

UNIFORM PARENTAGE ACT AMENDMENTS

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Lyle W. Hillyard

House Sponsor: V. Lowry Snow

LONG TITLE

General Description:

This bill allows the enforcement of child support obligations against all parents.

Highlighted Provisions:

This bill:

- ▶ allows the enforcement of child support obligations against all parents;
- ▶ states that a presumption of maternity shall be determined in the same manner as a presumption of paternity; and
- ▶ addresses the presumption of parentage.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

62A-11-307.1, as last amended by Laws of Utah 1997, Chapters 174 and 232

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

78B-15-201, as renumbered and amended by Laws of Utah 2008, Chapter 3

78B-15-607, as renumbered and amended by Laws of Utah 2008, Chapter 3

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

Section 1. Section **62A-11-307.1** is amended to read:

62A-11-307.1. Collection directly from responsible parent.

(1) The office may issue or modify an order under Section 62A-11-304.2 and collect under this part directly from a responsible parent if the procedural requirements of applicable law have been met and if public assistance is provided on behalf of that parent's dependent child. The direct right to issue an order under this Subsection (1) is independent of and in addition to the right derived from that assigned under Section 35A-3-108.

(2) An order issuing or modifying a support obligation under Subsection (1), issued while public assistance was being provided for a dependent child, remains in effect and may be enforced by the office under Section 62A-11-306.1 after provision of public assistance ceases.

(3) (a) The office may issue or modify an administrative order, subject to the procedural requirements of applicable law, that requires that obligee to pay to the office assigned support that an obligee receives and retains in violation of Subsection 62A-11-307.2(4) and may reduce to judgment any unpaid balance due.

(b) The office may collect the judgment debt in the same manner as it collects any judgment for past-due support owed by an obligor.

(4) Notwithstanding any other provision of law, the Office of Recovery Services shall have full standing and authority to establish and enforce child support obligations against an alleged parent currently or formerly in a same-sex marriage on the same terms as the Office of Recovery Services' authority against other mothers and fathers.

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

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

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

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

(b) a man or woman who:

(i) by operation of law under Section 78B-15-204, is recognized as the father or mother of the proposed adoptee, unless:

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

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

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

(c) the mother of the adoptee;

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

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

(f) an unmarried biological father, of an adoptee, whose consent is not required under Subsection (1)(d) or (1)(e), only if he fully and strictly complies with the requirements of Sections 78B-6-121 and 78B-6-122; and

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

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

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

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

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

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

Section 3. Section **78B-15-201** is amended to read:

78B-15-201. Establishment of parent-child relationship.

(1) (a) The mother-child relationship is established between a woman and a child by:

~~[(a)]~~ (i) the woman's having given birth to the child, except as otherwise provided in

Part 8, Gestational Agreement;

~~[(b)]~~ (ii) an adjudication of the woman's maternity;

~~[(c)]~~ (iii) adoption of the child by the woman; ~~[or]~~

~~[(d)]~~ (iv) an adjudication confirming the woman as a parent of a child born to a gestational mother if the agreement was validated under Part 8, Gestational Agreement, or is enforceable under other law~~[-]; or~~

(v) an un rebutted presumption of maternity of the child established in the same manner as under Section 78B-15-204.

(b) In this chapter, the presumption of maternity shall be treated the same as a presumption of paternity as established in Subsection 78B-15-201(2)(a).

(2) The father-child relationship is established between a man and a child by:

(a) an un rebutted presumption of the man's paternity of the child under Section 78B-15-204;

(b) an effective declaration of paternity by the man under Part 3, Voluntary Declaration of Paternity Act, unless the declaration has been rescinded or successfully challenged;

(c) an adjudication of the man's paternity;

(d) adoption of the child by the man;

(e) the man having consented to assisted reproduction by a woman under Part 7, Assisted Reproduction, which resulted in the birth of the child; or

(f) an adjudication confirming the man as a parent of a child born to a gestational mother if the agreement was validated under Part 8, Gestational Agreement, or is enforceable under other law.

Section 4. Section 78B-15-607 is amended to read:

78B-15-607. Limitation -- Child having presumed father.

(1) Paternity of a child conceived or born during a marriage with a presumed father, as

described in Subsection 78B-15-204(1)(a), (b), or (c), may be raised by the presumed father [or], the mother, or a support enforcement agency at any time [~~prior to~~] before filing an action for divorce or in the pleadings at the time of the divorce of the parents.

(a) If the issue is raised prior to the adjudication, genetic testing may be ordered by the tribunal in accordance with Section 78B-15-608. Failure of the mother of the child to appear for testing may result in an order allowing a motherless calculation of paternity. Failure of the mother to make the child available may not result in a determination that the presumed father is not the father, but shall allow for appropriate proceedings to compel the cooperation of the mother. If the question of paternity has been raised in the pleadings in a divorce and the tribunal addresses the issue and enters an order, the parties are estopped from raising the issue again, and the order of the tribunal may not be challenged on the basis of material mistake of fact.

(b) If the presumed father seeks to rebut the presumption of paternity, then denial of a motion seeking an order for genetic testing or a decision to disregard genetic test results shall be based on a preponderance of the evidence.

(c) If the mother seeks to rebut the presumption of paternity, the mother has the burden to show by a preponderance of the evidence that it would be in the best interests of the child to disestablish the parent-child relationship.

(d) If a support enforcement agency seeks to rebut the presumption of parentage and the presumptive parent opposes the rebuttal, the agency's request shall be denied. Otherwise, the denial of the agency's motion seeking an order for genetic testing or a decision to disregard genetic test results shall be based on a preponderance of the evidence, taking into account the best interests of the child.

(2) For the presumption outside of marriage described in Subsection 78B-15-204(1)(d), the presumption may be rebutted at any time if the tribunal determines that the presumed father and the mother of the child neither cohabited nor engaged in sexual intercourse with each other during the probable time of conception.

(3) The presumption may be rebutted by:

- 142 (a) genetic test results that exclude the presumed father;
- 143 (b) genetic test results that rebuttably identify another man as the father in accordance
- 144 with Section [78B-15-505](#);
- 145 (c) evidence that the presumed father and the mother of the child neither cohabited nor
- 146 engaged in sexual intercourse with each other during the probable time of conception; or
- 147 (d) an adjudication under this part.
- 148 (4) There is no presumption to rebut if the presumed father was properly served and
- 149 there has been a final adjudication of the issue.