

**ADOPTION BY A CO-PARENT**

2012 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Ross I. Romero**

House 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 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.

**Money Appropriated in this Bill:**



28 None

29 **Other Special Clauses:**

30 None

31 **Utah Code Sections Affected:**

32 AMENDS:

33 **78B-6-102**, as renumbered and amended by Laws of Utah 2008, Chapter 3

34 **78B-6-117**, as enacted by Laws of Utah 2008, Chapter 3

35 **78B-6-138**, as last amended by Laws of Utah 2010, Chapter 237



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

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

39 **78B-6-102. Legislative intent and findings -- Best interest of child -- Interests of**  
40 **each party.**

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

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

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

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

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

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

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

61           (5) The Legislature also finds that:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

106 **78B-6-117. Who may adopt -- Adoption of minor.**

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

109 (2) A child may be adopted by:

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

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

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

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

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

117 (c) the person:

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

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

120 (d) establishing a legal parental relationship with the person described in Subsection

121 (3)(c) is in the best interest of the child.

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. Pre-existing parent's rights and duties dissolved.**

144 (1) A pre-existing 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 pre-existing 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 pre-existing parent described in Subsection (1) [~~who, at~~  
151 ~~the time the child is adopted, is lawfully married to the person adopting the child~~] are not

152 released or terminated under Subsection (1)(b)[-] if, at the time the child is adopted:  
153 (a) the legal parent is lawfully married to the person who is adopting the child; or  
154 (b) (i) the legal 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  
159 pre-existing parent described in Subsection (1) who, at the time the child is adopted, is not  
160 lawfully married to the person adopting the child are terminated as provided in Subsection  
161 (1)(b).

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**Legislative Review Note**  
**as of 1-19-12 2:31 PM**

**Office of Legislative Research and General Counsel**