

ADOPTION ACT AMENDMENTS

2014 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Todd Weiler

House Sponsor: _____

LONG TITLE

General Description:

This bill amends provisions in Title 78B, Chapter 6, Part 1, Utah Adoption Act.

Highlighted Provisions:

This bill:

- ▶ amends the definition of "qualifying circumstance";
- ▶ except as provided below, for a child who is six months of age or less, requires a birth mother to reside in the state for three consecutive months during the time period beginning at the conception of the child and ending at the time the mother executes consent to adoption or relinquishment of the child for adoption before she consents to the adoption of her child or the relinquishment of her child for adoption;
 - ▶ requires a mother who has not resided in the state for three consecutive months during the time period beginning at the conception of the child and ending at the time the mother executes consent to adoption or relinquishment of the child for adoption to notify the unmarried biological father of an adoption proceeding regarding the child;
 - ▶ requires an unmarried biological father to, within 30 days after the day on which notice from the child's mother of an adoption proceeding is served, fully and strictly comply with certain requirements of the Utah Adoption Act; and
 - ▶ provides that an unmarried biological father's consent to adoption of a child or relinquishment of a child for adoption is not required if the unmarried biological



28 father fails to comply with certain requirements of the Utah Adoption Act.

29 **Money Appropriated in this Bill:**

30 None

31 **Other Special Clauses:**

32 None

33 **Utah Code Sections Affected:**

34 AMENDS:

35 **78B-6-110**, as last amended by Laws of Utah 2013, Chapter 458

36 **78B-6-120**, as last amended by Laws of Utah 2013, Chapter 458

37 **78B-6-122**, as last amended by Laws of Utah 2013, Chapter 474

38 **78B-6-125**, as renumbered and amended by Laws of Utah 2008, Chapter 3



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

41 Section 1. Section **78B-6-110** is amended to read:

42 **78B-6-110. Notice of adoption proceedings.**

43 (1) (a) An unmarried biological father, by virtue of the fact that he has engaged in a
44 sexual relationship with a woman:

45 (i) is considered to be on notice that a pregnancy and an adoption proceeding regarding
46 the child may occur; and

47 (ii) has a duty to protect his own rights and interests.

48 (b) An unmarried biological father is entitled to actual notice of a birth or an adoption
49 proceeding with regard to his child only as provided in this section and Section 78B-6-125.

50 (2) Notice of an adoption proceeding shall be served on each of the following persons:

51 (a) any person or agency whose consent or relinquishment is required under Section
52 **78B-6-120** or **78B-6-121**, unless that right has been terminated by:

53 (i) waiver;

54 (ii) relinquishment;

55 (iii) actual consent, as described in Subsection (12); or

56 (iv) judicial action;

57 (b) any person who has initiated a paternity proceeding and filed notice of that action
58 with the state registrar of vital statistics within the Department of Health, in accordance with

59 Subsection (3);

60 (c) any legally appointed custodian or guardian of the adoptee;

61 (d) the petitioner's spouse, if any, only if the petitioner's spouse has not joined in the
62 petition;

63 (e) the adoptee's spouse, if any;

64 (f) any person who, prior to the time the mother executes her consent for adoption or
65 relinquishes the child for adoption, is recorded on the birth certificate as the child's father, with
66 the knowledge and consent of the mother;

67 (g) a person who is:

68 (i) openly living in the same household with the child at the time the consent is
69 executed or relinquishment made; and

70 (ii) holding himself out to be the child's father; and

71 (h) any person who is married to the child's mother at the time she executes her consent
72 to the adoption or relinquishes the child for adoption, unless the court finds that the mother's
73 spouse is not the child's father under Section 78B-15-607.

74 (3) (a) In order to preserve any right to notice, an unmarried biological father shall,
75 consistent with Subsection (3)(d):

76 (i) initiate proceedings in a district court of Utah to establish paternity under Title 78B,
77 Chapter 15, Utah Uniform Parentage Act; and

78 (ii) file a notice of commencement of the proceedings described in Subsection (3)(a)(i)
79 with the office of vital statistics within the Department of Health.

80 (b) If the unmarried, biological father does not know the county in which the birth
81 mother resides, he may initiate his action in any county, subject to a change in trial pursuant to
82 Section 78B-3-307.

83 (c) The Department of Health shall provide forms for the purpose of filing the notice
84 described in Subsection (3)(a)(ii), and make those forms available in the office of the county
85 health department in each county.

86 (d) When the state registrar of vital statistics receives a completed form, the registrar
87 shall:

88 (i) record the date and time the form was received; and

89 (ii) immediately enter the information provided by the unmarried biological father in

90 the confidential registry established by Subsection 78B-6-121(3)(c).

91 (e) The action and notice described in Subsection (3)(a):

92 (i) may be filed before or after the child's birth; and

93 (ii) shall be filed prior to the mother's:

94 (A) execution of consent to adoption of the child; or

95 (B) relinquishment of the child for adoption.

96 (4) Notice provided in accordance with this section need not disclose the name of the
97 mother of the child who is the subject of an adoption proceeding.

98 (5) The notice required by this section:

99 (a) may be served at any time after the petition for adoption is filed, but may not be
100 served on a birth mother before she has given birth to the child who is the subject of the
101 petition for adoption;

102 (b) shall be served at least 30 days prior to the final dispositional hearing;

103 (c) shall specifically state that the person served shall fulfill the requirements of
104 Subsection (6)(a), within 30 days after the day on which the person receives service if the
105 person intends to intervene in or contest the adoption;

106 (d) shall state the consequences, described in Subsection (6)(b), for failure of a person
107 to file a motion for relief within 30 days after the day on which the person is served with notice
108 of an adoption proceeding;

109 (e) is not required to include, nor be accompanied by, a summons or a copy of the
110 petition for adoption; and

111 (f) shall state where the person may obtain a copy of the petition for adoption.

112 (6) (a) A person who has been served with notice of an adoption proceeding and who
113 wishes to contest the adoption shall file a motion to intervene in the adoption proceeding:

114 (i) within 30 days after the day on which the person was served with notice of the
115 adoption proceeding;

116 (ii) setting forth specific relief sought; and

117 (iii) accompanied by a memorandum specifying the factual and legal grounds upon
118 which the motion is based.

119 (b) A person who fails to fully and strictly comply with all of the requirements
120 described in Subsection (6)(a) within 30 days after the day on which the person was served

121 with notice of the adoption proceeding:

122 (i) waives any right to further notice in connection with the adoption;

123 (ii) forfeits all rights in relation to the adoptee; and

124 (iii) is barred from thereafter bringing or maintaining any action to assert any interest in
125 the adoptee.

126 (7) Service of notice under this section shall be made as follows:

127 (a) (i) Subject to Subsection (5)(e), service on a person whose consent is necessary
128 under Section 78B-6-120 or 78B-6-121 shall be in accordance with the provisions of the Utah
129 Rules of Civil Procedure.

130 (ii) If service of a person described in Subsection (7)(a)(i) is by publication, the court
131 shall designate the content of the notice regarding the identity of the parties.

132 (iii) The notice described in this Subsection (7)(a) may not include the name of a
133 person seeking to adopt the adoptee.

134 (b) (i) Except as provided in Subsection (7)(b)(ii) to any other person for whom notice
135 is required under this section, service by certified mail, return receipt requested, is sufficient.

136 (ii) If the service described in Subsection (7)(b)(i) cannot be completed after two
137 attempts, the court may issue an order providing for service by publication, posting, or by any
138 other manner of service.

139 (c) Notice to a person who has initiated a paternity proceeding and filed notice of that
140 action with the state registrar of vital statistics in the Department of Health in accordance with
141 the requirements of Subsection (3), shall be served by certified mail, return receipt requested, at
142 the last address filed with the registrar.

143 (8) The notice required by this section may be waived in writing by the person entitled
144 to receive notice.

145 (9) Proof of service of notice on all persons for whom notice is required by this section
146 shall be filed with the court before the final dispositional hearing on the adoption.

147 (10) Notwithstanding any other provision of law, neither the notice of an adoption
148 proceeding nor any process in that proceeding is required to contain the name of the person or
149 persons seeking to adopt the adoptee.

150 (11) Except as to those persons whose consent to an adoption is required under Section
151 78B-6-120 or 78B-6-121, the sole purpose of notice under this section is to enable the person

152 served to:

153 (a) intervene in the adoption; and

154 (b) present evidence to the court relevant to the best interest of the child.

155 (12) In order to be excused from the requirement to provide notice as described in
156 Subsection (2)(a) on the grounds that the person has provided consent to the adoption
157 proceeding under Subsection (2)(a)(iii), the consent may not be implied consent, as described
158 in Section [78B-6-120.1](#).

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

160 **78B-6-120. Necessary consent to adoption or relinquishment for adoption.**

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

163 (a) the adoptee, if the adoptee is more than 12 years of age, unless the adoptee does not
164 have the mental capacity to consent;

165 (b) a man who:

166 (i) by operation of law under Section [78B-15-204](#), is recognized as the father of the
167 proposed adoptee, unless:

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

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

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

172 (c) the mother of the adoptee;

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

176 (e) consistent with Subsection (3), a biological parent who has executed and filed a
177 voluntary declaration of paternity with the state registrar of vital statistics within the
178 Department of Health in accordance with Title 78B, Chapter 15, Utah Uniform Parentage Act,
179 prior to the mother's execution of consent to adoption or her relinquishment of the child for
180 adoption;

181 (f) an unmarried biological father, of an adoptee, whose consent is not required under
182 Subsection (1)(d) or (1)(e), only if he fully and strictly complies with the requirements of:

183 (A) Sections 78B-6-121 and 78B-6-122; ~~and~~ or

184 (B) Sections 78B-6-121 and 78B-6-125; and

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

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

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

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

193 (a) can be accessed by the Department of Health; and

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

196 Section 3. Section **78B-6-122** is amended to read:

197 **78B-6-122. Qualifying circumstance.**

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

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

204 ~~[(ii) the mother intended to give birth to the child in the state;]~~

205 ~~[(iii) the child was born in the state; or]~~

206 ~~[(iv) the mother intended to execute a consent to adoption or relinquishment of the~~
207 ~~child for adoption;]~~

208 ~~[(A) in the state; or]~~

209 ~~[(B) under the laws of the state.]~~

210 (i) has been a resident of this state for three consecutive months; or

211 (ii) (A) is a member of the armed forces of the United States;

212 (B) is not a legal resident of this state; and

213 (C) has been stationed in this state under military orders for three consecutive months.

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

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

218 (ii) whether he has expressed or demonstrated an interest in taking responsibility for
219 the child;

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

222 (iv) whether he offered to provide and, if the offer was accepted, did provide, financial
223 support for the child or the child's mother;

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

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

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

229 (A) his paternity of the child; or

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

231 (viii) other evidence that demonstrates that he has demonstrated a full commitment to
232 his parental responsibilities.

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

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

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

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

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

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

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

252 (B) the unmarried biological father complied with the requirements of Section
253 78B-6-121 before the later of:

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

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

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

261 (a) notice of any judicial proceeding in connection with the adoption of the child; and
262 (b) consent, or refuse to consent, to the adoption of the child.

263 Section 4. Section 78B-6-125 is amended to read:

264 **78B-6-125. Time period prior to birth mother's consent.**

265 (1) A birth mother may not consent to the adoption of her child or relinquish ~~control~~
266 ~~or custody of~~ her child ~~[until]~~ for adoption unless:

267 (a) at least 24 hours [after] have passed since the birth of her child[-]; and

268 (b) (i) the birth mother complies with Subsection (2); or

269 (ii) at least 30 days have passed after the day on which the notice described in
270 Subsection (3)(a) is served.

271 (2) Except as provided in Subsection (3)(a), for a child who is six months of age or
272 less, a birth mother may not consent to the adoption of her child or relinquish her child for
273 adoption unless, during the time period beginning at the conception of the child and ending at
274 the time the mother executes consent to adoption or relinquishment of the child for adoption,
275 the child's mother:

276 (a) has been a resident of this state for three consecutive months; or
277 (b) (i) is a member of the armed forces of the United States;
278 (ii) is not a legal resident of this state; and
279 (iii) has been stationed in this state under military orders for three consecutive months.
280 (3) (a) A birth mother who fails to meet the requirements of Subsection (2) shall notify
281 the unmarried biological father, pursuant to:
282 (i) the provisions of Section 78B-6-110, of an adoption proceeding regarding the child;
283 or
284 (ii) the laws of the state where the child was conceived, of an adoption proceeding
285 regarding the child.
286 (b) The unmarried biological father shall fully and strictly comply with the
287 requirements of Section 78B-6-121 within 30 days after the day on which the notice described
288 in Subsection (3)(a) is served.
289 (c) An unmarried biological father's consent to adoption of a child or relinquishment of
290 a child for adoption is not required if the unmarried biological father fails to comply with the
291 requirements of Section 78B-6-121 within 30 days after the day on which the notice described
292 in Subsection (3)(a) is served.
293 [(2)] (4) The consent or relinquishment of [~~any other~~] a person other than the birth
294 mother as required by Sections 78B-6-120 and 78B-6-121, may be executed at any time,
295 including [~~prior to~~] before the birth of the child.

Legislative Review Note
as of 2-19-14 2:31 PM

Office of Legislative Research and General Counsel