

SENATE BILL NO. 1145

102ND GENERAL ASSEMBLY

INTRODUCED BY SENATOR ESLINGER.

4400S.01I

KRISTINA MARTIN, Secretary

AN ACT

To repeal section 452.375, RSMo, and to enact in lieu thereof one new section relating to custody of in vitro human embryos.

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

Section A. Section 452.375, RSMo, is repealed and one new
2 section enacted in lieu thereof, to be known as section 452.375,
3 to read as follows:

452.375. 1. As used in this chapter, unless the
2 context clearly indicates otherwise:

3 (1) "Custody" means joint legal custody, sole legal
4 custody, joint physical custody or sole physical custody or
5 any combination thereof;

6 (2) **"In vitro human embryo", means any human embryo at**
7 **any stage of development that is not conceived within a**
8 **female;**

9 (3) "Joint legal custody" means that the parents share
10 the decision-making rights, responsibilities, and authority
11 relating to the health, education and welfare of the child,
12 and, unless allocated, apportioned, or decreed, the parents
13 shall confer with one another in the exercise of decision-
14 making rights, responsibilities, and authority;

15 [(3)] (4) "Joint physical custody" means an order
16 awarding each of the parents significant, but not
17 necessarily equal, periods of time during which a child
18 resides with or is under the care and supervision of each of

EXPLANATION-Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

19 the parents. Joint physical custody shall be shared by the
20 parents in such a way as to assure the child of frequent,
21 continuing and meaningful contact with both parents;

22 **(5) "Surrogate", means a woman who is not an ovum**
23 **donor but in whose womb an in vitro human embryo is**
24 **implanted;**

25 [(4)] (6) "Third-party custody" means a third party
26 designated as a legal and physical custodian pursuant to
27 subdivision (5) of subsection 5 of this section.

28 2. The court shall determine custody in accordance
29 with the best interests of the child. There shall be a
30 rebuttable presumption that an award of equal or
31 approximately equal parenting time to each parent is in the
32 best interests of the child. Such presumption is rebuttable
33 only by a preponderance of the evidence in accordance with
34 all relevant factors, including, but not limited to, the
35 factors contained in subdivisions (1) to (8) of this
36 subsection. The presumption may be rebutted if the court
37 finds that the parents have reached an agreement on all
38 issues related to custody, or if the court finds that a
39 pattern of domestic violence has occurred as set out in
40 subdivision (6) of this subsection. When the parties have
41 not reached an agreement on all issues related to custody,
42 the court shall consider all relevant factors and enter
43 written findings of fact and conclusions of law, including,
44 but not limited to, the following:

45 (1) The wishes of the child's parents as to custody
46 and the proposed parenting plan submitted by both parties;

47 (2) The needs of the child for a frequent, continuing
48 and meaningful relationship with both parents and the
49 ability and willingness of parents to actively perform their
50 functions as mother and father for the needs of the child;

51 (3) The interaction and interrelationship of the child
52 with parents, siblings, and any other person who may
53 significantly affect the child's best interests;

54 (4) Which parent is more likely to allow the child
55 frequent, continuing and meaningful contact with the other
56 parent;

57 (5) The child's adjustment to the child's home,
58 school, and community. The fact that a parent sends his or
59 her child or children to a home school, as defined in
60 section 167.031, shall not be the sole factor that a court
61 considers in determining custody of such child or children;

62 (6) The mental and physical health of all individuals
63 involved, including any history of abuse of any individuals
64 involved. If the court finds that a pattern of domestic
65 violence as defined in section 455.010 has occurred, and, if
66 the court also finds that awarding custody to the abusive
67 parent is in the best interest of the child, then the court
68 shall enter written findings of fact and conclusions of
69 law. Custody and visitation rights shall be ordered in a
70 manner that best protects the child and any other child or
71 children for whom the parent has custodial or visitation
72 rights, and the parent or other family or household member
73 who is the victim of domestic violence from any further harm;

74 (7) The intention of either parent to relocate the
75 principal residence of the child; and

76 (8) The unobstructed input of a child, free of
77 coercion and manipulation, as to the child's custodial
78 arrangement.

79 3. (1) In any court proceedings relating to custody
80 of a child, the court shall not award custody or
81 unsupervised visitation of a child to a parent if such
82 parent or any person residing with such parent has been

83 found guilty of, or pled guilty to, any of the following
84 offenses when a child was the victim:

85 (a) A felony violation of section 566.030, 566.031,
86 566.032, 566.060, 566.061, 566.062, 566.064, 566.067,
87 566.068, 566.083, 566.100, 566.101, 566.111, 566.151,
88 566.203, 566.206, 566.209, 566.211, or 566.215;

89 (b) A violation of section 568.020;

90 (c) A violation of subdivision (2) of subsection 1 of
91 section 568.060;

92 (d) A violation of section 568.065;

93 (e) A violation of section 573.200;

94 (f) A violation of section 573.205; or

95 (g) A violation of section 568.175.

96 (2) For all other violations of offenses in chapters
97 566 and 568 not specifically listed in subdivision (1) of
98 this subsection or for a violation of an offense committed
99 in another state when a child is the victim that would be a
100 violation of chapter 566 or 568 if committed in Missouri,
101 the court may exercise its discretion in awarding custody or
102 visitation of a child to a parent if such parent or any
103 person residing with such parent has been found guilty of,
104 or pled guilty to, any such offense.

105 4. The general assembly finds and declares that it is
106 the public policy of this state that frequent, continuing
107 and meaningful contact with both parents after the parents
108 have separated or dissolved their marriage is in the best
109 interest of the child, except for cases where the court
110 specifically finds that such contact is not in the best
111 interest of the child, and that it is the public policy of
112 this state to encourage parents to participate in decisions
113 affecting the health, education and welfare of their
114 children, and to resolve disputes involving their children

115 amicably through alternative dispute resolution. In order
116 to effectuate these policies, the general assembly
117 encourages the court to enter a temporary parenting plan as
118 early as practicable in a proceeding under this chapter,
119 consistent with the provisions of subsection 2 of this
120 section, and, in so doing, the court shall determine the
121 custody arrangement which will best assure both parents
122 participate in such decisions and have frequent, continuing
123 and meaningful contact with their children so long as it is
124 in the best interests of the child.

125 5. Prior to awarding the appropriate custody
126 arrangement in the best interest of the child, the court
127 shall consider each of the following as follows:

128 (1) Joint physical and joint legal custody to both
129 parents, which shall not be denied solely for the reason
130 that one parent opposes a joint physical and joint legal
131 custody award. The residence of one of the parents shall be
132 designated as the address of the child for mailing and
133 educational purposes;

134 (2) Joint physical custody with one party granted sole
135 legal custody. The residence of one of the parents shall be
136 designated as the address of the child for mailing and
137 educational purposes;

138 (3) Joint legal custody with one party granted sole
139 physical custody;

140 (4) Sole custody to either parent; or

141 (5) Third-party custody or visitation:

142 (a) When the court finds that each parent is unfit,
143 unsuitable, or unable to be a custodian, or the welfare of
144 the child requires, and it is in the best interests of the
145 child, then custody, temporary custody or visitation may be
146 awarded to a person related by consanguinity or affinity to

147 the child. If no person related to the child by
148 consanguinity or affinity is willing to accept custody, then
149 the court may award custody to any other person or persons
150 deemed by the court to be suitable and able to provide an
151 adequate and stable environment for the child. Before the
152 court awards custody, temporary custody or visitation to a
153 third person under this subdivision, the court shall make
154 that person a party to the action;

155 (b) Under the provisions of this subsection, any
156 person may petition the court to intervene as a party in
157 interest at any time as provided by supreme court rule.

158 6. If the parties have not agreed to a custodial
159 arrangement, or the court determines such arrangement is not
160 in the best interest of the child, the court shall include a
161 written finding in the judgment or order based on the public
162 policy in subsection 4 of this section and each of the
163 factors listed in subdivisions (1) to (8) of subsection 2 of
164 this section detailing the specific relevant factors that
165 made a particular arrangement in the best interest of the
166 child. If a proposed custodial arrangement is rejected by
167 the court, the court shall include a written finding in the
168 judgment or order detailing the specific relevant factors
169 resulting in the rejection of such arrangement.

170 7. Upon a finding by the court that either parent has
171 refused to exchange information with the other parent, which
172 shall include but not be limited to information concerning
173 the health, education and welfare of the child, the court
174 shall order the parent to comply immediately and to pay the
175 prevailing party a sum equal to the prevailing party's cost
176 associated with obtaining the requested information, which
177 shall include but not be limited to reasonable attorney's
178 fees and court costs.

179 8. As between the parents of a child, no preference
180 may be given to either parent in the awarding of custody
181 because of that parent's age, sex, or financial status, nor
182 because of the age or sex of the child. The court shall not
183 presume that a parent, solely because of his or her sex, is
184 more qualified than the other parent to act as a joint or
185 sole legal or physical custodian for the child.

186 9. Any judgment providing for custody shall include a
187 specific written parenting plan setting forth the terms of
188 such parenting plan arrangements specified in subsection 8
189 of section 452.310. Such plan may be a parenting plan
190 submitted by the parties pursuant to section 452.310 or, in
191 the absence thereof, a plan determined by the court, but in
192 all cases, the custody plan approved and ordered by the
193 court shall be in the court's discretion and shall be in the
194 best interest of the child.

195 10. After August 28, 2016, every court order
196 establishing or modifying custody or visitation shall
197 include the following language: "In the event of
198 noncompliance with this order, the aggrieved party may file
199 a verified motion for contempt. If custody, visitation, or
200 third-party custody is denied or interfered with by a parent
201 or third party without good cause, the aggrieved person may
202 file a family access motion with the court stating the
203 specific facts that constitute a violation of the custody
204 provisions of the judgment of dissolution, legal separation,
205 or judgment of paternity. The circuit clerk will provide
206 the aggrieved party with an explanation of the procedures
207 for filing a family access motion and a simple form for use
208 in filing the family access motion. A family access motion
209 does not require the assistance of legal counsel to prepare
210 and file."

211 11. No court shall adopt any local rule, form, or
212 practice requiring a standardized or default parenting plan
213 for interim, temporary, or permanent orders or judgments.
214 Notwithstanding any other provision of law to the contrary,
215 a court may enter an interim order in a proceeding under
216 this chapter, provided that the interim order shall not
217 contain any provisions about child custody or a parenting
218 schedule or plan without first providing the parties with
219 notice and a hearing, unless the parties otherwise agree.

220 12. Unless a parent has been denied custody rights
221 pursuant to this section or visitation rights under section
222 452.400, both parents shall have access to records and
223 information pertaining to a minor child including, but not
224 limited to, medical, dental, and school records. If the
225 parent without custody has been granted restricted or
226 supervised visitation because the court has found that the
227 parent with custody or any child has been the victim of
228 domestic violence, as defined in section 455.010, by the
229 parent without custody, the court may order that the reports
230 and records made available pursuant to this subsection not
231 include the address of the parent with custody or the
232 child. A court shall order that the reports and records
233 made available under this subsection not include the address
234 of the parent with custody if the parent with custody is a
235 participant in the address confidentiality program under
236 section 589.663. Unless a parent has been denied custody
237 rights pursuant to this section or visitation rights under
238 section 452.400, any judgment of dissolution or other
239 applicable court order shall specifically allow both parents
240 access to such records and reports.

241 13. Except as otherwise precluded by state or federal
242 law, if any individual, professional, public or private

243 institution or organization denies access or fails to
244 provide or disclose any and all records and information,
245 including, but not limited to, past and present dental,
246 medical and school records pertaining to a minor child, to
247 either parent upon the written request of such parent, the
248 court shall, upon its finding that the individual,
249 professional, public or private institution or organization
250 denied such request without good cause, order that party to
251 comply immediately with such request and to pay to the
252 prevailing party all costs incurred, including, but not
253 limited to, attorney's fees and court costs associated with
254 obtaining the requested information.

255 14. An award of joint custody does not preclude an
256 award of child support pursuant to section 452.340 and
257 applicable supreme court rules. The court shall consider
258 the factors contained in section 452.340 and applicable
259 supreme court rules in determining an amount reasonable or
260 necessary for the support of the child.

261 15. If the court finds that domestic violence or abuse
262 as defined in section 455.010 has occurred, the court shall
263 make specific findings of fact to show that the custody or
264 visitation arrangement ordered by the court best protects
265 the child and the parent or other family or household member
266 who is the victim of domestic violence, as defined in
267 section 455.010, and any other children for whom such parent
268 has custodial or visitation rights from any further harm.

269 **16. If a dispute is brought before a court of this**
270 **state involving the custody of an in vitro human embryo, the**
271 **court shall render a decision according to the following**
272 **standards:**

273 **(1) The court shall determine custody in accordance**
274 **with the best interest of the in vitro human embryo. It is**

275 presumed that it is in the best interest of the in vitro
276 human embryo to place him or her in the custody of the ovum
277 donor or spermatozoon donor who intends to develop the in
278 vitro human embryo to birth, subject to rebuttal evidence;

279 (2) The court shall resolve the dispute between the
280 parties in the manner that provides the best chance for the
281 in vitro human embryo to develop and grow;

282 (3) The following persons have standing to petition
283 the court or to intervene in a case: the ovum donor;
284 spermatozoon donor; or the surrogate, who shall have limited
285 standing for only those embryos that have been previously
286 placed inside the womb of the surrogate;

287 (4) The court may uphold an agreement between the
288 parties to an action establishing or terminating parental
289 rights as not against public policy; and

290 (5) All agreements, lawsuits, motions to modify, or
291 any other motions regarding the disposition of in vitro
292 human embryos brought before the court shall be subject to
293 the provisions of this subsection. All decisions made by
294 the court regarding the disposition of in vitro human
295 embryos prior to August 28, 2024, shall be open to
296 modification by motion or petition of a person with standing
297 and shall be reopened and modified in accordance with this
298 subsection.

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