

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

ADOPTION AMENDMENTS

2015 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Todd Weiler

House Sponsor: _____

LONG TITLE

General Description:

This bill amends the Utah Adoption Act.

Highlighted Provisions:

This bill:

- ▶ adds a requirement for the consent of an unmarried biological father to the adoption of a child who is six months of age or less; and
- ▶ creates a process for the juvenile court to consider multiple petitions for adoption.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

78B-6-121, as last amended by Laws of Utah 2013, Chapters 278 and 458

78B-6-132, as last amended by Laws of Utah 2012, Chapter 281

78B-6-133, as last amended by Laws of Utah 2010, Chapter 237

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

Section 1. Section **78B-6-121** is amended to read:

78B-6-121. Consent of unmarried biological father.



28 (1) Except as provided in Subsections (2)(a) and 78B-6-122(1), and subject to
29 Subsections (5) and (6), with regard to a child who is placed with prospective adoptive parents
30 more than six months after birth, consent of an unmarried biological father is not required
31 unless the unmarried biological father:

32 (a) (i) developed a substantial relationship with the child by:

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

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

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

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

40 (b) (i) openly lived with the child:

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

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

46 (B) immediately preceding placement of the child with prospective adoptive parents;
47 and

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

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

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

57 (3) Except as provided in Subsections (6) and 78B-6-122(1), and subject to Subsection
58 (5), with regard to a child who is six months of age or less at the time the child is placed with

59 prospective adoptive parents, consent of an unmarried biological father is not required unless,
60 prior to the time the mother executes her consent for adoption or relinquishes the child for
61 adoption, the unmarried biological father:

62 (a) initiates proceedings in a district court of Utah to establish paternity under Title
63 78B, Chapter 15, Utah Uniform Parentage Act;

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

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

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

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

69 (c) within 14 days after the day on which the child is born, files a petition in a district
70 court of Utah for a temporary order to establish child support in accordance with Title 78B,
71 Chapter 12, Utah Child Support Act;

72 [~~(c)~~] (d) consistent with Subsection (4), files notice of the commencement of paternity
73 proceedings, described in Subsection (3)(a), with the state registrar of vital statistics within the
74 Department of Health, in a confidential registry established by the department for that purpose;
75 and

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

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

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

82 (iii) the mother [~~refuses~~] refused to accept the unmarried biological father's offer to pay
83 the expenses described in this Subsection (3)[~~(d)~~](e).

84 (4) The notice described in Subsection (3)[~~(c)~~](d) is considered filed when received by
85 the state registrar of vital statistics.

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

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

91 (a) the court determines, in accordance with the requirements and procedures of Title
92 78A, Chapter 6, Part 5, Termination of Parental Rights Act, that the unmarried biological
93 father's rights should be terminated, based on the petition of any interested party;

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

96 (ii) the unmarried biological father fails to comply with Subsection (3) within 10
97 business days after the day that notice of the rescission described in Subsection (6)(b)(i) is
98 mailed by the Office of Vital Records within the Department of Health as provided in Section
99 78B-15-306; or

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

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

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

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

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

109 Section 2. Section 78B-6-132 is amended to read:

110 **78B-6-132. Adoption by married couple.**

111 ~~[(1) In assessing the best interest of a child in the custody of the Division of Child and
112 Family Services whose foster parents have petitioned for adoption, the court shall give special
113 consideration to the relationship of the child with his foster parents, if the child has been in that
114 home for a period of six months or longer.]~~

115 [(2)] Nothing in this section shall be construed as requiring an adoption that would be
116 contrary to the public policy of placing an adoptable child with a married couple whenever
117 possible.

118 Section 3. Section 78B-6-133 is amended to read:

119 **78B-6-133. Contested adoptions -- Rights of parties -- Determination of custody.**

120 (1) If a person whose consent for an adoption is required pursuant to Subsection

121 78B-6-120(1)[(b), (c), (d), (e), or (f)] refused to consent, the court shall determine whether
122 proper grounds exist for the termination of that person's rights pursuant to the provisions of this
123 chapter or Title 78A, Chapter 6, Part 5, Termination of Parental Rights Act.

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

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

128 (i) dismiss the adoption petition;

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

130 and

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

132 (3) Evidence considered at the custody hearing may include:

133 (a) evidence of psychological or emotional bonds that the child has formed with a third
134 person, including the prospective adoptive parent; and

135 (b) any detriment that a change in custody may cause the child.

136 (4) If the court dismisses the adoption petition, the fact that a person relinquished a
137 child for adoption or consented to the adoption may not be considered as evidence in a custody
138 proceeding described in this section, or in any subsequent custody proceeding, that it is not in
139 the child's best interest for custody to be awarded to such person or that:

140 (a) the person is unfit or incompetent to be a parent;

141 (b) the person has neglected or abandoned the child;

142 (c) the person is not interested in having custody of the child; or

143 (d) the person has forfeited the person's parental presumption.

144 (5) Any custody order entered pursuant to this section may also:

145 (a) include provisions for:

146 (i) parent-time; or

147 (ii) visitation by an interested third party; and

148 (b) provide for the financial support of the child.

149 (6) (a) If a person or entity whose consent is required for an adoption under Subsection
150 78B-6-120(1)[(a) or (g)] refuses to consent, the court shall proceed with an evidentiary hearing
151 and award custody as set forth in Subsection (2).

152 (b) The court may also finalize the adoption if doing so is in the best interest of the
153 child.

154 (7) (a) A person may not contest an adoption after the final decree of adoption is
155 entered, if that person:

- 156 (i) was a party to the adoption proceeding;
- 157 (ii) was served with notice of the adoption proceeding; or
- 158 (iii) executed a consent to the adoption or relinquishment for adoption.

159 (b) No person may contest an adoption after one year from the day on which the final
160 decree of adoption is entered.

161 (c) The limitations on contesting an adoption action, described in this Subsection (7),
162 apply to all attempts to contest an adoption:

- 163 (i) regardless of whether the adoption is contested directly or collaterally; and
- 164 (ii) regardless of the basis for contesting the adoption, including claims of fraud,
165 duress, undue influence, lack of capacity or competency, mistake of law or fact, or lack of
166 jurisdiction.

167 (d) The limitations on contesting an adoption action, described in this Subsection (7),
168 do not prohibit a timely appeal of:

- 169 (i) a final decree of adoption; or
- 170 (ii) a decision in an action challenging an adoption, if the action was brought within the
171 time limitations described in Subsections (7)(a) and (b).

172 (8) A juvenile court that has jurisdiction over a child for whom more than one petition
173 for adoption is filed shall grant a hearing to a petitioner:

- 174 (a) with whom the child is placed;
- 175 (b) who has custody or guardianship of the child;
- 176 (c) who has filed a written statement with the juvenile court within 120 days after the
177 day on which the shelter hearing is held:
 - 178 (i) requesting immediate placement of the child with the petitioner; and
 - 179 (ii) expressing the petitioner's intention of adopting the child;
- 180 (d) if the child has been in the current placement for less than 90 days before the day on
181 which the petitioner files the petition for adoption; or
- 182 (e) if the child is placed with or is in the custody or guardianship of an individual who

183 previously informed the division or the juvenile court that the individual is unwilling or unable
184 to adopt the child.

185 (9) A juvenile court that has jurisdiction over a child for whom more than one petition
186 for adoption is filed shall:

187 (a) dismiss the petition of the petitioner who is not entitled to a hearing under
188 Subsection (8); and

189 (b) deny that petitioner the right to notice of, appearance in, or intervention in
190 proceedings of any other petitions for adoption.

191 (10) (a) If a juvenile court grants a hearing on more than one petition for adoption, it
192 shall consider each petition for adoption separately on its own merits and shall not allow
193 discovery between the petitioners.

194 (b) There is a rebuttable presumption that it is in the best interest of the child to be
195 placed for adoption with a petitioner with whom the child has continuously resided for six
196 months or more before the day on which the petition was filed, if that petitioner has fulfilled
197 the other requirements in Title 78B, Chapter 6, Part 1, Utah Adoption Act.

198 (c) The juvenile court may consider other factors relevant to the best interest of the
199 child to determine whether the presumption is rebutted.

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

202 (12) Neither the juvenile court nor the division is obligated to inform a petitioner of the
203 petitioner's rights or duties under this section.

Legislative Review Note
as of 1-26-15 11:01 AM

Office of Legislative Research and General Counsel