

SECOND REGULAR SESSION

# SENATE BILL NO. 1129

98TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR RIDDLE.

Read 1st time March 1, 2016, and ordered printed.

ADRIANE D. CROUSE, Secretary.

6717S.011

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Section A. Section 452.375, RSMo, is repealed and one new section  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

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

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

5 (2) **"In vitro human embryo", any human embryo at any stage of  
6 development which is not conceived within a female;**

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

12 [(3)] (4) "Joint physical custody" means an order awarding each of the  
13 parents significant, but not necessarily equal, periods of time during which a  
14 child resides with or is under the care and supervision of each of the  
15 parents. Joint physical custody shall be shared by the parents in such a way as  
16 to assure the child of frequent, continuing and meaningful contact with both  
17 parents;

18 [(4)] (5) **"Surrogate", a woman who is not an ovum donor, but in  
19 whose womb an in vitro human embryo is implanted;**

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

20           **(6)** "Third-party custody" means a third party designated as a legal and  
21 physical custodian pursuant to subdivision (5) of subsection 5 of this section.

22           2. The court shall determine custody in accordance with the best interests  
23 of the child. The court shall consider all relevant factors including:

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

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

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

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

34           (5) The child's adjustment to the child's home, school, and community;

35           (6) The mental and physical health of all individuals involved, including  
36 any history of abuse of any individuals involved. If the court finds that a pattern  
37 of domestic violence as defined in section 455.010 has occurred, and, if the court  
38 also finds that awarding custody to the abusive parent is in the best interest of  
39 the child, then the court shall enter written findings of fact and conclusions of  
40 law. Custody and visitation rights shall be ordered in a manner that best  
41 protects the child and any other child or children for whom the parent has  
42 custodial or visitation rights, and the parent or other family or household member  
43 who is the victim of domestic violence from any further harm;

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

46           (8) The wishes of a child as to the child's custodian.

47 The fact that a parent sends his or her child or children to a home school, as  
48 defined in section 167.031, shall not be the sole factor that a court considers in  
49 determining custody of such child or children.

50           3. (1) In any court proceedings relating to custody of a child, the court  
51 shall not award custody or unsupervised visitation of a child to a parent if such  
52 parent or any person residing with such parent has been found guilty of, or pled  
53 guilty to, any of the following offenses when a child was the victim:

54           (a) A felony violation of section 566.030, 566.032, 566.040, 566.060,  
55 566.062, 566.064, 566.067, 566.068, 566.070, 566.083, 566.090, 566.100, 566.111,

56 566.151, 566.203, 566.206, 566.209, 566.212, or 566.215;

57 (b) A violation of section 568.020;

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

59 (d) A violation of section 568.065;

60 (e) A violation of section 568.080;

61 (f) A violation of section 568.090; or

62 (g) A violation of section 568.175.

63 (2) For all other violations of offenses in chapters 566 and 568 not  
64 specifically listed in subdivision (1) of this subsection or for a violation of an  
65 offense committed in another state when a child is the victim that would be a  
66 violation of chapter 566 or 568 if committed in Missouri, the court may exercise  
67 its discretion in awarding custody or visitation of a child to a parent if such  
68 parent or any person residing with such parent has been found guilty of, or pled  
69 guilty to, any such offense.

70 4. The general assembly finds and declares that it is the public policy of  
71 this state that frequent, continuing and meaningful contact with both parents  
72 after the parents have separated or dissolved their marriage is in the best  
73 interest of the child, except for cases where the court specifically finds that such  
74 contact is not in the best interest of the child, and that it is the public policy of  
75 this state to encourage parents to participate in decisions affecting the health,  
76 education and welfare of their children, and to resolve disputes involving their  
77 children amicably through alternative dispute resolution. In order to effectuate  
78 these policies, the court shall determine the custody arrangement which will best  
79 assure both parents participate in such decisions and have frequent, continuing  
80 and meaningful contact with their children so long as it is in the best interests  
81 of the child.

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

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

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

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

92 (4) Sole custody to either parent; or

93 (5) Third-party custody or visitation:

94 (a) When the court finds that each parent is unfit, unsuitable, or unable  
95 to be a custodian, or the welfare of the child requires, and it is in the best  
96 interests of the child, then custody, temporary custody or visitation may be  
97 awarded to any other person or persons deemed by the court to be suitable and  
98 able to provide an adequate and stable environment for the child. Before the  
99 court awards custody, temporary custody or visitation to a third person under this  
100 subdivision, the court shall make that person a party to the action;

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

104 6. If the parties have not agreed to a custodial arrangement, or the court  
105 determines such arrangement is not in the best interest of the child, the court  
106 shall include a written finding in the judgment or order based on the public policy  
107 in subsection 4 of this section and each of the factors listed in subdivisions (1) to  
108 (8) of subsection 2 of this section detailing the specific relevant factors that made  
109 a particular arrangement in the best interest of the child. If a proposed custodial  
110 arrangement is rejected by the court, the court shall include a written finding in  
111 the judgment or order detailing the specific relevant factors resulting in the  
112 rejection of such arrangement.

113 7. Upon a finding by the court that either parent has refused to exchange  
114 information with the other parent, which shall include but not be limited to  
115 information concerning the health, education and welfare of the child, the court  
116 shall order the parent to comply immediately and to pay the prevailing party a  
117 sum equal to the prevailing party's cost associated with obtaining the requested  
118 information, which shall include but not be limited to reasonable attorney's fees  
119 and court costs.

120 8. As between the parents of a child, no preference may be given to either  
121 parent in the awarding of custody because of that parent's age, sex, or financial  
122 status, nor because of the age or sex of the child.

123 9. Any judgment providing for custody shall include a specific written  
124 parenting plan setting forth the terms of such parenting plan arrangements  
125 specified in subsection [7] 8 of section 452.310. Such plan may be a parenting  
126 plan submitted by the parties pursuant to section 452.310 or, in the absence  
127 thereof, a plan determined by the court, but in all cases, the custody plan

128 approved and ordered by the court shall be in the court's discretion and shall be  
129 in the best interest of the child.

130         10. Unless a parent has been denied custody rights pursuant to this  
131 section or visitation rights under section 452.400, both parents shall have access  
132 to records and information pertaining to a minor child, including, but not limited  
133 to, medical, dental, and school records. If the parent without custody has been  
134 granted restricted or supervised visitation because the court has found that the  
135 parent with custody or any child has been the victim of domestic violence, as  
136 defined in section 455.010, by the parent without custody, the court may order  
137 that the reports and records made available pursuant to this subsection not  
138 include the address of the parent with custody or the child. Unless a parent has  
139 been denied custody rights pursuant to this section or visitation rights under  
140 section 452.400, any judgment of dissolution or other applicable court order shall  
141 specifically allow both parents access to such records and reports.

142         11. Except as otherwise precluded by state or federal law, if any  
143 individual, professional, public or private institution or organization denies access  
144 or fails to provide or disclose any and all records and information, including, but  
145 not limited to, past and present dental, medical and school records pertaining to  
146 a minor child, to either parent upon the written request of such parent, the court  
147 shall, upon its finding that the individual, professional, public or private  
148 institution or organization denied such request without good cause, order that  
149 party to comply immediately with such request and to pay to the prevailing party  
150 all costs incurred, including, but not limited to, attorney's fees and court costs  
151 associated with obtaining the requested information.

152         12. An award of joint custody does not preclude an award of child support  
153 pursuant to section 452.340 and applicable supreme court rules. The court shall  
154 consider the factors contained in section 452.340 and applicable supreme court  
155 rules in determining an amount reasonable or necessary for the support of the  
156 child.

157         13. If the court finds that domestic violence or abuse, as defined in section  
158 455.010 has occurred, the court shall make specific findings of fact to show that  
159 the custody or visitation arrangement ordered by the court best protects the child  
160 and the parent or other family or household member who is the victim of domestic  
161 violence, as defined in section 455.010, and any other children for whom such  
162 parent has custodial or visitation rights from any further harm.

163         14. **If a dispute is brought before a court of this state involving**

164 the custody of in vitro human embryos, the court shall render a  
165 decision according to the following standards:

166 (1) The court shall determine custody in accordance with the  
167 best interest of the in vitro human embryo. It is presumed that it is in  
168 the best interest of the in vitro human embryo to place him or her in  
169 the custody of the ovum donor or spermatozoon donor who intends to  
170 develop the in vitro human embryo to birth, subject to rebuttal  
171 evidence;

172 (2) The court shall resolve the dispute between the parties in the  
173 manner that provides the best chance for the in vitro human embryo to  
174 develop and grow. The court shall not approve either the termination  
175 of the in vitro human embryo or an outcome that leaves the in vitro  
176 human embryo indefinitely in an environment in which it does not  
177 develop and grow;

178 (3) The following persons have standing to petition the court or  
179 to intervene in a case: the ovum donor, spermatozoon donor, the  
180 surrogate in which the in vitro human embryo at issue has been placed,  
181 or any other party involved in the negotiations for the creation of the  
182 in vitro human embryo at issue;

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

186 (5) All agreements brought before the court concerning the  
187 disposition of in vitro human embryos shall be subject to the provisions  
188 of this section.

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