created in Section 80-2-201.
- (14) "Extra-jurisdictional child-placing agency" means an agency licensed to place children for adoption by a district, territory, or state of the United States, other than Utah.
- (15) "Genetic and social history" means a comprehensive report, when obtainable, that contains the following information on an adoptee's birth parents, aunts, uncles, and grandparents:
- (a) medical history;
  - (b) health status;
  - (c) cause of and age at death;
  - (d) height, weight, and eye and hair color;
  - (e) ethnic origins;
  - (f) where appropriate, levels of education and professional achievement; and

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(g) religion, if any.

(16) "Health history" means a comprehensive report of the adoptee's health status at the time of placement for adoption, and medical history, including neonatal, psychological, physiological, and medical care history.

(17) "Identifying information" means information that is in the possession of the office and that contains the name and address of a pre-existing parent or an adult adoptee, or other specific information that by itself or in reasonable conjunction with other information may be used to identify a pre-existing parent or an adult adoptee, including information on a birth certificate or in an adoption document.

(18) "Licensed counselor" means an individual who is licensed by the state, or another state, district, or territory of the United States as a:

(a) certified social worker;

(b) clinical social worker;

(c) psychologist;

(d) marriage and family therapist;

(e) clinical mental health counselor; or

(f) an equivalent licensed professional of another state, district, or territory of the United States.

(19) "Man" means a male individual, regardless of age.

(20) "Mature adoptee" means an adoptee who is adopted when the adoptee is an adult.

(21) "Office" means the Office of Vital Records and Statistics within the Department of Health and Human Services operating under Title 26B, Chapter 8, Part 1, Vital Statistics.

(22) "Parent," for purposes of Section 78B-6-119, means any person described in Subsections 78B-6-120(1)(b) through (f) from whom consent for adoption or relinquishment for adoption is required under Sections 78B-6-120 through 78B-6-122.

(23) "Potential birth father" means a man who:

(a) is identified by a birth mother as a potential biological father of the birth mother's child, but whose genetic paternity has not been established; and

(b) was not married to the biological mother of the child described in Subsection (23)(a) at the time of the child's conception or birth.

(24) "Pre-existing parent" means:

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(a) a birth parent; or

(b) an individual who, before an adoption decree is entered, is, due to an earlier adoption decree, legally the parent of the child being adopted.

(25) "Prospective adoptive parent" means an individual who seeks to adopt an adoptee.

(26) "Relative" means:

(a) an adult who is a grandparent, great grandparent, aunt, great aunt, uncle, great uncle, brother-in-law, sister-in-law, stepparent, first cousin, second cousin, ~~{ third cousin, }~~ stepsibling, or ~~{ }~~ sibling of a child, or first ~~{, }~~ or second ~~{, or third }~~ cousin of a child's parent; and

(b) in the case of a child defined as an "Indian child" under the Indian Child Welfare Act, 25 U.S.C. Sec. 1903, an "extended family member" as defined by that statute.

(27) "Unmarried biological father" means a man who:

(a) is the biological father of a child; and

(b) was not married to the biological mother of the child described in Subsection

(27)(a) at the time of the child's conception or birth.

Section 2. Section ~~{78B-6-133}~~80-2a-101 is amended to read:

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

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

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

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

~~———— (i) dismiss the adoption petition;~~

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

~~and~~

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

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

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- ~~———— (3) Evidence considered at the custody hearing may include:~~
- ~~———— (a) evidence of psychological or emotional bonds that the child has formed with a third person, including the prospective adoptive parent; and~~
- ~~———— (b) any detriment that a change in custody may cause the child.~~
- ~~———— (4) If the court dismisses the adoption petition, the fact that a person relinquished a child for adoption or consented to the adoption may not be considered as evidence in a custody proceeding described in this section, or in any subsequent custody proceeding, that it is not in the child's best interest for custody to be awarded to such person or that:~~
  - ~~———— (a) the person is unfit or incompetent to be a parent;~~
  - ~~———— (b) the person has neglected or abandoned the child;~~
  - ~~———— (c) the person is not interested in having custody of the child; or~~
  - ~~———— (d) the person has forfeited the person's parental presumption.~~
- ~~———— (5) Any custody order entered pursuant to this section may also:~~
  - ~~———— (a) include provisions for:~~
    - ~~———— (i) parent-time; or~~
    - ~~———— (ii) visitation by an interested third party; and~~
    - ~~———— (b) provide for the financial support of the child.~~
- ~~———— (6) (a) If a person or entity whose consent is required for an adoption under Subsection 78B-6-120(1)(a) or (g) refuses to consent, the court shall proceed with an evidentiary hearing and award custody as set forth in Subsection (2).~~
- ~~———— (b) The court may also finalize the adoption if doing so is in the best interest of the child.~~
- ~~———— (7) (a) A person may not contest an adoption after the final decree of adoption is entered, if that person:~~
  - ~~———— (i) was a party to the adoption proceeding;~~
  - ~~———— (ii) was served with notice of the adoption proceeding; or~~
  - ~~———— (iii) executed a consent to the adoption or relinquishment for adoption.~~
- ~~———— (b) No person may contest an adoption after one year from the day on which the final decree of adoption is entered.~~
- ~~———— (c) The limitations on contesting an adoption action, described in this Subsection (7), apply to all attempts to contest an adoption:~~

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- ~~—— (i) regardless of whether the adoption is contested directly or collaterally, and~~
- ~~—— (ii) regardless of the basis for contesting the adoption, including claims of fraud, duress, undue influence, lack of capacity or competency, mistake of law or fact, or lack of jurisdiction.~~
- ~~—— (d) The limitations on contesting an adoption action, described in this Subsection (7), do not prohibit a timely appeal of:~~
  - ~~—— (i) a final decree of adoption; or~~
  - ~~—— (ii) a decision in an action challenging an adoption, if the action was brought within the time limitations described in Subsections (7)(a) and (b).~~
- ~~—— (8) A court that has jurisdiction over a child for whom more than one petition for adoption is filed shall grant a hearing [only] under the following circumstances, and in other circumstances, may grant a hearing in the discretion of the court:~~
  - ~~—— (a) to a petitioner:~~
    - ~~—— (i) with whom the child is placed;~~
    - ~~—— (ii) who has custody or guardianship of the child;~~
    - ~~—— (iii) who has filed a written statement with the court within 120 days after the day on which the shelter hearing is held:~~
      - ~~—— (A) requesting immediate placement of the child with the petitioner; and~~
      - ~~—— (B) expressing the petitioner's intention of adopting the child;~~
    - ~~—— (iv) who is a relative with whom the child has a significant and substantial relationship and who was unaware, within the first 120 days after the day on which the shelter hearing is held, of the child's removal from the child's parent; or~~
    - ~~—— (v) who is a relative with whom the child has a significant and substantial relationship and, in a case where the child is not placed with a relative or is placed with a relative that is unable or unwilling to adopt the child:~~
      - ~~—— (A) was actively involved in the child's child welfare case with the division or the juvenile court while the child's parent engaged in reunification services; and~~
      - ~~—— (B) filed a written statement with the court that includes the information described in Subsections (8)(a)(iii)(A) and (B) within 30 days after the day on which the court terminated reunification services; or~~
  - ~~—— (b) if the child:~~

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

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

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

~~—— (i) who has fulfilled the requirements described in Title 78B, Chapter 6, Part 1, Utah Adoption Act; and~~

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

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

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

~~—— (b) The court may consider other factors relevant to the best interest of the child to determine whether the presumption is rebutted.~~

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

~~—— (10) Nothing in this section shall be construed to prevent the division or the child's guardian ad litem from appearing or participating in any proceeding for a petition for adoption.~~

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

~~—— Section 3. Section **80-2a-101** is amended to read:~~

‡ **80-2a-101. Definitions.**

(1) "Custody" means the same as that term is defined in Section 80-2-102.

(2) "Division" means the Division of Child and Family Services created in Section 80-2-201.

(3) "Friend" means an adult who:

(a) has an established relationship with the child or a family member of the child; and

(b) is not the natural parent of the child.

(4) "Nonrelative" means an individual who is not a noncustodial parent or relative.



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(5) "Relative" means an adult who:

(a) is the child's grandparent, great grandparent, aunt, great aunt, uncle, great uncle, brother-in-law, sister-in-law, stepparent, first cousin, second cousin, ~~{ third cousin, }~~ stepsibling, or sibling;

(b) is the first ~~{,}~~ or second ~~{, or third}~~ cousin of the child's parent;

(c) is a permanent guardian or natural parent of the child's sibling; or

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

(6) "Sibling" means the same as that term is defined in Section 80-2-102.

(7) "Temporary custody" means the same as that term is defined in Section 80-2-102.

Section ~~{4}~~ 3. Section **80-3-102** is amended to read:

### **80-3-102. Definitions.**

As used in this chapter:

(1) "Abuse, neglect, or dependency petition" means a petition filed in accordance with this chapter to commence proceedings in a juvenile court alleging that a child is:

(a) abused;

(b) neglected; or

(c) dependent.

(2) "Custody" means the same as that term is defined in Section 80-2-102.

(3) "Division" means the Division of Child and Family Services created in Section 80-2-201.

(4) "Friend" means an adult who:

(a) has an established relationship with the child or a family member of the child; and

(b) is not the natural parent of the child.

(5) "Immediate family member" means a spouse, child, parent, sibling, grandparent, or grandchild.

(6) "Relative" means an adult who:

(a) is the child's grandparent, great grandparent, aunt, great aunt, uncle, great uncle, brother-in-law, sister-in-law, stepparent, first cousin, second cousin, ~~{ third cousin, }~~ stepsibling, or sibling;

(b) is a first ~~{,}~~ or second ~~{, or third}~~ cousin of the child's parent;

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(c) is a permanent guardian or natural parent of the child's sibling; or

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

(7) "Sibling" means the same as that term is defined in Section 80-2-102.

(8) "Sibling visitation" means the same as that term is defined in Section 80-2-102.

(9) "Temporary custody" means the same as that term is defined in Section 80-2-102.

Section ~~{5}~~4. Section **80-4-305** is amended to read:

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

#### **Posttermination reunification.**

(1) Except as provided in Subsection (7), as used in this section, "relative" means:

(a) an adult who is a grandparent, great-grandparent, aunt, great aunt, uncle, great uncle, brother-in-law, sister-in-law, stepparent, first cousin, second cousin, ~~{third cousin, }~~ sibling, or stepsibling of a child; and

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

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

(a) place the child in the legal custody and guardianship of a child-placing agency or the division for adoption; or

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

(3) Subject to Subsections (4) and (6), the division shall place all adoptable children placed in the custody of the division for adoption.

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

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

(b) may order the division to conduct a reasonable search to determine whether there is a relative who is willing to adopt the child; and

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

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

(ii) place the child for adoption with the relative unless the juvenile court finds that adoption by the relative is not in the best interest of the child.

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(5) If an individual who is not a relative of the child desires to adopt the child, the juvenile court shall, before entering an order for adoption of the child, determine whether due weight was given to the relative's preferential consideration under Subsection 80-3-302(7)(a)(i).

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

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

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

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

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

Section ~~6~~5. **Effective date.**

This bill takes effect on May 1, 2024.