

## SAME-SEX ADOPTION LAWS BY STATE

The issue of adoption by same-sex couples has moved to the forefront in recent years. Liberty Counsel was instrumental in upholding the constitutionality of Florida's ban on same-sex adoption in the *Lofton v. Kearney* case at the Eleventh Circuit Court of Appeals. This was the first case of its kind in the country upholding a state legislative ban on same-sex adoption. We continue to work to establish legislation - and protect such legislation from court challenges - to protect children.

See the state-by-state chart at the end of this document for a listing of adoption law related to same-sex couples in each state.

### STATES EXPLICITLY PROHIBITING HOMOSEXUAL ADOPTION

Three states - Florida, Mississippi, and Utah - have laws that explicitly prohibit homosexual individuals and/or couples from adopting children. Michigan has, by construction of its statutes, prohibited same-sex couples from adopting, but does not prohibit single homosexual individuals from adopting. Other states may not have explicit prohibitions against same-sex adoption, but may have statutory requirements that only married couples may adopt, and thus, by extension, same-sex couples (because they are not married) are prohibiting from adopting. The following states have explicit prohibitions against same-sex adoption.

#### **FLORIDA<sup>1</sup>**

##### ***Florida Statute § 63.042***

Who may be adopted, who may adopt

- (1) Any person, a minor or an adult, may be adopted.
- (2) The following persons may adopt:
  - (a) A husband and wife jointly;
  - (b) An unmarried adult, including the birth parent of the person to be adopted;
  - (c) The unmarried minor birth parent of the person to be adopted; or
  - (d) A married person without the other spouse joining as a petitioner, if the person to be adopted is not his or her spouse, and if:
    1. The other spouse is a parent of the person to be adopted and consents to the adoption; or
    2. The failure of the other spouse to join in the petition or to consent to the adoption is excused by the court for reason of prolonged unexplained absence, unavailability, incapacity, or circumstances constituting an unreasonable withholding of consent.
- (3) No person eligible to adopt under this statute may adopt if that person is a homosexual.
- (4) No person eligible under this section shall be prohibited from adopting solely because such person possesses a physical disability or handicap, unless it is determined by the department or the licensed child-placing agency that such disability or handicap renders such person incapable of serving as an effective parent.

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<sup>1</sup> Florida adoption law does not prohibit gays or lesbians from serving as foster parents, but it does prevent such parents from adopting their foster children.

## MISSISSIPPI

### ***Mississippi Statute § 93-17-3(2)***

Eligible persons; venue; certificate; name

(2) Adoption by couples of the same gender is prohibited.

## MICHIGAN

Michigan law only allows couples married to each other to adopt. *See* M.C.L. §710.24; *Matter fo Adams*, 473 N.W.2d 712 (Mich. App. 1991)(holding that two persons not married to each other cannot jointly adopt a child). In 2004, Michigan’s Attorney General issued an opinion that same-sex couples who are legally married in another state may not adopt in Michigan as a couple because Michigan does not recognize same-sex marriages from other states, nor does it allow same-sex couples to marry in Michigan. *See* Op. Mich. Att’y Gen 7160 (2004).

Michigan Chief County Judge Archie Brown issued a memo on June 4, 2002, banning judges throughout Washtenaw County from awarding second-parent adoptions to the unmarried partners of biological parents. This appears to prohibit second-parent adoptions by same-sex couples throughout the state, since Ann Arbor’s Washtenaw County was the *only one* of the state’s 83 counties where such adoptions were granted. *See* Memo: Judge Archie C. Brown to Juvenile Division Staff, June 4, 2002; Detroit Free Press, July 25, 2002.

## UTAH

### ***Utah Statute § 78-30-9***

Decree of adoption – Best interest of child

(1) The court shall examine each person appearing before it in accordance with this chapter, separately, and, if satisfied that the interests of the child will be promoted by the adoption, it shall enter a final decree of adoption declaring that the child is adopted by the adoptive parent or parents and shall be regarded and treated in all respects as the child of the adoptive parent or parents.

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

(3) (a) The Legislature specifically finds that it is not in a child’s best interest to be adopted by a person or persons who are cohabiting in a relationship that is not a legally valid and binding marriage under the laws of this state. Nothing in this section limits or prohibits the court’s placement of a child with a single adult who is not cohabiting as defined in Subsection (3)(b).

(b) For purposes of this section, “cohabiting” means residing with another person and being involved in a sexual relationship with that person.

## STATES WITH PROHIBITIONS ON HOMOSEXUAL FOSTER PARENTING

### ARKANSAS<sup>2</sup>

#### ***Arkansas Child Welfare Agency Review Board - Minimum Licensing Standards §200.32 (1999)***

No person may serve as a foster parent if any adult member of that person's household is a homosexual. Homosexual, for purposes of this rule, shall mean any person who voluntarily and knowingly engages in or submits to any sexual contact involving the genitals of one person and the mouth or anus of another person of the same gender, and who has engaged in such activity after the foster home is approved or at a point in time that is reasonably close in time to the filing of the application to be a foster parent.

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<sup>2</sup> This administrative regulation was declared unconstitutional by an Arkansas trial court judge on December 29, 2004. *See Howard v. Child Welfare Agency Review Bd.*, 2004 WL 3154530 (Ar. Cir. Ct. Dec. 29, 2004). The State of Arkansas has appealed the ruling, but in the interim is not enforcing the prohibition against homosexual foster parenting.

States	Same-Sex Adoption Bans	No Prohibition on Same-Sex Adoption	Allows Same-Sex Adoption	Allow Single Homosexuals to Adopt	Ban Second Parent Same-Sex Adoption	Allow Second Parent Same-Sex Adoption	Second Parent Same-Sex Adoption Unclear
Alabama		x		x			x
Alaska		x		x			x
Arizona		x		x			x
Arkansas		x		Unclear			x
California			x	x		x	
Colorado		x		x	x		
Connecticut			x	x		x	
Delaware		x		x			x
Dist. of Columbia			x	x		x	
Florida	x				x		
Georgia		x		x			x
Hawaii		x		x			x
Idaho		x		x			x
Illinois			x	x		x	
Indiana		x		x			x
Iowa		x		x			x
Kansas		x		x			x
Kentucky		x		x			x
Louisiana		x		x			x
Maine		x		x			x
Maryland		x		x			x
Massachusetts			x	x		x	
Michigan	x				x		
Minnesota		x		x			x
Mississippi	x			x			x
Missouri		x		Unclear			x
Montana		x		x			x
Nebraska		x		Unclear			x
Nevada		x		x			x
New Hampshire		x		x			x
New Jersey			x	x		x	
New Mexico			x	x			x

New York			x	x		x	
North Carolina		x		x			x
North Dakota		x		x			x
Ohio		x		x	x		
Oklahoma		x		x			x
Oregon			x	x			x
Pennsylvania		x		x		x	
Rhode Island		x		x			x
South Carolina		x		x			x
South Dakota		x		x			x
Tennessee		x		x			x
Texas		x		x			x
Utah	x			x			x
Vermont			x	x		x	
Virginia		x		x			x
Washington		x		x			x
West Virginia		x		x			x
Wisconsin		x		x	x		
Wyoming		x		x			x