

ADOPTION REVISIONS

2010 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Rebecca Chavez-Houck

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends provisions of the Utah Adoption Act relating to who may adopt a child.

Highlighted Provisions:

This bill:

- ▶ amends a legislative finding relating to who may adopt a child;
- ▶ permits a person who is cohabiting in a relationship that is not a legally valid and binding marriage under the laws of this state to adopt a child if:
 - the child has only one parent with parental rights to the child;
 - the child's parent joins in the adoption petition;
 - the person has developed a parent-child type of relationship with the child;
 - ending the relationship with the child would be detrimental to the child; and
 - continuation of the relationship is in the child's best interest;
- ▶ provides that a person's parental rights are not terminated if, at the time the child is adopted:
 - the biological parent is cohabiting with the person who is adopting the child, in a relationship that is not a legally valid and binding marriage under the laws of this state; and
 - the person who is adopting the child is permitted to adopt the child under the provisions of this bill; and



28 ▶ makes technical changes.

29 **Monies Appropriated in this Bill:**

30 None

31 **Other Special Clauses:**

32 None

33 **Utah Code Sections Affected:**

34 AMENDS:

35 **78B-6-102**, as renumbered and amended by Laws of Utah 2008, Chapter 3

36 **78B-6-117**, as enacted by Laws of Utah 2008, Chapter 3

37 **78B-6-138**, as last amended by Laws of Utah 2009, Chapter 159



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

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

41 **78B-6-102. Legislative intent and findings -- Best interest of child -- Interests of**
42 **each party.**

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

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

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

52 (4) The Legislature specifically finds that, except as provided in Subsection
53 78B-6-117(3), it is not in a child's best interest to be adopted by a person or persons who are
54 cohabiting in a relationship that is not a legally valid and binding marriage under the laws of
55 this state. Nothing in this section limits or prohibits the court's placement of a child with a
56 single adult who is not cohabiting as defined in this part.

57 (5) The Legislature also finds that:

58 (a) the state has a compelling interest in providing stable and permanent homes for

59 adoptive children in a prompt manner, in preventing the disruption of adoptive placements, and
60 in holding parents accountable for meeting the needs of children;

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

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

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

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

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

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

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

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

86 (d) The Legislature finds no practical way to remove all risk of fraud or
87 misrepresentation in adoption proceedings, and has provided a method for absolute protection
88 of an unmarried biological father's rights by compliance with the provisions of this chapter. In
89 balancing the rights and interests of the state, and of all parties affected by fraud, specifically

90 the child, the adoptive parents, and the unmarried biological father, the Legislature has
91 determined that the unmarried biological father is in the best position to prevent or ameliorate
92 the effects of fraud and that, therefore, the burden of fraud shall be borne by him.

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

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

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

101 Section 2. Section **78B-6-117** is amended to read:

102 **78B-6-117. Who may adopt -- Adoption of minor.**

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

105 (2) A child may be adopted by:

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

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

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

111 (a) the child only has one parent with parental rights to the child;

112 (b) the child's parent joins in the petition for the person to adopt the child;

113 (c) the person:

114 (i) has developed a parent-child type of relationship with the child;

115 (ii) has not developed the relationship described in Subsection (3)(c)(i) as the result of
116 a financially compensated care arrangement; and

117 (iii) has contributed to the child's emotional or financial well-being;

118 (d) ending the relationship described in Subsection (3)(c) would be detrimental to the
119 child; and

120 (e) continuation of the relationship described in Subsection (3)(c)(i) is in the child's

121 best interest.

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

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

127 (i) have applied to adopt a child;

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

129 (iii) are an appropriate placement for the child;

130 (b) the child is placed with a relative of the child;

131 (c) the child is placed with a person who has already developed a substantial
132 relationship with the child;

133 (d) the child is placed with a person who:

134 (i) is selected by a parent or former parent of the child, if the parent or former parent
135 consented to the adoption of the child; and

136 (ii) the parent or former parent described in Subsection (4)(d)(i):

137 (A) knew the person with whom the child is placed before the parent consented to the
138 adoption; or

139 (B) became aware of the person with whom the child is placed through a source other
140 than the division or the child-placing agency that assists with the adoption of the child; or

141 (e) it is in the best interests of the child to place the child with a single person.

142 Section 3. Section **78B-6-138** is amended to read:

143 **78B-6-138. Biological parent's rights and duties dissolved.**

144 (1) A biological parent of an adopted child is released from all parental duties toward
145 and all responsibilities for the adopted child, including residual rights, and has no further rights
146 with regard to that child at the earlier of:

147 (a) the time the parent's parental rights are terminated; or

148 (b) except as provided in Subsection (2), and subject to Subsection (3), the time the
149 final decree of adoption is entered.

150 (2) The rights and duties of a biological parent described in Subsection (1) [~~who, at the~~
151 ~~time the child is adopted, is lawfully married to the person adopting the child~~] are not released

152 or terminated under Subsection (1)(b)[-] if, at the time the child is adopted:

153 (a) the biological parent is lawfully married to the person who is adopting the child; or

154 (b) (i) the biological parent is cohabiting with the person who is adopting the child, in a
155 relationship described in Subsection 78B-6-117(3); and

156 (ii) the person who is adopting the child is permitted to adopt the child under
157 Subsection 78B-6-117(3).

158 (3) [~~The~~] Except as provided in Subsection (2)(b), the rights and duties of a biological
159 parent described in Subsection (1) who, at the time the child is adopted, is not lawfully married
160 to the person adopting the child are terminated as provided in Subsection (1)(b).

Legislative Review Note
as of 1-21-10 6:26 AM

Office of Legislative Research and General Counsel

H.B. 300 - Adoption Revisions

Fiscal Note

2010 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.
