

FIRST REGULAR SESSION

SENATE BILL NO. 649

92ND GENERAL ASSEMBLY

INTRODUCED BY SENATOR SHIELDS.

Read 1st time February 27, 2003, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

2009S.011

AN ACT

To repeal sections 192.016, 453.020, 453.030, and 453.060, RSMo, and to enact in lieu thereof five new sections relating to the Missouri putative father registry.

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

Section A. Sections 192.016, 453.020, 453.030, and 453.060, RSMo, are repealed and five new sections enacted in lieu thereof, to be known as sections 192.016, 453.020, 453.030, 453.060, and 453.061, to read as follows:

192.016. 1. The department of health and senior services shall establish a putative father registry which shall record the names and addresses of:

(1) Any person adjudicated by a court of this state to be the father of a child born out of wedlock;

(2) Any person who has filed with the registry before or after the birth of a child out of wedlock, a notice of intent to claim paternity of the child;

(3) Any person adjudicated by a court of another state or territory of the United States to be the father of an out-of-wedlock child, where a certified copy of the court order has been filed with the registry by such person or any other person.

2. A person filing a notice of intent to claim paternity of a child or an acknowledgment of paternity shall file the acknowledgment affidavit form developed by the state registrar which shall include the minimum requirements prescribed by the Secretary of the United States Department of Health and Human Services pursuant to 42 U.S.C. Section 652(a)(7).

3. A person filing a notice of intent to claim paternity of a child shall notify the registry of any change of address.

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

4. A person who has filed a notice of intent to claim paternity may at any time revoke a notice of intent to claim paternity previously filed therewith and, upon receipt of such notification by the registry, the revoked notice of intent to claim paternity shall be deemed a nullity nunc pro tunc.

5. An unrevoked notice of intent to claim paternity of a child may be introduced in evidence by any party, other than the person who filed such notice, in any proceeding in which such fact may be relevant.

6. Lack of knowledge of the pregnancy does not excuse failure to timely file pursuant to subdivisions (b) or (c) of subdivision (2) of subsection 3 of section 453.030, RSMo.

7. Failure to timely file pursuant to subdivisions (b) or (c) of subsection 3 of section 453.030, RSMo, shall not waive a man's right to withhold consent to an adoption proceeding if:

(1) The person was led to believe through the mother's misrepresentation or fraud that:

(a) The mother was not pregnant when in fact she was; or

(b) The pregnancy was terminated when in fact the baby was born; or

(c) After the birth, the child died when in fact the child is alive; and

(2) The person upon the discovery of the misrepresentation or fraud satisfied the requirements of subdivision (b) or (c) of subsection 3 of section 453.030, RSMo, within fifteen days of that discovery.

8. The department shall, upon request and within two business days of such request, provide the names and addresses of persons listed with the registry to any court or authorized agency, or entity or person named in section 453.014, RSMo, and such information shall not be divulged to any other person, except upon order of a court for good cause shown.

[7.] 9. The department of health and senior services shall:

(1) Prepare forms for registration of paternity and an application for search of the putative father registry;

(2) Produce and distribute a pamphlet or publication informing the public about the putative father registry, including the procedures for voluntary acknowledgment of paternity, the consequences of acknowledgment and failure to acknowledge paternity pursuant to section 453.010, RSMo, [and the address of] a copy of the statement in subsection 10 of this section, and a detachable form meeting the requirements of subsection 2 of this section addressed to the putative father registry. Such pamphlet or publication shall be made available for distribution at all offices of the department of health and senior services. The department shall also provide such pamphlets or publications to the department of social services, hospitals, libraries, medical clinics, schools, universities, and other providers of child-related

services upon request;

(3) Provide information to the public at large by way of general public service announcements, or other ways to deliver information to the public about the putative father registry and its services.

10. Pursuant to subdivision (2) of subsection 9 of section 192.016, RSMo, the following statement shall be contained in any pamphlet or publication informing the public about the putative father registry:

STATEMENT:

"DOES THE PUTATIVE FATHER REGISTRY APPLY TO ME?

Have you had protected or unprotected sexual intercourse with a woman who was not your wife within the last year?

IF YOU ANSWERED "YES" TO THIS QUESTION, THE PUTATIVE FATHER REGISTRY APPLIES TO YOU. MISSOURI LAW ASSUMES THAT YOU KNOW A CHILD MAY BE CONCEIVED IF YOU HAVE SEXUAL INTERCOURSE WITH A WOMAN AND REQUIRES YOU TO TAKE ACTION TO PROTECT YOUR RIGHTS IN ANY SUCH CHILD.

SHOULD I FILE THE ATTACHED CARD WITH THE PUTATIVE FATHER REGISTRY?

1. If a woman you have had sex with has a child, do you want to know if that child is yours?

2. If a woman you have had sex with has a child, do you want to claim that child as your own?

3. Do you want to be notified if a child born to that woman is placed for adoption?

IF YOU ANSWERED "YES" TO ANY OF THESE QUESTIONS, THEN YOU MUST FOLLOW THE INSTRUCTIONS IN THIS PAMPHLET. FAILURE TO FOLLOW THE INSTRUCTIONS PRESCRIBED BY LAW WILL JEOPARDIZE YOUR RIGHTS.

WHAT DO I HAVE TO DO TO PROTECT MY RIGHTS?

Under Missouri law, a man who conceives a child with a woman who is not his wife has the right to be notified if that child is placed for adoption. He also has the right to challenge the adoption if he desires and assume responsibility for that child. However, in order to have these rights, a father MUST follow the instructions below.

If you want to be notified of and have the ability to allow or challenge the adoption of a child you believe to be yours, you MUST do the following THREE things:

1. Fill out and send the detachable card attached to this pamphlet to the Registry.

WHY SHOULD I DO THIS?

- a. You believe you are or may be the father of this child.
- b. You want the State to recognize you as the child's father.
- c. You want to receive notification if this child is placed for adoption.

WHAT IS THE TIME LIMIT TO SEND THIS IN?

You must file the card with the Registry before the child is born OR within 15 days after the child is born.

THE FACT THAT YOU DID NOT KNOW THE MOTHER WAS PREGNANT IS NOT AN EXCUSE FOR FAILURE TO FILE THE ATTACHED CARD!

- 2. Inform the Putative Father Registry of any change of address.
- 3. File a paternity case in court to establish that you are the child's father.

WHY SHOULD I DO THIS?

- a. You believe you are or may be the father of this child.
- b. You want the State to recognize you as the child's father.
- c. You want to choose whether or not to allow or challenge an adoption of the child.
- d. You want to support the child until he or she is 18 years old.
- e. You want to raise the child.

WHAT IS THE TIME LIMIT TO FILE THIS CASE?

You must file the case with a court before the child is born OR within 15 days after the child is born.

THE FACT THAT YOU DID NOT KNOW THE MOTHER WAS PREGNANT IS NOT AN EXCUSE FOR FAILURE TO FILE A CASE TO ESTABLISH THAT YOU ARE THE CHILD'S FATHER!"

453.020. 1. The petition for adoption shall state:

- (1) The name, sex and place of birth of the person sought to be adopted;
- (2) The name of his parents, if known to the petitioner;
- (3) If the person sought to be adopted is a minor, the fact that petitioner has the ability to properly care for, maintain and educate such person; and
- (4) If it is desired to change the name of such person, the new name.

2. The petition for adoption shall include payment of a fifty dollar filing fee which shall be used to fund the putative father registry established pursuant to section 192.016, RSMo.

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

2. The written consent of the person to be adopted shall be required in all cases where the person sought to be adopted is fourteen years of age or older, except where the court finds

that such child has not sufficient mental capacity to give the same.

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

(1) The mother of the child; and

(2) Any man who:

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

(b) Has filed an action to establish his paternity in a court of competent jurisdiction no later than fifteen days after the birth of the child; or

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

(3) The child's current adoptive parents or other legally recognized mother and father. Upon request by the petitioner and within one business day of such request, the clerk of the local court shall verify whether such written consents have been filed with the court.

4. The written consent required in subdivisions (2) and (3) of subsection 3 of this section may be executed before or after the commencement of the adoption proceedings, and shall be acknowledged before a notary public. In lieu of such acknowledgment, the signature of the person giving such written consent shall be witnessed by the signatures of at least two adult persons whose signatures and addresses shall be plainly written thereon. The two adult witnesses shall not be the prospective adoptive parents or any attorney representing a party to the adoption proceeding. The notary public or witnesses shall verify the identity of the party signing the consent.

5. The written consent required in subdivision (1) of subsection 3 of this section by the birth parent shall not be executed anytime before the child is forty-eight hours old. Such written consent shall be executed in front of a judge or a notary public. In lieu of such acknowledgment, the signature of the person giving such written consent shall be witnessed by the signatures of at least two adult persons who are present at the execution whose signatures and addresses shall be plainly written thereon and who determine and certify that the consent is knowingly and freely given. The two adult witnesses shall not be the prospective adoptive parents or any attorney representing a party to the adoption proceeding. The notary public or witnesses shall verify the identity of the party signing the consent.

6. The written consents shall be reviewed and, if found to be in compliance with this section, approved by the court within three business days of such consents being presented to the court. Upon review, in lieu of approving the consent within three business days, the court

may set a date for a prompt evidentiary hearing upon notice to the parties. Failure to review and approve the written consent within three business days shall not void the consent, but a party may seek a writ of mandamus from the appropriate court, unless an evidentiary hearing has been set by the court pursuant to this subsection.

7. The written consent required in subsection 3 of this section may be withdrawn anytime until it has been reviewed and accepted by a judge.

8. A consent form shall be developed through rules and regulations promulgated by the department of social services. No rule or portion of a rule promulgated under the authority of this section shall become effective unless it has been promulgated pursuant to the provisions of chapter 536, RSMo. If a written consent is obtained after August 28, 1997, but prior to the development of a consent form by the department and the written consent complies with the provisions of subsection 9 of this section, such written consent shall be deemed valid.

9. However, the consent form must specify that[:

(1)] the birth parent understands the importance of identifying all possible fathers of the child and [shall] **may** provide the names of all such persons [unless the mother has good cause as to why she should not name such persons. The court shall determine if good cause is justifiable. By signing the consent, the birth parent acknowledges that those having an interest in the child have been supplied with all available information to assist in locating all possible fathers; and

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

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

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

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

(1) A birth parent requests representation;

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

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

13. Except in cases where the court determines that the adoptive parents are unable to pay reasonable attorney fees and appoints pro bono counsel for the birth parents, the court shall

order the costs of the attorney fees incurred pursuant to subsection 12 of this section to be paid by the prospective adoptive parents or the child-placing agency.

453.060. 1. A writ of summons and a copy of the petition shall be served on:

(1) Any person, agency, organization or institution whose consent to the adoption is required by law unless such consent is filed in court;

(2) Any person whose consent to the adoption, according to the allegation of the petition for adoption, is not required for the reasons set forth in subdivision (6) or (7) of section 453.040;

(3) Any person, agency, organization or institution, within or without the state, having custody of the child sought to be adopted under a decree of a court of competent jurisdiction even though its consent to the adoption is not required by law;

(4) The legally appointed guardian of the child;

(5) Any person adjudicated by a court of this state or another state, a territory of the United States or another country to be the father of the child;

(6) Any person who has timely filed a notice of intent to claim paternity of the child pursuant to section 192.016, RSMo, or an acknowledgment of paternity pursuant to section 193.087, RSMo.

2. Except as provided in this section and section 453.014, it is not necessary to serve any person, agency, organization or institution whose consent is not required pursuant to the provisions of sections 453.030 to 453.050.

3. If service of summons cannot be made in the manner prescribed in section 506.150, RSMo, then the service shall be made by mail or publication as provided in section 506.160, RSMo.

4. Upon service, whether personal or constructive, the court may act upon the petition without the consent of any party, except that of a parent whose consent is required by sections 453.030 to 453.050, and the judgment is binding on all parties so served. Any such party has the right to appeal from the judgment in the manner and form provided by the civil code of Missouri.

5. In all cases where the putative father is unknown, [service shall be made by publication on "John Doe" as provided in section 506.160, RSMo] **a search of the Missouri putative father registry and any other state's registry where conception may have occurred shall be conducted to determine if a man has filed or been registered with the registry. If such a man is discovered, service shall be carried out according to the provisions of this section.**

6. Upon request, the court may order that the writ of summons and copy of the petition required by this section may be served without the names and addresses of the petitioners when the court deems it to be in the best interests of the child.

7. Upon the filing of an adoption petition, in all cases where the mother has

named any number of potential fathers, a statement stating that the man has been named as a potential father of the born or unborn child and a copy of the pamphlet or publication required to be produced in subsection 9 of section 192.016, RSMo, shall be mailed to the last known address of each named man.

453.061. Any man who has engaged in sexual intercourse with a woman is deemed to be on notice that a child may be conceived as a result is entitled to notice of an adoption proceeding only as provided in this chapter.

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