

SECOND REGULAR SESSION

SENATE BILL NO. 687

89TH GENERAL ASSEMBLY

INTRODUCED BY SENATORS SIMS AND BENTLEY.

Read 1st time January 12, 1998, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

S2880.02I

AN ACT

To repeal sections 211.464 and 453.160, RSMo 1994, and sections 192.016, 211.444, 452.402, 453.025, 453.030, 453.040, 453.060, 453.070, 453.080 and 453.110, RSMo Supp. 1997, relating to adoption, and to enact in lieu thereof twelve new sections relating to the same subject.

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

Section A. Sections 211.464 and 453.160, RSMo 1994, and sections 192.016, 211.444, 452.402, 453.025, 453.030, 453.040, 453.060, 453.070, 453.080 and 453.110, RSMo Supp. 1997, are repealed and twelve new sections enacted in lieu thereof, to be known as sections 192.016, 211.444, 211.464, 452.402, 453.025, 453.030, 453.040, 453.060, 453.070, 453.080, 453.110 and 453.160, to read as follows:

192.016. 1. The department of health 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

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

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(2)(7).

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

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. The department shall, upon request **and within twenty-four hours 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. The department of health 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 the putative father registry. Such pamphlet or publication shall be made available for distribution at all offices of the department of health. 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.

211.444. 1. The juvenile court may, upon petition of the juvenile officer, or the court before which a petition for adoption has been filed [under] **pursuant to** the provisions of chapter 453, RSMo, terminate the rights of a parent to a child if the court finds that such termination is in the best interests of the child and the parent has consented in writing to the termination of his **or her** parental rights.

2. A foster parent or legal custodian of a child may file a petition with the court for transfer and termination of parental rights. Such petition may be filed in an adoption proceeding.

3. The written consent required by subsection 1 of this section may be executed before or after the institution of the proceedings and shall be acknowledged before a notary public. In lieu of such acknowledgment, the signature of the person giving the written consent shall be witnessed by 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 parents. The notary public or witnesses shall verify the identity of the party signing the consent.

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

211.464. 1. Where a child has been placed with a foster parent, with relatives or with other persons who are able and willing to permanently integrate the child into the family by adoption, [if the court finds that it is in the best interests of the child,] the court [may] **shall** provide the opportunity for such foster parent, relative or other person to present evidence for the consideration of the court.

2. Current foster parents who are not seeking to adopt the child shall be given an opportunity to testify at all hearings regarding the child. Other legal custodians who are not seeking to adopt the child shall be given an opportunity to testify at all hearings regarding the child. Upon the filing of a petition concerning a minor child who is in the care of foster parents or other legal custodians, the court shall give notice to such foster parents or legal custodians of the filing, any future hearings held on such petition and their opportunity to testify at any subsequent hearings held in relation to such petition.

452.402. 1. The court may grant reasonable visitation rights to the grandparents of the child and issue any necessary orders to enforce the decree. The court may grant grandparent visitation when:

(1) The parents of the child have filed for a dissolution of their marriage. A grandparent shall have the right to intervene in any dissolution action solely on the issue of visitation rights. Grandparents shall also have the right to file a motion to modify the original decree of dissolution to seek visitation rights when such rights have been denied to them;

(2) One parent of the child is deceased and the surviving parent denies reasonable visitation rights; [or]

(3) A grandparent is unreasonably denied **by the custodial parent** visitation with the child for a period exceeding ninety days; **or**

(4) The child is adopted by a stepparent, another grandparent or other blood relative.

2. The court shall determine if the visitation by the grandparent would be in the child's

best interest or if it would endanger the child's physical health or impair [his] **the child's** emotional development. Visitation may only be ordered when the court finds such visitation to be in the best interests of the child. The court may order reasonable conditions or restrictions on grandparent visitation.

3. If the court finds it to be in the best interests of the child, the court may appoint a guardian ad litem for the child. The guardian ad litem shall be an attorney licensed to practice law in Missouri. The guardian ad litem may, for the purpose of determining the question of grandparent visitation rights, participate in the proceedings as if he were a party. The court shall allow a reasonable fee to the guardian ad litem to be taxed as costs in the proceedings.

4. A home study, as described by section 452.390, may be ordered by the court to assist in determining the best interests of the child.

5. The court may, in its discretion, consult with the child regarding the child's wishes in determining the best interest of the child.

6. The right of a grandparent to seek or maintain visitation rights **[under] pursuant to** this section may terminate upon the adoption of the child **[except where the child is adopted by a stepparent, another grandparent or other blood relative].**

7. The court may award reasonable attorneys fees and expenses to the prevailing party.

453.025. 1. The court shall, in all cases where the person sought to be adopted is under eighteen years of age, appoint a guardian ad litem, if not previously appointed pursuant to section 210.160, RSMo, to represent the person sought to be adopted.

2. When the parent is a minor or incompetent, the court shall appoint a guardian ad litem to represent such parent.

3. The guardian ad litem shall:

(1) Be the legal advocate for the best interest of the party he is appointed to represent with the power and authority to cross-examine, subpoena witnesses, and offer testimony;

(2) Initiate an appeal of any disposition that he determines to be adverse to the interests of the party he represents; and

(3) Ascertain the child's wishes, feelings and attitudes regarding the adoption by interviewing persons with knowledge of the child, and if appropriate, to meet with the child.

[4. Where an adoption petition is filed by an adoptive parent which alleges grounds as provided in section 211.447, RSMo, as permitted under section 453.040, any birth parent who cannot afford an attorney may provide the court with proof of income and request an attorney be appointed by the court. The court may order the costs of the attorney fees incurred pursuant to this subsection to be paid by the prospective adoptive parent.]

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) **[A] Any** man who:

(a) Is presumed to be the father pursuant to the subdivisions (1), (2), (3) or (5) 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[;

(c)], **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 consent has 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. The notary public or witnesses shall verify the identity of the party signing the consent.

6. The written consent shall be [presented to the court for review and approval as soon as practicable] **reviewed and approved by the court within seventy-two hours of obtaining such consent. Failure to review and approve the written consent within seventy-two hours shall not void the consent, but a party may seek a writ of mandamus from the appropriate court.**

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. The] **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 [section 536.024] **chapter 536, RSMo. If a written consent is obtained after the effective date of this section but prior to the development of a consent form by the department and the written consent complies with the provisions of subsection 8 of this section, such written consent shall be deemed valid.**

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

(1) The birth parent understands the importance of identifying all possible fathers of the child and shall 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.] **9.** 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[,] **or legal counsel** at the time of the execution thereof.

[11.] **10.** 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.] **11. The birth parent 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) The birth parent requests representation; [and]

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

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

[13.] **12.** The court [may] **shall** order the costs of the attorney fees incurred pursuant to [the provisions of] subsection [12] **11** of this section to be paid by the prospective adoptive parents

or the child placing agency.

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

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

(2) A parent of a child who has [waived the necessity of his or her consent] **legally consented** to a future adoption of the child;

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

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

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

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

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

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

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 [(5),] (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 **[under] 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.

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.

453.070. 1. Except as provided in subsection **[6] 5** of this section, no decree for the adoption of a child under eighteen years of age shall be entered for the petitioner or petitioners in such adoption as ordered by the juvenile court having jurisdiction, until a full investigation, which includes an assessment of the adoptive parents, an appropriate post-placement assessment and a summary of written reports as provided in section 453.026, and any other pertinent information relevant to whether the child is suitable for adoption by the petitioner and whether the petitioner is suitable as a parent for the child, has been made. The report shall also include a statement to the effect that the child has been considered as a potential subsidy recipient.

2. Such investigation shall be made, as directed by the court having jurisdiction, either by the division of family services of the state department of social services, a juvenile court officer, a licensed child placement agency, a social worker licensed pursuant to chapter 337, RSMo, or other suitable person appointed by the court. The results of such investigation shall be embodied in a written report that shall be submitted to the court within ninety days of the request for the investigation.

3. The department of social services, division of family services shall develop rules and regulations regarding the content of the assessment of the petitioner or petitioners. The content

of the assessment shall include but not be limited to, a report on the condition of the petitioner's home and information on the petitioner's education, financial, marital, medical and psychological status and criminal background check. 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 section 536.024, RSMo.

4. The assessment of petitioner or petitioners shall be submitted to the petitioner and to the court [at least ten days] prior to the scheduled hearing of the adoptive petition.

5. In cases where the adoption or custody involves a child under eighteen years of age that is the natural child of one of the petitioners and where all of the parents required by this chapter to give consent to the adoption or transfer of custody have given such consent, the juvenile court may waive the investigation and report and enter the decree for the adoption or order the transfer of custody without such investigation and report.

6. In the case of an investigation and report made by the division of family services by order of the court, the court may order the payment of a reasonable fee by the petitioner to cover the costs of the investigation and report.

7. Any adult person or persons over the age of eighteen, who, as foster parent or parents, have cared for a foster child continuously for a period of twelve months or more and bonding has occurred as evidenced by the positive emotional and physical interaction between the foster parent and child, may apply to such authorized agency for the placement of such child with them for the purpose of adoption if the child is eligible for adoption. The agency and court shall give preference and first consideration for adoptive placements to foster parents. However, the final determination of the propriety of the adoption of such foster child shall be within the sole discretion of the court.

453.080. 1. The court shall conduct a hearing to determine whether the adoption shall be finalized. During such hearing, the court shall ascertain whether:

(1) [The allegations of the petition are true;

(2)] The person sought to be adopted, if a child, has been in the lawful and actual custody of the petitioner for a period of at least six months prior to entry of the adoption decree. Lawful and actual custody shall include a transfer of custody pursuant to the laws of this state, another state, a territory of the United States, or another [county] **country**;

[(3)] (2) The court has received and reviewed a post-placement assessment on the monthly contacts with the adoptive family **pursuant to section 453.077, except for good cause shown in the case of a foreign adoption**;

[(4)] (3) The court has received and reviewed an updated financial affidavit;

[(5)] (4) The court has received the recommendations of the guardian ad litem and has received and reviewed the recommendations of the person placing the child, the person making the assessment and the person making the post-placement assessment;

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

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

[(8)] (7) There is compliance with the Interstate Compact on the Placement of Children pursuant to section 210.620, RSMo; and

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

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

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

4. [The court shall not have jurisdiction to deny continuing contact between the adopted person and the birth parent, or an adoptive parent and a birth parent. Additionally, the court shall not have jurisdiction to deny an exchange of identifying information between an adoptive parent and a birth parent.] Before the completion of an adoption, the exchange of information among the parties shall be at the discretion of the parties. Upon completion of an adoption, further contact among the parties shall be at the discretion of the adoptive parents. **The court shall not have jurisdiction to deny continuing contact between the adopted person and the birth parent, or an adoptive parent and a birth parent. Additionally, the court shall not have jurisdiction to deny an exchange of identifying information between an adoptive parent and a birth parent.**

453.110. 1. [No person, agency, organization or institution shall surrender custody of a minor child, or transfer the custody of such a child to another, and no person, agency, organization or institution shall take possession or charge of a minor child so transferred, without first having filed a petition before the circuit court sitting as a juvenile court of the county where the child may be, praying that such surrender or transfer may be made, and having obtained such an order from such court approving or ordering transfer of custody.

2. If any such surrender or transfer is made without first obtaining such an order, such court shall, on petition of any public official or interested person, agency, organization or institution, order an investigation and report as described in section 453.070 to be completed by the division of family services and shall make such order as to the custody of such child in the best interest of such child.

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

4. The investigation required by subsection 2 of this section shall be initiated by the division of family services within forty-eight hours of the filing of the court order requesting the

investigation and report and shall be completed within thirty days. The court shall order the person having custody in violation of the provisions of this section to pay the costs of the investigation and report.

5. This section shall not be construed to prohibit any parent, agency, organization or institution from placing a child in a family home for care if the right to supervise the care of the child and to resume custody thereof is retained, or from placing a child with a licensed foster home within the state through a child placing agency licensed by this state as part of a preadoption placement.] **Any birth parent who is intending to place a child for adoption may, without an order of the court, place such child with a licensed child placement agency for placement in foster care, or pursuant to section 475.024, RSMo, with any other party who the birth parent deems appropriate for up to one year, except such child shall not be placed with a prospective adoptive parent without a court order.**

2. Any birth parent placing a child with any party pursuant to this section shall have the right to terminate such placement with such party at any time prior to signing a consent pursuant to section 453.030, or a court order terminating parental rights, authorizing consent to adoption or transferring custody of the adoptee, whichever first occurs.

[6.] **3. Any person may file a petition for the transfer of custody for the purpose of adoption.** After the filing of a petition for the transfer of custody for the purpose of adoption, the court may enter an order of transfer of custody **to the adoptive parents or a licensed child-placing agency within seventy-two hours of the filing of such petition** if the court finds all of the following:

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

(2) A recommendation has been made **or requested but not received within seventy-two hours after the filing of a petition for transfer or custody** by the guardian ad litem;

(3) [A petition for transfer of custody for adoption has been properly filed or an order terminating parental rights has been properly filed] **The evidence and pleadings establish grounds for adoption pursuant to the provisions of section 453.030;**

(4) The financial affidavit has been filed as required [under] **pursuant to the provisions of section 453.075;**

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

(6) **A determination of the applicability of and** compliance with the Indian Child Welfare Act[, if applicable]; and

(7) **A determination of the applicability of and** compliance with the Interstate Compact on the Placement of Children pursuant to section 210.620, RSMo.

[7.] **4.** A hearing on the transfer of custody for the purpose of adoption is not required if:

- (1) The conditions set forth in subsection [6] **1** of this section are met;
- (2) The parties agree and the court grants leave; and
- (3) Parental rights have been terminated pursuant to section 211.444 or 211.447, RSMo.

5. In the event that the court does not enter an order of transfer of custody pursuant to this section, the court shall make specific findings in a written order outlining its reasons for denying the transfer of custody.

453.160. **1.** After the expiration of one year from the date this chapter shall become effective, the validity of any decree of adoption [under] **pursuant to** any prior law shall not be subject to attack in any proceedings, collateral or direct, by reason of any irregularity in proceedings had pursuant to such prior law.

2. Any consent required for an adoption may only be revoked for fraud or duress within one year of the date of such consent.

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