

Senator Luz Robles proposes the following substitute bill:

ADOPTION AGENCY MODIFICATIONS

2013 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Luz Robles

House Sponsor: _____

LONG TITLE

General Description:

This bill amends Title 62A, Chapter 2, Licensure of Programs and Facilities, Title 78B, Chapter 6, Particular Proceedings, and Title 78B, Chapter 15, the Utah Uniform Parentage Act.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ requires the Office of Licensing to prohibit an adoption agency or an employee of an adoption agency from making a fraudulent representation or action in connection with an adoption;
- ▶ states that a fraudulent representation or action by an adoption agency or an employee of an adoption agency in connection with an adoption is grounds for the Office of Licensing to deny, place conditions on, suspend, or revoke the agency's license, pursuant to Section 62A-2-112;
- ▶ provides for an award of attorney fees and costs to a prevailing party in an action alleging fraudulent representation or action in connection with an adoption; and
- ▶ makes technical changes.

Money Appropriated in this Bill:



26 None

27 **Other Special Clauses:**

28 None

29 **Utah Code Sections Affected:**

30 AMENDS:

31 **62A-2-106**, as last amended by Laws of Utah 2009, Chapter 75

32 **78B-6-106**, as renumbered and amended by Laws of Utah 2008, Chapter 3



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

35 Section 1. Section **62A-2-106** is amended to read:

36 **62A-2-106. Office responsibilities.**

37 (1) Subject to the requirements of federal and state law, the office shall:

38 (a) make rules in accordance with Title 63G, Chapter 3, Utah Administrative

39 Rulemaking Act, to establish:

40 (i) except as provided in Subsection (1)(a)(ii), basic health and safety standards for
41 licensees, that shall be limited to:

42 (A) fire safety;

43 (B) food safety;

44 (C) sanitation;

45 (D) infectious disease control;

46 (E) safety of the:

47 (I) physical facility and grounds; and

48 (II) area and community surrounding the physical facility;

49 (F) transportation safety;

50 (G) emergency preparedness and response;

51 (H) the administration of medical standards and procedures, consistent with the related
52 provisions of this title;

53 (I) staff and client safety and protection;

54 (J) the administration and maintenance of client and service records;

55 (K) staff qualifications and training, including standards for permitting experience to
56 be substituted for education, unless prohibited by law;

- 57 (L) staff to client ratios; and
- 58 (M) access to firearms;
- 59 (ii) basic health and safety standards for therapeutic schools, that shall be limited to:
- 60 (A) fire safety, except that the standards are limited to those required by law or rule
- 61 under Title 53, Chapter 7, Part 2, Fire Prevention and Fireworks Act;
- 62 (B) food safety;
- 63 (C) sanitation;
- 64 (D) infectious disease control, except that the standards are limited to:
- 65 (I) those required by law or rule under Title 26, Utah Health Code or Title 26A, Local
- 66 Health Authorities; and
- 67 (II) requiring a separate room for clients who are sick;
- 68 (E) safety of the physical facility and grounds, except that the standards are limited to
- 69 those required by law or rule under Title 53, Chapter 7, Part 2, Fire Prevention and Fireworks
- 70 Act;
- 71 (F) transportation safety;
- 72 (G) emergency preparedness and response;
- 73 (H) access to appropriate medical care, including:
- 74 (I) subject to the requirements of law, designation of a person who is authorized to
- 75 dispense medication; and
- 76 (II) storing, tracking, and securing medication;
- 77 (I) staff and client safety and protection that permits the school to provide for the direct
- 78 supervision of clients at all times;
- 79 (J) the administration and maintenance of client and service records;
- 80 (K) staff qualifications and training, including standards for permitting experience to
- 81 be substituted for education, unless prohibited by law;
- 82 (L) staff to client ratios; and
- 83 (M) access to firearms;
- 84 (iii) procedures and standards for permitting a licensee to:
- 85 (A) provide in the same facility and under the same conditions as children, residential
- 86 treatment services to a person 18 years old or older who:
- 87 (I) begins to reside at the licensee's residential treatment facility before the person's

88 18th birthday;

89 (II) has resided at the licensee's residential treatment facility continuously since the
90 time described in Subsection (1)(a)(iii)(A)(I);

91 (III) has not completed the course of treatment for which the person began residing at
92 the licensee's residential treatment facility; and

93 (IV) voluntarily consents to complete the course of treatment described in Subsection
94 (1)(a)(iii)(A)(III); or

95 (B) (I) provide residential treatment services to a child who is:

96 (Aa) 12 years old or older; and

97 (Bb) under the custody of the Division of Juvenile Justice Services; and

98 (II) provide, in the same facility as a child described in Subsection (1)(a)(iii)(B)(I),
99 residential treatment services to a person who is:

100 (Aa) at least 18 years old, but younger than 21 years old; and

101 (Bb) under the custody of the Division of Juvenile Justice Services;

102 (iv) minimum administration and financial requirements for licensees; ~~and~~

103 (v) guidelines for variances from rules established under this Subsection (1); and

104 (vi) minimum ethical responsibilities of an adoption agency licensed under this

105 chapter, including prohibiting an adoption agency or its employee from engaging in a

106 fraudulent representation, as described in Subsection (3), in connection with an adoption;

107 (b) enforce rules relating to the office;

108 (c) issue licenses in accordance with this chapter;

109 (d) if the United States Department of State executes an agreement with the office that
110 designates the office to act as an accrediting entity in accordance with the Intercountry
111 Adoption Act of 2000, Pub. L. No. 106-279, accredit one or more agencies and persons to
112 provide intercountry adoption services pursuant to:

113 (i) the Intercountry Adoption Act of 2000, Pub. L. No. 106-279; and

114 (ii) the implementing regulations for the Intercountry Adoption Act of 2000, Pub. L.
115 No. 106-279;

116 (e) make rules to implement the provisions of Subsection (1)(d);

117 (f) conduct surveys and inspections of licensees and facilities in accordance with
118 Section 62A-2-118;

- 119 (g) collect licensure fees;
- 120 (h) notify licensees of the name of a person within the department to contact when
- 121 filing a complaint;
- 122 (i) investigate complaints regarding any licensee or human services program;
- 123 (j) have access to all records, correspondence, and financial data required to be
- 124 maintained by a licensee;
- 125 (k) have authority to interview any client, family member of a client, employee, or
- 126 officer of a licensee; and
- 127 (l) have authority to deny, condition, revoke, suspend, or extend any license issued by
- 128 the department under this chapter by following the procedures and requirements of Title 63G,
- 129 Chapter 4, Administrative Procedures Act.
- 130 (2) In establishing rules under Subsection (1)(a)(ii)(G), the office shall require a
- 131 licensee to establish and comply with an emergency response plan that requires clients and staff
- 132 to:
- 133 (a) immediately report to law enforcement any significant criminal activity, as defined
- 134 by rule, committed:
- 135 (i) on the premises where the licensee operates its human services program;
- 136 (ii) by or against its clients; or
- 137 (iii) by or against a staff member while the staff member is on duty;
- 138 (b) immediately report to emergency medical services any medical emergency, as
- 139 defined by rule:
- 140 (i) on the premises where the licensee operates its human services program;
- 141 (ii) involving its clients; or
- 142 (iii) involving a staff member while the staff member is on duty; and
- 143 (c) immediately report other emergencies that occur on the premises where the licensee
- 144 operates its human services program to the appropriate emergency services agency.
- 145 (3) (a) "Fraudulent representation" means a representation made, or action taken with:
- 146 (i) the intent to deceive; or
- 147 (ii) reckless disregard for the truth.
- 148 (b) "Fraudulent representation" does not include repeating a representation made by
- 149 another unless, under the circumstances, repeating the representation constitutes reckless

150 disregard for the truth.

151 Section 2. Section **78B-6-106** is amended to read:

152 **78B-6-106. Responsibility of each party for own actions -- Fraud or**
153 **misrepresentation.**

154 (1) Each parent of a child conceived or born outside of marriage is responsible for his
155 or her own actions and is not excused from strict compliance with the provisions of this
156 chapter based upon any action, statement, or omission of the other parent or third parties.

157 (2) (a) Any person injured by fraudulent representations or actions in connection with
158 an adoption is entitled to pursue civil or criminal penalties in accordance with existing law.

159 (b) The prevailing party in a court proceeding alleging fraudulent representation or
160 action by a birth mother, adoption agency, or an employee of an adoption agency is entitled to
161 an award of reasonable attorney fees and costs.

162 (3) A fraudulent representation or action on the part of a licensed adoption agency, or
163 an employee of a licensed adoption agency, in violation of a rule made under Subsection
164 62A-2-106(1)(a)(vi) is grounds for a license sanction under Section 62A-2-112.

165 (4) A fraudulent representation is not:

166 (a) a defense to strict compliance with the requirements of this chapter~~[, and is not]~~; or

167 (b) a basis for dismissal of a petition for adoption, vacation of an adoption decree, or
168 an automatic grant of custody to the offended party. [~~Custody~~]

169 (5) Subject to Subsection (6), custody determinations shall be based on the best
170 interest of the child, in accordance with the provisions of Section 78B-6-133.

171 (6) When a court finds by clear and convincing evidence that an adoption is facilitated
172 by fraudulent representation or action, and court proceedings have significantly delayed a final
173 custody determination, due process shall be a greater consideration in a custody determination
174 than bonding of the child to the adoptive parent when reunification therapy is available and
175 required.