

SECOND REGULAR SESSION

HOUSE BILL NO. 2426

99TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE WALSH.

6366H.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 211.444, 453.015, 453.030, and 453.080, RSMo, and to enact in lieu thereof four new sections relating to adoption.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 211.444, 453.015, 453.030, and 453.080, RSMo, are repealed and
2 four new sections enacted in lieu thereof, to be known as sections 211.444, 453.015, 453.030,
3 and 453.080, to read as follows:

211.444. ~~[1-]~~ The juvenile court may, upon petition of the juvenile officer ~~[or]~~ , **the**
2 **attorney appointed by the court as guardian ad litem**, a child-placing agency licensed under
3 sections 210.481 to 210.536 in conjunction with a placement with such agency under subsection
4 6 of section 453.010, or ~~[the court before which]~~ **a private attorney filing** a petition for adoption
5 ~~[has been filed pursuant to]~~ **under** the provisions of chapter 453, terminate the rights of a parent
6 **or receive the consent to adoption or waiver of consent to adoption executed by a parent**
7 **or a named father** to a child, **including a child who is a ward of the court**, if the court finds
8 that such termination **or consent to adoption or waiver of consent to adoption** is in the best
9 interests of the child and the parent has, **in a properly executed writing under section 453.030**
10 **or 453.050**, consented ~~[in writing]~~ to the termination of his or her parental rights **or consented**
11 **to an adoption or waived consent to adoption.**

12 ~~[2- The written consent required by subsection 1 of this section may be executed before~~
13 ~~or after the institution of the proceedings and shall be acknowledged before a notary public. In~~
14 ~~lieu of such acknowledgment, the signature of the person giving the written consent shall be~~
15 ~~witnessed by at least two adult persons who are present at the execution whose signatures and~~
16 ~~addresses shall be plainly written thereon and who determine and certify that the consent is~~

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

17 knowingly and freely given. The two adult witnesses shall not be the prospective parents. The
18 notary public or witnesses shall verify the identity of the party signing the consent.

19 ~~3. The written consent required by subsection 1 of this section shall be valid and~~
20 ~~effective only after the child is at least forty-eight hours old and if it complies with the other~~
21 ~~requirements of section 453.030.]~~

453.015. As used in sections 453.010 to 453.400, the following terms mean:

2 (1) "Minor" or "child", any person who has not attained the age of eighteen years or any
3 person in the custody of the children's division who has not attained the age of twenty-one;

4 (2) "Parent", a birth parent or parents of a child, including the putative father of the child,
5 as well as the husband of a birth mother at the time the child was conceived, or a parent or
6 parents of a child by adoption. The putative father shall have no legal relationship unless he has
7 acknowledged the child as his own by affirmatively asserting his paternity;

8 (3) **"Post adoption contact agreement", a voluntary written agreement executed by**
9 **one or both of a child's birth parents and each adoptive parent describing future contact**
10 **between the parties to the agreement and the child; provided, that such agreement shall**
11 **be approved by the court under subsection 4 of section 453.080;**

12 (4) "Putative father", the alleged or presumed father of a child including a person who
13 has filed a notice of intent to claim paternity with the putative father registry established in
14 section 192.016 and a person who has filed a voluntary acknowledgment of paternity pursuant
15 to section 193.087;

16 [(4)] (5) "Stepparent", the spouse of a biological or adoptive parent. The term does not
17 include the state if the child is a ward of the state. The term does not include a person whose
18 parental rights have been terminated.

453.030. 1. In all cases the approval of the court of the adoption shall be required and
2 such approval shall be given or withheld as the welfare of the person sought to be adopted may,
3 in the opinion of the court, demand.

4 2. The written consent of the person to be adopted shall be required in all cases where
5 the person sought to be adopted is fourteen years of age or older, except where the court finds
6 that such child has not sufficient mental capacity to give the same. In a case involving a child
7 under fourteen years of age, the guardian ad litem shall ascertain the child's wishes and feelings
8 about his or her adoption by conducting an interview or interviews with the child, if appropriate
9 based on the child's age and maturity level, which shall be considered by the court as a factor in
10 determining if the adoption is in the child's best interests.

11 3. With the exceptions specifically enumerated in section 453.040, when the person
12 sought to be adopted is under the age of eighteen years, the written consent of the following
13 persons shall be required and filed in and made a part of the files and record of the proceeding:

14 (1) The mother of the child; ~~and~~

15 (2) ~~Only the~~ Any man who:

16 (a) Is presumed to be the father pursuant to ~~the~~ subdivision (1), (2), or (3) of subsection
17 1 of section 210.822; or

18 (b) Has filed an action to establish his paternity in a court of competent jurisdiction no
19 later than fifteen days after the birth of the child and has served a copy of the petition on the
20 mother in accordance with section 506.100; or

21 (c) Filed with the putative father registry pursuant to section 192.016 a notice of intent
22 to claim paternity or an acknowledgment of paternity either prior to or within fifteen days after
23 the child's birth, and has filed an action to establish his paternity in a court of competent
24 jurisdiction no later than fifteen days after the birth of the child; ~~or~~ **and**

25 (3) The child's current adoptive parents or other legally recognized mother and father.

26

27 Upon request by the petitioner and within one business day of such request, the clerk of the local
28 court shall verify whether such written consents have been filed with the court.

29 4. The written consent required in subdivisions (2) and (3) of subsection 3 of this section
30 may be executed before or after **the birth of the child or before or after** the commencement
31 of the adoption proceedings, and shall be executed in front of a judge or acknowledged before
32 a notary public. If consent is executed in front of a judge, it shall be the duty of the judge to
33 advise the consenting birth parent of the consequences of the consent. In lieu of such
34 acknowledgment, the signature of the person giving such written consent shall be witnessed by
35 the signatures of at least two adult persons whose signatures and addresses shall be plainly
36 written thereon. The two adult witnesses shall not be the prospective adoptive parents or any
37 attorney representing a party to the adoption proceeding **other than the attorney representing**
38 **the party signing the consent.** The notary public or witnesses shall verify the identity of the
39 party signing the consent. **Notwithstanding any other provision of law to the contrary, a**
40 **properly executed written consent under this subsection shall be considered irrevocable.**

41 5. The written consent required in subdivision (1) of subsection 3 of this section by the
42 birth ~~parent~~ **mother** shall not be executed anytime before the child is forty-eight hours old.
43 Such written consent shall be executed in front of a judge or acknowledged before a notary
44 public. If consent is executed in front of a judge, it shall be the duty of the judge to advise the
45 consenting party of the consequences of the consent. In lieu of ~~such~~ acknowledgment **before**
46 **a notary public**, the signature of the person giving such written consent shall be witnessed by
47 the signatures of at least two adult persons who are present at the execution whose signatures and
48 addresses shall be plainly written thereon and who determine and certify that the consent is
49 knowingly and freely given. The two adult witnesses shall not be the prospective adoptive

50 parents or any attorney representing a party to the adoption proceeding **other than the attorney**
51 **representing the party signing the consent.** The notary public or witnesses shall verify the
52 identity of the party signing the consent.

53 6. A consent is final when executed, unless the consenting party, prior to a final decree
54 of adoption, alleges and proves by clear and convincing evidence that the consent was not freely
55 and voluntarily given. The burden of proving the consent was not freely and voluntarily given
56 shall rest with the consenting party. Consents in all cases shall have been executed not more
57 than six months prior to the date the petition for adoption is filed.

58 7. A consent form shall be developed through rules and regulations promulgated by the
59 department of social services. No rule or portion of a rule promulgated under the authority of
60 this section shall become effective unless it has been promulgated pursuant to the provisions of
61 chapter 536. If a written consent is obtained after August 28, 1997, but prior to the development
62 of a consent form by the department and the written consent complies with the provisions of
63 subsection 8 of this section, such written consent shall be deemed valid.

64 8. However, the consent form must specify that:

65 (1) The birth parent understands the importance of identifying all possible fathers of the
66 child and may provide the names of all such persons; and

67 (2) The birth parent understands that if he denies paternity, but consents to the adoption,
68 he waives any future interest in the child.

69 9. The written consent to adoption required by subsection 3 and executed through
70 procedures set forth in subsection 5 of this section shall be valid and effective even though the
71 parent consenting was under eighteen years of age, if such parent was represented by a guardian
72 ad litem, at the time of the execution thereof.

73 10. Where the person sought to be adopted is eighteen years of age or older, his or her
74 written consent alone to his or her adoption shall be sufficient.

75 11. A birth parent, including a birth parent less than eighteen years of age, shall have the
76 right to legal representation and payment of any reasonable legal fees incurred throughout the
77 adoption process. In addition, the court may appoint an attorney to represent a birth parent if:

78 (1) A birth parent requests representation;

79 (2) The court finds that hiring an attorney to represent such birth parent would cause a
80 financial hardship for the birth parent; and

81 (3) The birth parent is not already represented by counsel.

82 12. Except in cases where the court determines that the adoptive parents are unable to
83 pay reasonable attorney fees and appoints pro bono counsel for the birth parents, the court shall
84 order the costs of the attorney fees incurred pursuant to subsection 11 of this section to be paid
85 by the prospective adoptive parents or the child-placing agency.

86 **13. The court shall receive and acknowledge a written consent to adoption properly**
87 **executed by a birth parent under this section when such consent is in the best interests of**
88 **the child.**

 453.080. 1. The court shall conduct a hearing to determine whether the adoption shall
2 be finalized. **Out-of-state adoptive petitioners may appear by their attorney or by video or**
3 **telephone conference rather than in person.** During such hearing, the court shall ascertain
4 whether:

5 (1) The person sought to be adopted, if a child, has been in the lawful and actual custody
6 of the petitioner for a period of at least six months prior to entry of the adoption decree; except
7 that the six-month period may be waived if the person sought to be adopted is a child who is
8 under the prior and continuing jurisdiction of a court pursuant to chapter 211 and the person
9 desiring to adopt the child is the child's current foster parent. Lawful and actual custody shall
10 include a transfer of custody pursuant to the laws of this state, another state, a territory of the
11 United States, or another country;

12 (2) The court has received and reviewed a postplacement assessment on the monthly
13 contacts with the adoptive family pursuant to section 453.077, except for good cause shown in
14 the case of a child adopted from a foreign country;

15 (3) The court has received and reviewed an updated financial affidavit;

16 (4) The court has received the recommendations of the guardian ad litem and has
17 received and reviewed the recommendations of the person placing the child, the person making
18 the assessment and the person making the postplacement assessment;

19 (5) ~~[There is compliance with the uniform child custody jurisdiction act, sections~~
20 ~~452.440 to 452.550;~~

21 ~~———(6)] There is compliance with the Indian Child Welfare Act, if applicable;~~

22 ~~[(7)]~~ (6) There is compliance with the Interstate Compact on the Placement of Children
23 pursuant to section 210.620; and

24 ~~[(8)]~~ (7) It is fit and proper that such adoption should be made.

25 2. If a petition for adoption has been filed pursuant to section 453.010 and a transfer of
26 custody has occurred pursuant to section 453.110, the court may authorize the filing for
27 finalization in another state if the adoptive parents are domiciled in that state.

28 3. If the court determines the adoption should be finalized, a decree shall be issued
29 setting forth the facts and ordering that from the date of the decree the adoptee shall be for all
30 legal intents and purposes the child of the petitioner or petitioners. The court may decree that
31 the name of the person sought to be adopted be changed, according to the prayer of the petition.

32 4. Before the completion of an adoption, the exchange of information among the parties
33 shall be at the discretion of the parties. **Prospective adoptive parents and birth parents may**

34 **enter into a written post adoption contact agreement to allow contact, communication, and**
35 **the exchange of photographs after the adoption between the adoptive parents and the birth**
36 **parents. The court shall not order any party to enter into a post adoption contact**
37 **agreement. The agreement shall be filed with and approved by the court at or before the**
38 **finalization of the adoption. The court shall approve an agreement only if the agreement**
39 **is in the best interests of the child. The court may enforce or modify an agreement made**
40 **under this subsection unless such enforcement or modification is not in the best interests**
41 **of the child. The agreement shall include:**

42 **(1) An acknowledgment by the birth parents that the adoption is irrevocable, even**
43 **if the adoptive parents do not abide by the post adoption contact agreement;**

44 **(2) An acknowledgment by the adoptive parents that the agreement grants the birth**
45 **parents the right to seek to enforce the provisions of the post adoption contact agreement.**
46 **Remedies for a breach of the agreement shall include specific performance of the terms of**
47 **the agreement; provided, that nothing in the agreement shall preclude a party seeking to**
48 **enforce the agreement from utilizing child welfare mediation before, or in addition to, the**
49 **commencement of a civil action for specific enforcement;**

50 **(3) An acknowledgment that the post adoption contact agreement shall be filed with**
51 **and approved by the court in order to be enforceable; and**

52 **(4) An acknowledgment that the birth parents' consent to the adoption was not**
53 **conditioned on the post adoption contact agreement and that acceptance of the agreement**
54 **is fully voluntary.**

55

56 Upon completion of an adoption, further contact among the parties shall be at the discretion of
57 the adoptive parents **or in accordance with a post adoption contact agreement executed**
58 **under this subsection.** The court shall not have jurisdiction to deny ~~continuing contact~~
59 ~~between the adopted person and the birth parent, or an adoptive parent and a birth parent.~~
60 ~~Additionally, the court shall not have jurisdiction to deny~~ an exchange of identifying
61 information between an adoptive parent and a birth parent.

62 5. Before the completion of an adoption, the court shall make available to the birth
63 parent or parents a contact preference form developed by the state registrar pursuant to section
64 193.128 and provided to the court by the department of health and senior services. If a birth
65 parent chooses to complete the form, the clerk of the court shall send the form with the certificate
66 of decree of adoption to the state registrar. Such form shall accompany the original birth
67 certificate of the adopted person and may be updated by a birth parent at any time upon the
68 request of the birth parent.

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