

ADOPTION AMENDMENTS

2009 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Rebecca Chavez-Houck

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends provisions of the Judicial Code relating to adoption, who may adopt, and placement for adoption.

Highlighted Provisions:

This bill:

- ▶ makes a legislative finding that it is generally in the best interest of a child to be adopted by a person or persons who are in a legally valid and binding marriage under the laws of Utah;

- ▶ prohibits adoption by a person who is cohabiting in a relationship that is not a legally valid and binding marriage under the laws of Utah, unless:

- the parent or parents of the child consent otherwise; or
- the child is in the legal custody of the Division of Child and Family Services;

and

- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:



28 78B-6-102, as renumbered and amended by Laws of Utah 2008, Chapter 3

29 78B-6-115, as renumbered and amended by Laws of Utah 2008, Chapter 3

30 78B-6-117, as enacted by Laws of Utah 2008, Chapter 3

31

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

33 Section 1. Section 78B-6-102 is amended to read:

34 **78B-6-102. Legislative intent and findings -- Best interest of child -- Interests of**
35 **each party.**

36 (1) It is the intent and desire of the Legislature that in every adoption the best interest
37 of the child should govern and be of foremost concern in the court's determination.

38 (2) The court shall make a specific finding regarding the best interest of the child,
39 taking into consideration information provided to the court pursuant to the requirements of this
40 chapter relating to the health, safety, and welfare of the child and the moral climate of the
41 potential adoptive placement.

42 (3) The Legislature finds that the rights and interests of all parties affected by an
43 adoption proceeding must be considered and balanced in determining what constitutional
44 protections and processes are necessary and appropriate.

45 (4) The Legislature specifically finds that it is [~~not~~] generally in a child's best interest to
46 be adopted by a person or persons who are [~~cohabiting in a relationship that is not~~] in a legally
47 valid and binding marriage under the laws of this state. [~~Nothing in this section limits or~~
48 ~~prohibits the court's placement of a child with a single adult who is not cohabiting as defined~~
49 ~~in this part.~~]

50 (5) The Legislature also finds that:

51 (a) the state has a compelling interest in providing stable and permanent homes for
52 adoptive children in a prompt manner, in preventing the disruption of adoptive placements, and
53 in holding parents accountable for meeting the needs of children;

54 (b) an unmarried mother, faced with the responsibility of making crucial decisions
55 about the future of a newborn child, is entitled to privacy, and has the right to make timely and
56 appropriate decisions regarding her future and the future of the child, and is entitled to
57 assurance regarding the permanence of an adoptive placement;

58 (c) adoptive children have a right to permanence and stability in adoptive placements;

59 (d) adoptive parents have a constitutionally protected liberty and privacy interest in
60 retaining custody of an adopted child;

61 (e) an unmarried biological father has an inchoate interest that acquires constitutional
62 protection only when he demonstrates a timely and full commitment to the responsibilities of
63 parenthood, both during pregnancy and upon the child's birth; and

64 (f) the state has a compelling interest in requiring unmarried biological fathers to
65 demonstrate commitment by providing appropriate medical care and financial support and by
66 establishing legal paternity, in accordance with the requirements of this chapter.

67 (6) (a) In enacting this chapter, the Legislature has prescribed the conditions for
68 determining whether an unmarried biological father's action is sufficiently prompt and
69 substantial to require constitutional protection.

70 (b) If an unmarried biological father fails to grasp the opportunities to establish a
71 relationship with his child that are available to him, his biological parental interest may be lost
72 entirely, or greatly diminished in constitutional significance by his failure to timely exercise it,
73 or by his failure to strictly comply with the available legal steps to substantiate it.

74 (c) A certain degree of finality is necessary in order to facilitate the state's compelling
75 interest. The Legislature finds that the interests of the state, the mother, the child, and the
76 adoptive parents described in this section outweigh the interest of an unmarried biological
77 father who does not timely grasp the opportunity to establish and demonstrate a relationship
78 with his child in accordance with the requirements of this chapter.

79 (d) The Legislature finds no practical way to remove all risk of fraud or
80 misrepresentation in adoption proceedings, and has provided a method for absolute protection
81 of an unmarried biological father's rights by compliance with the provisions of this chapter. In
82 balancing the rights and interests of the state, and of all parties affected by fraud, specifically
83 the child, the adoptive parents, and the unmarried biological father, the Legislature has
84 determined that the unmarried biological father is in the best position to prevent or ameliorate
85 the effects of fraud and that, therefore, the burden of fraud shall be borne by him.

86 (e) An unmarried biological father has the primary responsibility to protect his rights.

87 (f) An unmarried biological father is presumed to know that the child may be adopted
88 without his consent unless he strictly complies with the provisions of this chapter, manifests a
89 prompt and full commitment to his parental responsibilities, and establishes paternity.

90 (7) The Legislature finds that an unmarried mother has a right of privacy with regard to
91 her pregnancy and adoption plan, and therefore has no legal obligation to disclose the identity
92 of an unmarried biological father prior to or during an adoption proceeding, and has no
93 obligation to volunteer information to the court with respect to the father.

94 Section 2. Section **78B-6-115** is amended to read:

95 **78B-6-115. Who may adopt -- Adoption of minor -- Adoption of adult.**

96 (1) For purposes of this section, "vulnerable adult" means:

97 (a) a person 65 years of age or older; or

98 (b) an adult, 18 years of age or older, who has a mental or physical impairment which
99 substantially affects that person's ability to:

100 (i) provide personal protection;

101 (ii) provide necessities such as food, shelter, clothing, or medical or other health care;

102 (iii) obtain services necessary for health, safety, or welfare;

103 (iv) carry out the activities of daily living;

104 (v) manage the adult's own resources; or

105 (vi) comprehend the nature and consequences of remaining in a situation of abuse,
106 neglect, or exploitation.

107 (2) Subject to this section and Section 78B-6-117, any adult may be adopted by another
108 adult.

109 (3) The following provisions of this part apply to the adoption of an adult just as
110 though the person being adopted were a minor:

111 (a) (i) Section 78B-6-108;

112 (ii) Section 78B-6-114;

113 (iii) Section 78B-6-116;

114 (iv) Section 78B-6-118;

115 (v) Section 78B-6-124;

116 (vi) Section 78B-6-136;

117 (vii) Section 78B-6-137;

118 (viii) Section 78B-6-138;

119 (ix) Section 78B-6-139;

120 (x) Section 78B-6-141; and

121 (xi) Section 78B-6-142;

122 (b) Subsections [~~78B-6-106~~] 78B-6-105(1), (2), and (7), except that the juvenile court
123 does not have jurisdiction over a proceeding for adoption of an adult, unless the adoption arises
124 from a case where the juvenile court has continuing jurisdiction over the adult adoptee; and

125 (c) if the adult adoptee is a vulnerable adult, Sections 78B-6-128 through 78B-6-131,
126 regardless of whether the adult adoptee resides, or will reside, with the adoptors, unless the
127 court, based on a finding of good cause, waives the requirements of those sections.

128 (4) Before a court enters a final decree of adoption of an adult, the adoptee and the
129 adoptive parent or parents shall appear before the court presiding over the adoption
130 proceedings and execute consent to the adoption.

131 (5) No provision of this part, other than those listed or described in this section or
132 Section 78B-6-117, apply to the adoption of an adult.

133 Section 3. Section **78B-6-117** is amended to read:

134 **78B-6-117. Who may adopt -- Adoption of minor.**

135 (1) A minor child may be adopted by an adult person, in accordance with the
136 provisions and requirements of this section and this part.

137 (2) A child may be adopted by:

138 (a) adults who are legally married to each other in accordance with the laws of this
139 state, including adoption by a stepparent; or

140 (b) subject to Subsection (4), any single adult, except as provided in Subsection (3).

141 (3) A child may not be adopted by a person who is cohabiting in a relationship that is
142 not a legally valid and binding marriage under the laws of this state[-], unless:

143 (a) the parent or parents of the child consent otherwise; or

144 (b) the child is in the legal custody of the division.

145 (4) In order to provide a child who is in the custody of the division with the most
146 beneficial family structure, when a child in the custody of the division is placed for adoption,
147 the division or child-placing agency shall place the child with a man and a woman who are
148 married to each other, unless:

149 (a) there are no qualified married couples who:

150 (i) have applied to adopt a child;

151 (ii) are willing to adopt the child; and

- 152 (iii) are an appropriate placement for the child;
- 153 (b) the child is placed with a relative of the child;
- 154 (c) the child is placed with a person who has already developed a substantial
155 relationship with the child;
- 156 (d) the child is placed with a person who:
 - 157 (i) is selected by a parent or former parent of the child, if the parent or former parent
158 consented to the adoption of the child; and
 - 159 (ii) the parent or former parent described in Subsection (4)(d)(i):
 - 160 (A) knew the person with whom the child is placed before the parent consented to the
161 adoption; or
 - 162 (B) became aware of the person with whom the child is placed through a source other
163 than the division or the child-placing agency that assists with the adoption of the child; or
 - 164 (e) it is in the best interests of the child to place the child [~~with a single person~~] in
165 another placement.

Legislative Review Note
as of 1-29-09 3:08 PM

Office of Legislative Research and General Counsel

H.B. 288 - Adoption Amendments

Fiscal Note

2009 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.
