

SECOND REGULAR SESSION

SENATE BILL NO. 943

97TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR JUSTUS.

Read 1st time February 26, 2014, and ordered printed.

TERRY L. SPIELER, Secretary.

6244S.011

AN ACT

To repeal sections 211.442, 211.444, 453.040, 453.065, 453.080, and 453.110, RSMo, and to enact in lieu thereof seven new sections relating to adoption, with existing penalty provisions.

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

Section A. Sections 211.442, 211.444, 453.040, 453.065, 453.080, and 2 453.110, RSMo, are repealed and seven new sections enacted in lieu thereof, to 3 be known as sections 211.442, 211.444, 453.040, 453.045, 453.065, 453.080, and 4 453.110, to read as follows:

211.442. As used in sections 211.442 to 211.487, unless the context clearly 2 indicates otherwise, the following terms mean:

- 3 (1) "Child", an individual under eighteen years of age;
- 4 (2) "Minor", any person who has not attained the age of eighteen years;
- 5 (3) "Parent"[, a biological parent or parents of a child, as well as, the 6 husband of a natural mother at the time the child was conceived, or a parent or 7 parents of a child by adoption, including both the mother and the putative father 8 of a child. The putative father of a child shall have no legal relationship unless 9 he, prior to the entry of a decree under sections 211.442 to 211.487, has 10 acknowledged the child as his own by affirmatively asserting his paternity];

11 **(a) A biological parent or parents who have a parent and child**
12 **relationship as defined under subdivision (4) of section 210.817 and**
13 **section 210.819;**

14 **(b) The presumed father of a child under subdivisions (1), (2) and**
15 **(3) of section 810.822;**

16 **(c) The acknowledged father under section 210.823;**

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

17 **(d) The adjudicated parent under sections 210.817 to 210.853;**

18 **(e) A parent or parents of a child by adoption; or**

19 **(f) The putative father of a child who has, before the birth or**
20 **within fifteen days of the birth of the child:**

21 **a. Established a relationship with the child under section**
22 **453.045; and**

23 **b. Filed a parentage action under sections 210.817 to 210.853 and**
24 **properly served notice upon the mother.**

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

13 2. The written consent required by subsection 1 of this section may be
14 executed before or after the institution of the proceedings and shall be
15 acknowledged before a notary public. In lieu of such acknowledgment, the
16 signature of the person giving the written consent shall be witnessed by at least
17 two adult persons who are present at the execution whose signatures and
18 addresses shall be plainly written thereon and who determine and certify that the
19 consent is knowingly and freely given. The two adult witnesses shall not be the
20 prospective parents. The notary public or witnesses shall verify the identity of
21 the party signing the consent.

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

 453.040. The consent to the adoption of a child is not required of:

2 (1) A parent whose rights with reference to the child have been
3 terminated pursuant to law, including section 211.444 or section 211.447 or other
4 similar laws in other states;

5 (2) A parent of a child who has legally consented to a future adoption of
6 the child;

7 (3) A parent whose identity is unknown and cannot be ascertained at the
8 time of the filing of the petition;

9 (4) A man who has not been established to be the father and who is not
10 presumed by law to be the father, and who, after the conception of the child,
11 executes a verified statement denying paternity and disclaiming any interest in
12 the child and acknowledging that this statement is irrevocable when executed and
13 follows the consent as set forth in section 453.030;

14 (5) A parent or other person who has not executed a consent and who,
15 after proper service of process, fails to file an answer or make an appearance in
16 a proceeding for adoption or for termination of parental rights at the time such
17 cause is heard;

18 (6) A parent who has a mental condition which is shown by competent
19 evidence either to be permanent or such that there is no reasonable likelihood
20 that the condition can be reversed and which renders the parent unable to
21 knowingly provide the child the necessary care, custody and control;

22 (7) A parent who has for a period of at least six months, for a child one
23 year of age or older, or at least sixty days, for a child under one year of age,
24 immediately prior to the filing of the petition for adoption, willfully abandoned
25 the child or, for a period of at least six months immediately prior to the filing of
26 the petition for adoption, willfully, substantially and continuously neglected to
27 provide him with necessary care and protection;

28 (8) **A man who is on notice that he may be the biological father**
29 **of a child under section 453.061 but who has not developed a consistent**
30 **and substantial relationship with his child under section 453.045 and**
31 **whose consent is not required under section 453.030 or not required or**
32 **is waived under subsection 7 of section 192.016;**

33 (9) A parent whose rights to the child may be terminated for any of the
34 grounds set forth in section 211.447 and whose rights have been terminated after
35 hearing and proof of such grounds as required by sections 211.442 to
36 211.487. Such petition for termination may be filed as a count in an adoption
37 petition.

453.045. 1. A man whose consent to adoption is waived or not
2 required under sections 192.016, 453.030, or 453.040 nonetheless
3 preserves his rights to intervene in an action for termination of

4 **parental rights or in an action for adoption or to file a paternity action**
5 **for a child after a petition for either adoption or termination of**
6 **parental rights has been filed with the court, where he can prove that**
7 **he has previously developed a consistent and substantial relationship**
8 **with the child commensurate with his means and abilities, including**
9 **but not limited to, by providing his share of consistent prenatal**
10 **financial support and consistent prenatal and natal medical care for**
11 **the mother and baby, consistent child support payments commensurate**
12 **with his ability to pay, consistent contact and visitation with the child,**
13 **and assistance with educational and medical care of the child, unless**
14 **he can prove that he was actively thwarted from doing so by the**
15 **mother, or other actual or legal custodian.**

16 **2. Failure to develop such relationship pursuant to subsection 1**
17 **of this section waives such man's rights to intervene in an action for**
18 **termination of parental rights or in an action for adoption or to file a**
19 **paternity action for a child after a petition for either adoption or**
20 **termination of parental rights has been filed with the court.**

453.065. As used in sections 453.065 to 453.074, the following words and
2 terms shall have the meanings indicated:

3 (1) "Child", a person within the state who is under the age of eighteen or
4 in the custody of the division of family services who is in need of medical, dental,
5 educational, mental or other related health services and treatment, as defined in
6 this section, or who belongs to a racial or ethnic minority, who is five years of age
7 or older, or who is a member of a sibling group, and for whom an adoptive home
8 is not readily available. If the physical, dental or mental condition of the child
9 requires care after the age of eighteen, payment can be continued with the
10 approval of the division of family services of the department of social services and
11 subject to annual review;

12 (2) "Diminishing allotment", a monthly payment which periodically
13 diminishes over a period of not longer than four years at which time it ceases;

14 (3) "Long term subsidy", a continuous monthly payment toward the child's
15 care for a period of more than four years;

16 (4) "Special services", an allotment to a child who is in need of medical,
17 dental, educational, mental health or other related health services and treatment,
18 including treatment for physical handicap, intellectual impairment,
19 developmental disability, mental or emotional disturbance, social maladjustment;

20 (5) "Time limited subsidy", a monthly allotment which is continued for a
21 limited time after legal adoption, not exceeding four years. This compensation
22 is to aid the family in integrating the care of the new child in their home;

23 **(6) "Post adoption contact agreement", a written agreement**
24 **approved by the court pursuant to the provisions listed under**
25 **subsection 4 of section 453.080.**

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

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

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

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

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

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

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

25 [(7)] **(6)** There is compliance with the Interstate Compact on the
26 Placement of Children pursuant to section 210.620; and

27 [(8)] **(7)** It is fit and proper that such adoption should be made.

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

31 domiciled in that state.

32 3. If the court determines the adoption should be finalized, a [decree]
33 **judgment** shall be issued setting forth the facts and ordering that from the date
34 of the [decree] **judgment** the adoptee shall be for all legal intents and purposes
35 the child of the petitioner or petitioners. The court may decree that the name of
36 the person sought to be adopted be changed, according to the prayer of the
37 petition.

38 4. Before the completion of an adoption, the exchange of information
39 among the parties shall be at the discretion of the parties. **Prospective**
40 **adoptive parents and parents of a prospective adoptee may enter into**
41 **a post adoption contact agreement to allow communication, exchange**
42 **of photographs or contact after the adoption between the parents,**
43 **siblings, or other relatives of the adoptee and the adoptee and adoptive**
44 **parents. The court shall not order any party to enter into a post**
45 **adoption contact agreement.** Upon completion of an adoption, further contact
46 among the parties shall be at the discretion of the adoptive parents, **and such**
47 **adoptive parents may exercise their discretion to enter into a post**
48 **adoption contact agreement with the former parents of an adoptee to**
49 **allow contact between a former parent or sibling of the adoptee and the**
50 **adoptee or adoptive parents. The agreement shall be in writing and be**
51 **approved by the court at or before the finalization of the adoption. The**
52 **agreement shall include:**

53 (1) **An acknowledgment by the former parents that the adoption**
54 **is irrevocable, even if the adoptive parents do not abide by the post**
55 **adoption contact agreement; and**

56 (2) **An acknowledgment by the adoptive parents that the**
57 **agreement grants the former parents the right to seek to enforce the**
58 **post adoption privileges set forth in the agreement.**

59 **The court shall not approve an agreement unless the agreement is**
60 **approved by the adoptive parents with whom the agreement is being**
61 **made. The court shall enforce a written agreement made in accordance**
62 **with this subsection unless enforcement is not within the best interests**
63 **of the adoptee.** The court shall not have jurisdiction to deny continuing contact
64 between the adopted person and the birth parent, or an adoptive parent and a
65 birth parent. Additionally, the court shall not have jurisdiction to deny an
66 exchange of identifying information between an adoptive parent and a birth

67 parent.

453.110. 1. No person, agency, organization or institution shall surrender
2 custody of a minor child, or transfer the custody of such a child to another, and
3 no person, agency, organization or institution shall take possession or charge of
4 a minor child so transferred, without first having filed a petition before the
5 circuit court sitting as a juvenile court of the county where the child may be,
6 praying that such surrender or transfer may be made, and having obtained such
7 an order from such court approving or ordering transfer of custody. **Where**
8 **filing such petition is impractical prior to lawful placement for care**
9 **pursuant to subsection 5 of this section, such petition shall be filed**
10 **within twenty days of execution of proper power of attorney or when**
11 **the Interstate Compact for Placement of Children approval under**
12 **section 210.620 is obtained, whichever is later.**

13 2. If any **filing is made late or** such surrender or transfer is made
14 without first obtaining such an order **or compliance with subsection 5 of this**
15 **section**, such court shall, on petition of any public official or interested person,
16 agency, organization or institution, order an investigation and report as described
17 in section 453.070 to be completed by the division of family services and shall
18 make such order as to the custody of such child in the best interest of such child.

19 3. Any person violating the terms of this section shall be guilty of a class
20 D felony.

21 4. The investigation required by subsection 2 of this section shall be
22 initiated by the **children's** division [of family services] within forty-eight hours
23 of the filing of the court order requesting the investigation and report and shall
24 be completed within thirty days. The court shall order the person having custody
25 in violation of the provisions of this section to pay the costs of the investigation
26 and report.

27 5. This section shall not be construed to prohibit any parent, agency,
28 organization or institution from placing a child with another individual for care
29 **under proper power of attorney** if the right to supervise the care of the child
30 and to resume custody thereof is retained, or from placing a child with a licensed
31 foster home within the state **under proper power of attorney** through a
32 child-placing agency licensed by this state as part of a preadoption placement.

33 6. After the filing of a petition for the transfer of custody for the purpose
34 of adoption, the court may enter an order of transfer of custody if the court finds
35 all of the following:

36 (1) A family assessment has been made as required in section 453.070 and
37 has been reviewed by the court;

38 (2) A recommendation has been made by the guardian ad litem;

39 (3) A petition for transfer of custody for adoption has been properly filed
40 or an order terminating parental rights has been properly filed;

41 (4) The financial affidavit has been filed as required under section
42 453.075;

43 (5) The written report regarding the child who is the subject of the
44 petition containing the information has been submitted as required by section
45 453.026;

46 (6) Compliance with the Indian Child Welfare Act, if applicable; [and]

47 (7) Compliance with the Interstate Compact on the Placement of Children
48 pursuant to section 210.620; **and**

49 **(8) The parties have notified the court of any persons not a party**
50 **to the adoption who have physical custody or claims to have rights of**
51 **legal custody, physical custody, or visitation rights with respect to**
52 **minor child; of any other legal proceedings concerning the minor child;**
53 **and have affirmed a continuing duty to inform the court of any**
54 **proceeding in this or any other state that could affect the current**
55 **proceeding.**

56 7. A hearing on the transfer of custody for the purpose of adoption is not
57 required if:

58 (1) The conditions set forth in subsection 6 of this section are met;

59 (2) The parties agree and the court grants leave; and

60 (3) Parental rights have been terminated pursuant to section 211.444 or
61 211.447.

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