

BIRTH CERTIFICATE MODIFICATIONS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Daniel McCay

House Sponsor: Brady Brammer

LONG TITLE

General Description:

This bill enacts provisions regarding amending 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;

- ▶ 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 the sex designation of a birth certificate;

- ▶ requires the department to issue an amended birth certificate 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:

This bill provides a special effective date.

This bill provides a coordination clause.

29 **Utah Code Sections Affected:**

30 AMENDS:

31 **26-2-2**, as last amended by Laws of Utah 2022, Chapter 415

32 **26-2-7**, as last amended by Laws of Utah 2022, Chapter 231

33 REPEALS AND REENACTS:

34 **26-2-11**, as last amended by Laws of Utah 1995, Chapter 202

35

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

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

38 **26-2-2. Definitions.**

39 As used in this chapter:

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

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

46 [~~2~~] (3) "Certified nurse midwife" means an individual who:

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

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

52 [~~3~~] (4) "Custodial funeral service director" means a funeral service director who:

53 (a) is employed by a licensed funeral establishment; and

54 (b) has custody of a dead body.

55 [~~4~~] (5) "Dead body" or "decedent" means a human body or parts of the human body

56 from the condition of which it reasonably may be concluded that death occurred.

57 ~~[(5)]~~ (6) "Dead fetus" means a product of human conception, other than those
58 circumstances described in Subsection 76-7-301(1):

59 (a) of 20 weeks' gestation or more, calculated from the date the last normal menstrual
60 period began to the date of delivery; and

61 (b) that was not born alive.

62 ~~[(6)]~~ (7) "Declarant father" means a male who claims to be the genetic father of a child,
63 and, along with the biological mother, signs a voluntary declaration of paternity to establish the
64 child's paternity.

65 ~~[(7)]~~ (8) "Dispositioner" means:

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

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

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

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

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

74 ~~[(8)]~~ (9) "Fetal remains" means:

75 (a) an aborted fetus as that term is defined in Section 26-21-33; or

76 (b) a miscarried fetus as that term is defined in Section 26-21-34.

77 ~~[(9)]~~ (10) "File" means the submission of a completed certificate or other similar
78 document, record, or report as provided under this chapter for registration by the state registrar
79 or a local registrar.

80 ~~[(10)]~~ (11) "Funeral service director" means the same as that term is defined in Section
81 58-9-102.

82 ~~[(11)]~~ (12) "Health care facility" means the same as that term is defined in Section

83 26-21-2.

84 [~~12~~] (13) "Health care professional" means a physician, physician assistant, nurse
85 practitioner, or certified nurse midwife.

86 (14) "Intersex individual" means an individual who:

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

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

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

90 (d) has both ovarian and testicular tissue; or

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

93 (i) sex chromosome structure;

94 (ii) sex steroid hormone production; or

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

96 [~~13~~] (15) "Licensed funeral establishment" means:

97 (a) if located in Utah, a funeral service establishment, as that term is defined in Section
98 58-9-102, that is licensed under Title 58, Chapter 9, Funeral Services Licensing Act; or

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

102 [~~14~~] (16) "Live birth" means the birth of a child who shows evidence of life after the
103 child is entirely outside of the mother.

104 [~~15~~] (17) "Local registrar" means a person appointed under Subsection 26-2-3(3)(b).

105 [~~16~~] (18) "Nurse practitioner" means an individual who:

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

108 (b) has completed an education program regarding the completion of a certificate of
109 death developed by the department by administrative rule made in accordance with Title 63G,

110 Chapter 3, Utah Administrative Rulemaking Act.

111 ~~[(17)]~~ (19) "Office" means the Office of Vital Records and Statistics within the
112 Department of Health, operating under Title 26, Chapter 2, Utah Vital Statistics Act.

113 ~~[(18)]~~ (20) "Physician" means a person licensed to practice as a physician or osteopath
114 in this state under Title 58, Chapter 67, Utah Medical Practice Act, or Title 58, Chapter 68,
115 Utah Osteopathic Medical Practice Act.

116 ~~[(19)]~~ (21) "Physician assistant" means an individual who:

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

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

122 ~~[(20)]~~ (22) "Presumed father" means the father of a child conceived or born during a
123 marriage as defined in Section 30-1-17.2.

124 ~~[(21)]~~ (23) "Registration" or "register" means acceptance by the local or state registrar
125 of a certificate and incorporation of the certificate into the permanent records of the state.

126 ~~[(22)]~~ (24) "State registrar" means the state registrar of vital records appointed under
127 Subsection 26-2-3(2)(e).

128 ~~[(23)]~~ (25) "Vital records" means:

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

131 (b) amendments to any of the registered certificates or reports described in Subsection

132 ~~[(23)]~~ (25)(a);

133 (c) an adoption document; and

134 (d) other similar documents.

135 ~~[(24)]~~ (26) "Vital statistics" means the data derived from registered certificates and
136 reports of birth, death, fetal death, induced termination of pregnancy, marriage, divorce,

137 dissolution of marriage, or annulment.

138 Section 2. Section 26-2-7 is amended to read:

139 **26-2-7. Correction of errors or omissions in vital records -- Conflicting birth and**
140 **foundling certificates -- Administrative birth certificate amendment -- Rulemaking.**

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

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

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

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

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

151 (2) For a birth certificate, the department may correct an error or omission under
152 Subsection (1)(a) if:

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

154 (b) the department receives:

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

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

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

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

163 (3) The department may amend a birth certificate's sex designation for an intersex

164 individual at the request of the individual or the guardian of the individual if:

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

167 (b) the department receives:

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

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

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

174 Section 3. Section **26-2-11** is repealed and reenacted to read:

175 **26-2-11. Birth certificate name or sex designation change -- Registration of court**
176 **order and amendment of birth certificate.**

177 (1) An individual may obtain a court order in accordance with Title 42, Names, to
178 change the name on the individual's birth certificate.

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

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

183 (ii) is not on probation or parole;

184 (iii) is not seeking the amendment:

185 (A) to commit a crime;

186 (B) to interfere with the rights of others;

187 (C) to avoid creditors;

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

189 (E) to commit fraud on the public; or

190 (F) for any other fraudulent purpose;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

217 (ii) provide the court with a declaration of the status of any divorce or custody matter

218 pertaining to the child, including the case name, case number, court, judge, and current status
219 of the case.

220 (d) The court shall:

221 (i) consider any objection given by a parent;

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

223 (iii) receive all evidence; and

224 (iv) make a determination as to whether:

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

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

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

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

231 or

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

233 (b) An order granting a sex designation change under this section is not effective until
234 the individual is at least 16 years old.

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

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

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

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

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

245 (7) The provisions of this section are severable.

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

247 **Section 4. Effective date.**

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

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

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