

SECOND REGULAR SESSION

# SENATE BILL NO. 990

97TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR LAMPING.

Read 1st time February 27, 2014, and ordered printed.

TERRY L. SPIELER, Secretary.

4298S.03I

## AN ACT

To repeal sections 211.442, 211.444, 453.010, 453.040, 453.065, 453.080, and 453.110, RSMo, and to enact in lieu thereof eight 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Section A. Sections 211.442, 211.444, 453.010, 453.040, 453.065, 453.080, and 453.110, RSMo, are repealed and eight new sections enacted in lieu thereof, to be known as sections 211.442, 211.444, 453.010, 453.040, 453.045, 453.065, 453.080, and 453.110, to read as follows:

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

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

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

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

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

- 16           **(c) The acknowledged father under section 210.823;**  
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 to a child, **including a child who is a ward of the**  
7 **court,** if the court finds that such termination is in the best interests of the child  
8 and the parent has consented in writing to the termination of his or her parental  
9 rights. **The court shall take under consideration a consent to adoption**  
10 **or waiver or consent to adoption by a parent of a named father when**  
11 **determining the best interests of the child.**

12           2. A man whose consent to adoption is not required under  
13 sections 453.030 or 453.040 and who waives his rights under section  
14 453.045 to intervene in an action for termination of parental rights, an  
15 action for adoption, or to file a paternity action for a child, may not  
16 intervene in an action for adoption or termination of parental rights  
17 after said petition for either adoption or termination of parental rights,  
18 or both, has been filed with the court.

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

27 the party signing the consent.

28 [3.] 4. The written consent required by subsection 1 of this section shall  
29 be valid and effective only after the child is at least forty-eight hours old and if  
30 it complies with the other requirements of section 453.030.

453.010. 1. Any person desiring to adopt another person as his or her  
2 child shall petition the juvenile division of the circuit court of the county in  
3 which:

4 (1) The person seeking to adopt resides **or within one hundred and**  
5 **fifty miles of such county;**

6 (2) The child sought to be adopted was born;

7 (3) The child is located at the time of the filing of the petition; [or]

8 (4) Either birth person resides **or within one hundred and fifty miles**  
9 **of such county; or**

10 **(5) The placing agency or intermediary has offices.**

11 2. A petition to adopt shall not be dismissed or denied on the grounds that  
12 the petitioner is not domiciled or does not reside in any of the venues set forth in  
13 subdivision (2), (3) or (4) of subsection 1 of this section.

14 3. If the person sought to be adopted is a child who is under the prior and  
15 continuing jurisdiction of a court pursuant to the provision of chapter 211, any  
16 person desiring to adopt such person as his or her child shall petition the juvenile  
17 division of the circuit court which has jurisdiction over the child for permission  
18 to adopt such person as his or her child. Upon receipt of a motion from the  
19 petitioner and consent of the receiving court, the juvenile division of the circuit  
20 court which has jurisdiction over the child may transfer jurisdiction to the  
21 juvenile division of a circuit court within any of the alternative venues set forth  
22 in subsection 1 of this section.

23 4. If the petitioner has a spouse living and competent to join in the  
24 petition, such spouse may join therein, and in such case the adoption shall be by  
25 them jointly. If such a spouse does not join the petition the court in its discretion  
26 may, after a hearing, order such joinder, and if such order is not complied with  
27 may dismiss the petition.

28 5. Upon receipt of a properly filed petition, a court, as defined in this  
29 section, shall hear such petition in a timely fashion. A court or any child-placing  
30 agency shall not deny or delay the placement of a child for adoption when an  
31 approved family is available, regardless of the approved family's residence or

32 domicile. The court shall expedite the placement of a child for adoption pursuant  
33 to subsection 3 of this section.

34 6. A licensed child-placing agency may file a petition for transfer of  
35 custody if a birth parent consents in writing by power of attorney for placement  
36 of a minor child, a consent to adoption, or any other document which evidences  
37 a desire to place the child with the licensed child-placing agency for the purposes  
38 of transfer of custody of the child to the licensed child-placing agency. The  
39 written consent obtained from the birth parent shall strictly comply with section  
40 453.030.

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.**

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.** During  
4 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] **adoption may be finalized** in another  
30 state if the adoptive parents are domiciled in that state.

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

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

50 approved by the court at or before the finalization of the adoption. The  
51 agreement shall include:

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

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

58 The court shall not approve an agreement unless the agreement is  
59 approved by the adoptive parents with whom the agreement is being  
60 made. The court shall enforce a written agreement made in accordance  
61 with this subsection unless enforcement is not within the best interests  
62 of the adoptee.

63 The court shall not have jurisdiction to deny continuing contact between the  
64 adopted person and the birth parent, or an adoptive parent and a birth  
65 parent. Additionally, the court shall not have jurisdiction to deny an exchange  
66 of identifying information between an adoptive parent and a birth 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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Bill

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