

**ADOPTION AMENDMENTS**

2011 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Rebecca Chavez-Houck**

Senate Sponsor: \_\_\_\_\_

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**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 an unmarried cohabitant to adopt a child if:
  - the child has only one legal parent;
  - the child's parent joins in the adoption petition;
  - the person has developed a parental relationship with the child; and
  - establishing a legal parental relationship with the person 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 legal 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
- ▶ makes technical changes.



28 **Money Appropriated in this Bill:**

29 None

30 **Other Special Clauses:**

31 None

32 **Utah Code Sections Affected:**

33 AMENDS:

34 **78B-6-102**, as renumbered and amended by Laws of Utah 2008, Chapter 3

35 **78B-6-117**, as enacted by Laws of Utah 2008, Chapter 3

36 **78B-6-138**, as last amended by Laws of Utah 2010, Chapter 237



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

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

40 **78B-6-102. Legislative intent and findings -- Best interest of child -- Interests of**  
41 **each party.**

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

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

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

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

56 (b) The Legislature further finds that when a child is being raised by two unmarried  
57 cohabiting adults:

58 (i) it is in the best interest of the child to have a legal parent-child relationship with

59 both adults; and

60 (ii) the legal parent of the child has a fundamental right to choose to allow adoption of  
61 the parent's child by the other cohabiting adult.

62 (5) The Legislature also finds that:

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

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

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

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

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

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

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

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

86 (c) A certain degree of finality is necessary in order to facilitate the state's compelling  
87 interest. The Legislature finds that the interests of the state, the mother, the child, and the  
88 adoptive parents described in this section outweigh the interest of an unmarried biological  
89 father who does not timely grasp the opportunity to establish and demonstrate a relationship

90 with his child in accordance with the requirements of this chapter.

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

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

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

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

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

107 **78B-6-117. Who may adopt -- Adoption of minor.**

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

110 (2) A child may be adopted by:

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

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

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

116 (a) the child only has one legal parent;

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

118 (c) the person:

119 (i) has developed a parental relationship with the child; and

120 (ii) has contributed to the child's emotional or financial well-being; and

121 (d) establishing a legal parental relationship with the person described in Subsection  
122 (3)(c) is in the best interest of the child.

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

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

128 (i) have applied to adopt a child;

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

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

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

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

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

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

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

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

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

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

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

144 **78B-6-138. Pre-existing parent's rights and duties dissolved.**

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

148 (a) the time the pre-existing parent's parental rights are terminated; or

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

151 (2) The rights and duties of a pre-existing parent described in Subsection (1) [~~who, at~~

152 ~~the time the child is adopted, is lawfully married to the person adopting the child] are not~~  
153 released or terminated under Subsection (1)(b)[~~:] if, at the time the child is adopted:~~

154 (a) the legal parent is lawfully married to the person who is adopting the child; or

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

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

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

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**Legislative Review Note**  
as of 2-2-11 10:21 AM

**Office of Legislative Research and General Counsel**

# FISCAL NOTE

H.B. 108

SHORT TITLE: **Adoption Amendments**

SPONSOR: **Chavez-Houck, R.**

2011 GENERAL SESSION, STATE OF UTAH

## STATE GOVERNMENT (UCA 36-12-13(2)(b))

Enactment of this bill likely will not materially impact the state budget.

## LOCAL GOVERNMENTS (UCA 36-12-13(2)(c))

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

## DIRECT EXPENDITURES BY UTAH RESIDENTS AND BUSINESSES (UCA 36-12-13(2)(d))

Enactment of this bill likely will not result in direct, measurable expenditures by Utah residents or businesses.