

IN THE SENATE

SENATE BILL NO. 1293

BY HEALTH AND WELFARE COMMITTEE

AN ACT

RELATING TO ADOPTION; AMENDING SECTION 16-1504, IDAHO CODE, TO REVISE A PROVISION RELATING TO WHEN AN UNMARRIED BIOLOGICAL FATHER HAS MANIFESTED A FULL COMMITMENT TO HIS PARENTAL RESPONSIBILITIES AND TO REVISE PROVISIONS RELATING TO WHEN AN UNMARRIED BIOLOGICAL FATHER IS DEEMED TO HAVE WAIVED AND SURRENDERED ANY RIGHT IN RELATION TO A CHILD; AND AMENDING SECTION 16-1513, IDAHO CODE, TO REVISE A PROVISION RELATING TO WHEN AN UNMARRIED BIOLOGICAL FATHER IS DEEMED TO HAVE WAIVED AND SURRENDERED ANY RIGHT IN RELATION TO A CHILD.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 16-1504, Idaho Code, be, and the same is hereby amended to read as follows:

16-1504. NECESSARY CONSENT TO ADOPTION. (1) Consent to adoption is required from:

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

(b) Both parents or the surviving parent of an adoptee who was conceived or born within a marriage, unless the adoptee is eighteen (18) years of age or older;

(c) The mother of an adoptee born outside of marriage;

(d) Any 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;

(e) An unmarried biological father of an adoptee only if the requirements and conditions of subsection (2) (a) or (b) of this section have been proven;

(f) Any legally appointed custodian or guardian of the adoptee;

(g) The guardian or conservator of an incapacitated adult, if one has been appointed;

(h) The adoptee's spouse, if any;

(i) An unmarried biological father who has filed a voluntary acknowledgment of paternity with the vital statistics unit of the department of health and welfare pursuant to section 7-1106, Idaho Code; and

(j) The father of an illegitimate child who has adopted the child by acknowledgment.

(2) In accordance with subsection (1) of this section, the consent of an unmarried biological father is necessary only if the father has strictly complied with all requirements of this section.

(a) (i) With regard to a child who is placed with adoptive parents more than six (6) months after birth, an unmarried biological father shall have developed a substantial relationship with the child, taken some measure of responsibility for the child and the child's

future, and demonstrated a full commitment to the responsibilities of parenthood by financial support of the child, of a fair and reasonable sum and in accordance with the father's ability, when not prevented from doing so by the person or authorized agency having lawful custody of the child, and either:

1. Visiting the child at least monthly when physically and financially able to do so, and when not prevented from doing so by the person or authorized agency having lawful custody of the child; or

2. Have regular communication with the child or with the person or agency having the care or custody of the child, when physically and financially unable to visit the child, and when not prevented from doing so by the person or authorized agency having lawful custody of the child.

(ii) The subjective intent of an unmarried biological father, whether expressed or otherwise, unsupported by evidence of acts specified in this subsection shall not preclude a determination that the father failed to meet any one (1) or more of the requirements of this subsection.

(iii) An unmarried biological father who openly lived with the child for a period of six (6) months within the one (1) year period after the birth of the child and immediately preceding placement of the child with adoptive parents, and who openly held himself out to be the father of the child during that period, shall be deemed to have developed a substantial relationship with the child and to have otherwise met all of the requirements of this subsection.

(b) With regard to a child who is under six (6) months of age at the time he is placed with adoptive parents, an unmarried biological father shall have manifested a full commitment to his parental responsibilities by performing all of the acts described in this subsection and prior to the date of the filing of any proceeding to terminate the parental rights of the birth mother; the filing of any proceeding to adopt the child; or the execution of a consent to terminate the birth mother's parental rights under the provisions of section 16-2005(4), Idaho Code, whichever occurs first. The father shall have strictly complied with all of the requirements of this subsection by:

(i) Filing proceedings to establish paternity under section 7-1111, Idaho Code, and filing with that court a sworn affidavit stating that he is fully able and willing to have full custody of the child, setting forth his plans for the care of the child, and agreeing to a court order of child support and the payment of expenses incurred in connection with the mother's pregnancy and the child's birth;

(ii) Filing a notice of the proceedings to establish his paternity of the child with the vital statistics unit of the department of health and welfare pursuant to section 16-1513, Idaho Code; and

(iii) If he had actual knowledge of the pregnancy, paying a fair and reasonable amount of the expenses incurred in connection with the mother's pregnancy and the child's birth, in accordance with

1 his means, and when not prevented from doing so by the person or
2 authorized agency having lawful custody of the child.

3 (3) An unmarried biological father whose consent is required under sub-
4 section (1) or (2) of this section may nevertheless lose his right to consent
5 if the court determines, in accordance with the requirements and procedures
6 of the termination of parent and child relationship act, sections 16-2001
7 through 16-2015, Idaho Code, that his rights should be terminated, based on
8 the petition of any party as set forth in section 16-2004, Idaho Code.

9 (4) In any adoption proceeding pertaining to a child born out of wed-
10 lock, if there is no showing that an unmarried biological father has con-
11 sented to or waived his rights regarding a proposed adoption, the petitioner
12 shall file with the court a certificate from the vital statistics unit of the
13 department of health and welfare, signed by the state registrar of vital sta-
14 tistics, stating that a diligent search has been made of the registry of no-
15 tices from putative fathers, of a child born out of wedlock, and that the pu-
16 tative father involved has not filed notice of the proceedings to establish
17 his paternity, or if a filing is found, stating the name of the putative fa-
18 ther and the time and date of filing. That certificate shall be filed with
19 the court prior to the entrance of the final decree of adoption.

20 (5) An unmarried biological father who does not fully and strictly com-
21 ply with each of the conditions provided in this section is deemed to have
22 waived and surrendered any right in relation to the child, including the
23 right to notice of any judicial proceeding in connection with the adoption of
24 the child, or for termination of parental rights and his consent to the adop-
25 tion of the child is not required unless he proves, by clear and convincing
26 evidence, all of the following:

27 (a) It was not possible for him, prior to the filing of a proceeding to
28 terminate parental rights of the birth mother; the filing of any pro-
29 ceeding to adopt the child; or the execution of a consent to terminate
30 the birth mother's parental rights under the provisions of section
31 16-2005(4), Idaho Code, whichever occurs first, to:

32 (i) Commence proceedings to establish paternity of his child in
33 accordance with section 7-1111, Idaho Code; and

34 (ii) File notice of the filing of proceedings to establish his
35 paternity of the child with the vital statistics unit of the de-
36 partment of health and welfare in accordance with section 16-1513,
37 Idaho Code;

38 (b) His failure to timely file notice of the filing of proceedings to
39 establish his paternity of the child with the vital statistics unit
40 of the department of health and welfare in accordance with section
41 16-1513, Idaho Code, and his failure to commence timely proceedings to
42 establish paternity of his child in accordance with section 7-1111,
43 Idaho Code, was through no fault of his own; and

44 (c) He filed notice of the filing of proceedings to establish pater-
45 nity of his child in accordance with section 7-1111, Idaho Code, with
46 the vital statistics unit of the department of health and welfare in ac-
47 cordance with section 16-1513, Idaho Code, and filed proceedings to es-
48 tablish his paternity of the child within ten (10) days after the birth
49 of the child. Lack of knowledge of the pregnancy is not an acceptable

1 reason for his failure to timely file notice of the commencement of pro-
 2 ceedings or for his failure to commence timely proceedings.

3 (6) A minor parent has the power to consent to the adoption of his or her
 4 child. That consent is valid and has the same force and effect as a consent
 5 executed by an adult parent. A minor parent, having executed a consent, can-
 6 not revoke that consent upon reaching the age of majority or otherwise becom-
 7 ing emancipated.

8 (7) No consent shall be required of, nor notice given to, any person
 9 whose parental relationship to such child shall have been terminated in
 10 accordance with the provisions of either chapter 16 or 20, title 16, Idaho
 11 Code, or by a court of competent jurisdiction of a sister state under like
 12 proceedings; or in any other manner authorized by the laws of a sister state.
 13 Where a voluntary child placement agency licensed by the state in which it
 14 does business is authorized to place a child for adoption and to consent
 15 to such child's adoption under the laws of such state, the consent of such
 16 agency to the adoption of such child in a proceeding within the state of Idaho
 17 shall be valid and no further consents or notices shall be required.

18 (8) The legislature finds that an unmarried biological father who re-
 19 sides in another state may not, in every circumstance, be reasonably pre-
 20 sumed to know of, and strictly comply with, the requirements of this chapter.
 21 Therefore, when all of the following requirements have been met, that unmar-
 22 ried biological father may contest an adoption prior to finalization of the
 23 decree of adoption and assert his interest in the child:

24 (a) The unmarried biological father resides and has resided in another
 25 state where the unmarried mother was also located or resided;

26 (b) The mother left that state without notifying or informing the un-
 27 married biological father that she could be located in the state of
 28 Idaho;

29 (c) The unmarried biological father has, through every reasonable
 30 means, attempted to locate the mother but does not know or have reason to
 31 know that the mother is residing in the state of Idaho; and

32 (d) The unmarried biological father has complied with the most strin-
 33 gent and complete requirements of the state where the mother previously
 34 resided or was located in order to protect and preserve his parental in-
 35 terest and rights in the child in cases of adoption.

36 (9) An unmarried biological father may, under the provisions of section
 37 7-1107, Idaho Code, file a proceeding to establish his paternity prior to the
 38 birth of the child; however, such paternity proceeding must be filed prior to
 39 the date of the filing of any proceeding to terminate parental rights of the
 40 birth mother; the filing of any proceeding to adopt the child; or the execu-
 41 tion of a consent to terminate the birth mother's parental rights under the
 42 provisions of section 16-2005(4), Idaho Code, whichever occurs first.

43 SECTION 2. That Section 16-1513, Idaho Code, be, and the same is hereby
 44 amended to read as follows:

45 16-1513. REGISTRATION OF NOTICE AND FILING OF PATERNITY PROCEED-
 46 INGS. (1) A person who is the father or claims to be the father of a child
 47 born out of wedlock may claim rights pertaining to his paternity of the child
 48 by commencing proceedings to establish paternity under section 7-1111,
 49 Idaho Code, and by filing with the vital statistics unit of the department

1 of health and welfare notice of his filing of proceedings to establish his
2 paternity of the child born out of wedlock. The vital statistics unit of
3 the department of health and welfare shall provide forms for the purpose of
4 filing the notice of filing of paternity proceedings, and the forms shall
5 be made available through the vital statistics unit of the Idaho department
6 of health and welfare and in the office of the county clerk in every county
7 of this state. The forms shall include a written notification that filing
8 pursuant to this section shall not satisfy the requirements of chapter 82,
9 title 39, Idaho Code, and the notification shall also include the following
10 statements:

11 (a) A parent may make a claim of parental rights of an abandoned child,
12 abandoned pursuant to the provisions of chapter 82, title 39, Idaho
13 Code, as provided by section 39-8206, Idaho Code, by filing a notice of
14 claim of parental rights with the vital statistics unit of the depart-
15 ment of health and welfare on a form as prescribed and provided by the
16 vital statistics unit of the department of health and welfare;

17 (b) The vital statistics unit of the department of health and welfare
18 shall maintain a separate registry for claims to abandoned children,
19 abandoned pursuant to the provisions of chapter 82, title 39, Idaho
20 Code;

21 (c) The department shall provide forms for the purpose of filing a claim
22 of parental rights of an abandoned child, abandoned pursuant to the pro-
23 visions of chapter 82, title 39, Idaho Code, and the forms shall be made
24 available through the vital statistics unit of the Idaho department of
25 health and welfare and in the office of the county clerk in every county
26 of this state;

27 (d) To be valid, a claim of parental rights of an abandoned child, aban-
28 doned pursuant to the provisions of chapter 82, title 39, Idaho Code,
29 must be filed before an order terminating parental rights is entered by
30 the court. A parent that fails to file a claim of parental rights prior
31 to entry of an order terminating their parental rights is deemed to have
32 abandoned the child and waived and surrendered any right in relation to
33 the child, including the right to notice of any judicial proceeding in
34 connection with the termination of parental rights or adoption of the
35 child;

36 (e) Registration of notice of filing of paternity proceedings pursuant
37 to chapter 15, title 16, Idaho Code, shall not satisfy the requirements
38 of chapter 82, title 39, Idaho Code. To register a parental claim to
39 an abandoned child, abandoned pursuant to the provisions of chapter 82,
40 title 39, Idaho Code, an individual must file an abandoned child reg-
41 istry claim with the vital statistics unit of the department of health
42 and welfare and comply with all other provisions of chapter 82, title
43 39, Idaho Code, in the time and manner prescribed, in order to preserve
44 parental rights to the child.

45 When filing a notice of the filing of paternity proceedings, a person
46 who claims to be the father of a child born out of wedlock shall file with the
47 vital statistics unit of the department of health and welfare the completed
48 form prescribed by the vital statistics unit of the department of health
49 and welfare. Said form will be filled out completely, signed by the person
50 claiming paternity, and witnessed before a notary public.

1 (2) The notice of the filing of paternity proceedings may be filed prior
2 to the birth of the child, but must be filed prior to the date of the filing
3 of any proceeding to terminate the parental rights of the birth mother. The
4 notice of the filing of paternity proceedings shall be signed by the person
5 filing the notice and shall include his name and address, the name and last
6 address of the mother, and either the birth date of the child or the proba-
7 ble month and year of the expected birth of the child. The vital statistics
8 unit of the department of health and welfare shall maintain a central reg-
9 istry for this purpose that shall be subject to disclosure according to chap-
10 ter 3, title 9, Idaho Code. The department shall record the date and time the
11 notice of the filing of proceedings is filed with the department. The notice
12 shall be deemed to be duly filed with the department as of the date and time
13 recorded on the notice by the department.

14 (3) If the unmarried biological father does not know the county in which
15 the birth mother resides, he may initiate his action in any county, subject
16 to a change in venue.

17 (4) Except as provided in section 16-1504(5), Idaho Code, any father
18 of a child born out of wedlock who fails to file and register his notice of
19 the commencement of paternity proceedings pursuant to section 7-1111, Idaho
20 Code, prior to the date of the filing of any proceeding to terminate the
21 parental rights of the birth mother; the filing of any proceeding to adopt
22 the child; or the execution of a consent to terminate the birth mother's
23 parental rights under the provisions of section 16-2005(4), Idaho Code,
24 whichever occurs first, is deemed to have waived and surrendered any right
25 in relation to the child and of any notice to proceedings for adoption of the
26 child or for termination of parental rights of the birth mother. His consent
27 to the adoption of the child shall not be required and he shall be barred from
28 thereafter bringing or maintaining any action to establish his paternity of
29 the child. Failure of such filing or registration shall constitute an aban-
30 donment of said child and shall constitute an irrevocable implied consent in
31 any adoption or termination proceeding.

32 (5) The filing and registration of an unrevoked notice of the commence-
33 ment of paternity proceedings by a putative father shall constitute prima
34 facie evidence of the fact of his paternity in any contested proceeding under
35 chapter 11, title 7, Idaho Code. The filing of a notice of the commencement
36 of paternity proceedings shall not be a bar to an action for termination of
37 his parental rights under chapter 20, title 16, Idaho Code.

38 (6) An unmarried biological father of a child born out of wedlock who
39 has filed and registered a notice of the filing of paternity proceedings may
40 at any time revoke notice of intent to claim paternity previously filed.
41 Upon receipt of written revocation, the effect shall be as if no notice of the
42 filing of paternity proceedings had been filed or registered.

43 (7) In any adoption proceeding pertaining to a child born out of wed-
44 lock, if there is no showing that the putative father has consented to the
45 adoption, a certificate shall be obtained from the vital statistics unit of
46 the department of health and welfare, signed by the state registrar of vital
47 statistics, which certificate shall state that a diligent search has been
48 made of the registry of notices from putative fathers, and that no filing has
49 been found pertaining to the father of the child in question, or if a fil-
50 ing is found, stating the name of the putative father and the time and date

1 of filing. That certificate shall be filed with the court prior to entry of a
2 final decree of adoption.

3 (8) Identities of putative fathers can only be released pursuant to
4 procedures contained in chapter 3, title 9, Idaho Code.

5 (9) To cover the cost of implementing and maintaining said central reg-
6 istry, the vital statistics unit of the department of health and welfare
7 shall charge a filing fee of ten dollars (\$10.00) at the time the putative
8 father files his notice of his commencement of proceedings. The department
9 shall also charge a reasonable fee to cover all costs incurred in a search
10 of the Idaho putative father registry and for furnishing a certificate in
11 accordance with the provisions of this section and section 16-1504, Idaho
12 Code. It is the intent of the legislature that the fee shall cover all direct
13 and indirect costs incurred pursuant to this section and section 16-1504,
14 Idaho Code. The department shall annually review the fees and expenses in-
15 curred pursuant to administering the provisions of this section and section
16 16-1504, Idaho Code.

17 (10) Consistent with its authority denoted in the vital statistics act,
18 section 39-242(c), Idaho Code, the board of health and welfare shall adopt,
19 amend and repeal rules for the purpose of carrying out the provisions of this
20 section.

21 (11) The department shall produce and distribute, within the limits
22 of continuing annual appropriations duly made available to the department
23 by the legislature for such purposes, a pamphlet or publication informing
24 the public about the Idaho putative father registry, printed in English and
25 Spanish. The pamphlet shall indicate the procedures to be followed in order
26 to receive notice of any proceeding for adoption of a child an unmarried
27 biological father claims to have fathered and of any proceeding for termi-
28 nation of his parental rights, voluntary acknowledgment of paternity, the
29 consequences of acknowledgment of paternity, the consequences of failure to
30 acknowledge paternity and the address of the Idaho putative father registry.
31 Within the limits of continuing annual appropriations duly made available
32 to the department by the legislature for such purposes, such pamphlets or
33 publications shall be made available for distribution to the public at all
34 offices of the department of health and welfare. Upon request the department
35 shall also provide such pamphlets or publications to hospitals, libraries,
36 medical clinics, schools, colleges, universities, providers of child-re-
37 lated services and children's agencies licensed in the state of Idaho or
38 advertising services in the state of Idaho.

39 (12) Within the limits of continuing annual appropriations duly made
40 available to the department by the legislature for such purposes, each
41 county clerk, branch office of the department of motor vehicles, all of-
42 fices of the department of health and welfare, hospitals and local health
43 districts shall post in a conspicuous place a notice that informs the public
44 about the purpose and operation of the Idaho putative father registry. The
45 notice must include information regarding the following:

- 46 (a) Where to obtain a registration form;
- 47 (b) Where to register;
- 48 (c) The procedures to follow in order to file proceedings to establish
- 49 paternity of a child born out of wedlock;
- 50 (d) The consequences of a voluntary acknowledgment of paternity; and

1 (e) The consequences of failure to acknowledge paternity.

2 (13) The department shall host on the department's web page a public
3 service announcement (PSA) informing the public about the Idaho putative
4 father registry, printed in English and Spanish. The PSA shall indicate the
5 procedures to be followed in order to receive notice of any proceeding for
6 adoption of a child an unmarried biological father claims to have fathered
7 and of any proceeding for termination of his parental rights, voluntary ac-
8 knowledgment of paternity, the consequences of acknowledgment of paternity,
9 the consequences of failure to acknowledge paternity and the address of the
10 Idaho putative father registry.

11 (14) Failure to post a proper notice under the provisions of this sec-
12 tion does not relieve a putative father of the obligation to file notice
13 of the filing of proceedings to establish his paternity pursuant to this
14 section or to commence proceedings to establish paternity pursuant to sec-
15 tion 7-1111, Idaho Code, prior to the filing of any proceeding to terminate
16 parental rights of the birth mother.

17 (15) A person who knowingly or intentionally falsely files or registers
18 as a putative father is guilty of a misdemeanor.