

SECOND REGULAR SESSION

SENATE BILL NO. 992

99TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR SATER.

Read 1st time February 6, 2018, and ordered printed.

ADRIANE D. CROUSE, Secretary.

5780S.02I

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
2 repealed and four new sections enacted in lieu thereof, to be known as sections
3 211.444, 453.015, 453.030, and 453.080, to read as follows:

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

15 [2. The written consent required by subsection 1 of this section may be
16 executed before or after the institution of the proceedings and shall be
17 acknowledged before a notary public. In lieu of such acknowledgment, the
18 signature of the person giving the written consent shall be witnessed by at least

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

19 two adult persons who are present at the execution whose signatures and
20 addresses shall be plainly written thereon and who determine and certify that the
21 consent is knowingly and freely given. The two adult witnesses shall not be the
22 prospective parents. The notary public or witnesses shall verify the identity of
23 the party signing the consent.

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

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

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

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

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

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

20 [(4)] (5) "Stepparent", the spouse of a biological or adoptive parent. The
21 term does not include the state if the child is a ward of the state. The term does
22 not include a person whose parental rights have been terminated.

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

4 2. The written consent of the person to be adopted shall be required in all
5 cases where the person sought to be adopted is fourteen years of age or older,
6 except where the court finds that such child has not sufficient mental capacity to

7 give the same. In a case involving a child under fourteen years of age, the
8 guardian ad litem shall ascertain the child's wishes and feelings about his or her
9 adoption by conducting an interview or interviews with the child, if appropriate
10 based on the child's age and maturity level, which shall be considered by the
11 court as a factor in determining if the adoption is in the child's best interests.

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

16 (1) The mother of the child; [and]

17 (2) [Only the] **Any** man who:

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

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

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

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

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

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

43 adoption proceeding **other than the attorney representing the party**
44 **signing the consent.** The notary public or witnesses shall verify the identity
45 of the party signing the consent. **Notwithstanding any other provision of**
46 **law to the contrary, a properly executed written consent under this**
47 **subsection shall be considered irrevocable.**

48 5. The written consent required in subdivision (1) of subsection 3 of this
49 section by the birth [parent] **mother** shall not be executed anytime before the
50 child is forty-eight hours old. Such written consent shall be executed in front of
51 a judge or acknowledged before a notary public. If consent is executed in front
52 of a judge, it shall be the duty of the judge to advise the consenting party of the
53 consequences of the consent. In lieu of [such] acknowledgment **before a notary**
54 **public,** the signature of the person giving such written consent shall be
55 witnessed by the signatures of at least two adult persons who are present at the
56 execution whose signatures and addresses shall be plainly written thereon and
57 who determine and certify that the consent is knowingly and freely given. The
58 two adult witnesses shall not be the prospective adoptive parents or any attorney
59 representing a party to the adoption proceeding **other than the attorney**
60 **representing the party signing the consent.** The notary public or witnesses
61 shall verify the identity of the party signing the consent.

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

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

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

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

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

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

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

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

92 (1) A birth parent requests representation;

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

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

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

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

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 or by video or telephone conference rather than in**
4 **person.** During such hearing, the court shall ascertain whether:

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

12 territory of the United States, or another country;

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

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

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

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

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

24 [(7)] (6) There is compliance with the Interstate Compact on the
25 Placement of Children pursuant to section 210.620; and

26 [(8)] (7) It is fit and proper that such adoption should be made.

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

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

36 4. Before the completion of an adoption, the exchange of information
37 among the parties shall be at the discretion of the parties. **Prospective**
38 **adoptive parents and birth parents may enter into a written post**
39 **adoptive contact agreement to allow contact, communication, and the**
40 **exchange of photographs after the adoption between the adoptive**
41 **parents and the birth parents. The court shall not order any party to**
42 **enter into a post adoption contact agreement. The agreement shall be**
43 **filed with and approved by the court at or before the finalization of the**
44 **adoption. The court shall approve an agreement only if the agreement**
45 **is in the best interests of the child. The court may enforce or modify**
46 **an agreement made under this subsection unless such enforcement or**
47 **modification is not in the best interests of the child. The agreement**

48 shall include:

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

52 (2) An acknowledgment by the adoptive parents that the
53 agreement grants the birth parents the right to seek to enforce the
54 provisions of the post adoption contact agreement. Remedies for a
55 breach of the agreement shall include specific performance of the terms
56 of the agreement; provided, that nothing in the agreement shall
57 preclude a party seeking to enforce the agreement from utilizing child
58 welfare mediation before, or in addition to, the commencement of a
59 civil action for specific enforcement;

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

63 (4) An acknowledgment that the birth parent's consent to the
64 adoption was not conditioned on the post adoption contact agreement
65 and that acceptance of the agreement is fully voluntary.

66 Upon completion of an adoption, further contact among the parties shall be at the
67 discretion of the adoptive parents **or in accordance with a post adoption**
68 **contact agreement executed under this subsection.** The court shall not
69 have jurisdiction to deny [continuing contact between the adopted person and the
70 birth parent, or an adoptive parent and a birth parent. Additionally, the court
71 shall not have jurisdiction to deny] an exchange of identifying information
72 between an adoptive parent and a birth parent.

73 5. Before the completion of an adoption, the court shall make available to
74 the birth parent or parents a contact preference form developed by the state
75 registrar pursuant to section 193.128 and provided to the court by the department
76 of health and senior services. If a birth parent chooses to complete the form, the
77 clerk of the court shall send the form with the certificate of decree of adoption to
78 the state registrar. Such form shall accompany the original birth certificate of
79 the adopted person and may be updated by a birth parent at any time upon the
80 request of the birth parent.

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