

FIRST REGULAR SESSION

SENATE BILL NO. 343

94TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR JUSTUS.

Read 1st time January 22, 2007, and ordered printed.

TERRY L. SPIELER, Secretary.

1019S.011

AN ACT

To repeal sections 211.442, 211.444, 452.445, 452.455, 453.015, 453.040, 475.010, and 475.070, RSMo, and to enact in lieu thereof eight new sections relating to the consent or notice required of an unknown father.

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

Section A. Sections 211.442, 211.444, 452.445, 452.455, 453.015, 453.040, 475.010, and 475.070, RSMo, are repealed and eight new sections enacted in lieu thereof, to be known as sections 211.442, 211.444, 452.445, 452.455, 453.015, 453.040, 475.010, and 475.070, to read as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;
- (4) **"Unknown father", a person who:**
 - (a) **Is not a presumed father under sections 210.817 to 210.852, RSMo;**
 - (b) **Has not registered with the putative father registry under section 192.016, RSMo; or**
 - (c) **Has not filed a voluntary acknowledgment of paternity under**

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

17 **section 193.087, RSMo.**

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

6 2. The written consent required by subsection 1 of this section may be
7 executed before or after the institution of the proceedings and shall be
8 acknowledged before a notary public. In lieu of such acknowledgment, the
9 signature of the person giving the written consent shall be witnessed by at least
10 two adult persons who are present at the execution whose signatures and
11 addresses shall be plainly written thereon and who determine and certify that the
12 consent is knowingly and freely given. The two adult witnesses shall not be the
13 prospective parents. The notary public or witnesses shall verify the identity of
14 the party signing the consent.

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

18 **4. Written consent is not required from an unknown father.**

452.445. As used in sections 452.440 to 452.550:

2 (1) "Custody determination" means a court decision and court orders and
3 instructions providing for the custody of a child, including visitation rights. This
4 term does not include a decision relating to child support or any other monetary
5 obligation of any person; but the court shall have the right in any custody
6 determination where jurisdiction is had pursuant to section 452.460 and where
7 it is in the best interest of the child to adjudicate the issue of child support;

8 (2) "Custody proceeding" includes proceedings in which a custody
9 determination is one of several issues, such as an action for dissolution of
10 marriage, legal separation, separate maintenance, appointment of a guardian of
11 the person, child neglect or abandonment, but excluding actions for violation of
12 a state law or municipal ordinance;

13 (3) "Decree" or "custody decree" means a custody determination contained
14 in a judicial decree or order made in a custody proceeding, and includes an initial
15 decree and a modification decree;

16 (4) "Home state" means the state in which, immediately preceding the
17 filing of custody proceeding, the child lived with his parents, a parent, an

18 institution; or a person acting as parent, for at least six consecutive months; or,
19 in the case of a child less than six months old, the state in which the child lived
20 from birth with any of the persons mentioned. Periods of temporary absence of
21 any of the named persons are counted as part of the six-month or other period;

22 (5) "Initial decree" means the first custody decree concerning a particular
23 child;

24 (6) "Litigant" means a person, including a parent, grandparent, or
25 step-parent, who claims a right to custody or visitation with respect to a child;

26 (7) **"Unknown father", a person who:**

27 (a) **Is not a presumed father under sections 210.817 to 210.852,**
28 **RSMo;**

29 (b) **Has not registered with the putative father registry under**
30 **section 192.016, RSMo; or**

31 (c) **Has not filed a voluntary acknowledgment of paternity under**
32 **section 193.087, RSMo.**

452.455. 1. Any petition for modification of child custody decrees filed
2 under the provisions of section 452.410, or sections 452.440 to 452.450, shall be
3 verified and, if the original proceeding originated in the state of Missouri, shall
4 be filed in that original case, but service shall be obtained and responsive
5 pleadings may be filed as in any original proceeding.

6 2. Before making a decree under the provisions of section 452.410, or
7 sections 452.440 to 452.450, the litigants, any parent whose parental rights have
8 not been previously terminated, **except unknown fathers**, and any person who
9 has physical custody of the child must be served in the manner provided by the
10 rules of civil procedure and applicable court rules and may within thirty days
11 after the date of service (forty-five days if service by publication) file a verified
12 answer. If any of these persons is outside this state, notice and opportunity to
13 be heard shall be given pursuant to section 452.460.

14 3. In any case in which the paternity of a child has been determined by
15 a court of competent jurisdiction and where the noncustodial parent is delinquent
16 in the payment of child support in an amount in excess of ten thousand dollars,
17 the custodial parent shall have the right to petition a court of competent
18 jurisdiction for the termination of the parental rights of the noncustodial parent.

19 4. When a person filing a petition for modification of a child custody
20 decree owes past due child support to a custodial parent in an amount in excess
21 of ten thousand dollars, such person shall post a bond in the amount of past due

22 child support owed as ascertained by the division of child support enforcement or
23 reasonable legal fees of the custodial parent, whichever is greater, before the
24 filing of the petition. The court shall hold the bond in escrow until the
25 modification proceedings pursuant to this section have been concluded wherein
26 such bond shall be transmitted to the division of child support enforcement for
27 disbursement to the custodial parent.

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 division of family services who has not
5 attained 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) "Putative father", the alleged or presumed father of a child including
12 a person who has filed a notice of intent to claim paternity with the putative
13 father registry established in section 192.016, RSMo, and a person who has filed
14 a voluntary acknowledgment of paternity pursuant to section 193.087, RSMo; and

15 (4) "Stepparent", the spouse of a biological or adoptive parent. The term
16 does not include the state if the child is a ward of the state. The term does not
17 include a person whose parental rights have been terminated;

18 (5) "Unknown father", a person who:

19 (a) Is not a presumed father under sections 210.817 to 210.852,
20 RSMo;

21 (b) Has not registered with the putative father registry under
22 section 192.016, RSMo; or

23 (c) Has not filed a voluntary acknowledgment of paternity under
24 section 193.087, RSMo.

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, RSMo, or section 211.447,
4 RSMo, or other 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) **An unknown father;**

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

10 [(4)] (5) A man who has not been established to be the father and who
11 is not presumed by law to be the father, and who, after the conception of the
12 child, executes a verified statement denying paternity and disclaiming any
13 interest in the child and acknowledging that this statement is irrevocable when
14 executed and follows the consent as set forth in section 453.030;

15 [(5)] (6) A parent or other person who has not executed a consent and
16 who, after proper service of process, fails to file an answer or make an appearance
17 in a proceeding for adoption or for termination of parental rights at the time such
18 cause is heard;

19 [(6)] (7) A parent who has a mental condition which is shown by
20 competent evidence either to be permanent or such that there is no reasonable
21 likelihood that the condition can be reversed and which renders the parent unable
22 to knowingly provide the child the necessary care, custody and control;

23 [(7)] (8) A parent who has for a period of at least six months, for a child
24 one year of age or older, or at least sixty days, for a child under one year of age,
25 immediately prior to the filing of the petition for adoption, willfully abandoned
26 the child or, for a period of at least six months immediately prior to the filing of
27 the petition for adoption, willfully, substantially and continuously neglected to
28 provide him with necessary care and protection;

29 [(8)] (9) A parent whose rights to the child may be terminated for any of
30 the grounds set forth in section 211.447, RSMo, and whose rights have been
31 terminated after hearing and proof of such grounds as required by sections
32 211.442 to 211.487, RSMo. Such petition for termination may be filed as a count
33 in an adoption petition.

475.010. When used in this chapter, unless otherwise apparent from the
2 context, the following terms mean:

3 (1) "Adult", a person who has reached the age of eighteen years;

4 (2) "Claims", liabilities of the protectee arising in contract, in tort or
5 otherwise, before or after the appointment of a conservator, and liabilities of the
6 estate which arise at or after the adjudication of disability or after the
7 appointment of a conservator of the estate, including expenses of the adjudication
8 and of administration. The term does not include demands or disputes regarding
9 title of the protectee to specific assets alleged to be included in the estate;

10 (3) "Conservator", one appointed by a court to have the care and custody
11 of the estate of a minor or a disabled person. A "limited conservator" is one
12 whose duties or powers are limited. The term "conservator", as used in this
13 chapter, includes "limited conservator" unless otherwise specified or apparent
14 from the context;

15 (4) "Disabled" or "disabled person", one who is:

16 (a) Unable by reason of any physical or mental condition to receive and
17 evaluate information or to communicate decisions to such an extent that the
18 person lacks ability to manage his financial resources, or

19 (b) The term "disabled" or "disabled person", as used in this chapter
20 includes the terms "partially disabled" or "partially disabled person" unless
21 otherwise specified or apparent from the context;

22 (5) "Eligible person" or "qualified person", a natural person, social service
23 agency, corporation or national or state banking organization qualified to act as
24 guardian of the person or conservator of the estate pursuant to the provisions of
25 section 475.055;

26 (6) "Guardian", one appointed by a court to have the care and custody of
27 the person of a minor or of an incapacitated person. A "limited guardian" is one
28 whose duties or powers are limited. The term "guardian", as used in this chapter,
29 includes "limited guardian" unless otherwise specified or apparent from the
30 context;

31 (7) "Guardian ad litem", one appointed by a court, in which particular
32 litigation is pending, to represent a minor, an incapacitated person, a disabled
33 person, or an unborn person in that particular proceeding or as otherwise
34 specified in this code;

35 (8) "Habilitation", instruction, training, guidance or treatment designed
36 to enable and encourage a mentally retarded or developmentally disabled person
37 as defined in chapter 630, RSMo, to acquire and maintain those life skills needed
38 to cope more effectively with the demands of his own person and of his
39 environment;

40 (9) "Incapacitated person", one who is unable by reason of any physical
41 or mental condition to receive and evaluate information or to communicate
42 decisions to such an extent that he lacks capacity to meet essential requirements
43 for food, clothing, shelter, safety or other care such that serious physical injury,
44 illness, or disease is likely to occur. The term "incapacitated person" as used in
45 this chapter includes the term "partially incapacitated person" unless otherwise

46 specified or apparent from the context;

47 (10) "Least restrictive environment", that there shall be imposed on the
48 personal liberty of the ward only such restraint as is necessary to prevent him
49 from injuring himself and others and to provide him with such care, habilitation
50 and treatment as are appropriate for him considering his physical and mental
51 condition and financial means;

52 (11) "Manage financial resources", either those actions necessary to
53 obtain, administer, and dispose of real and personal property, intangible property,
54 business property, benefits, income or any assets, or those actions necessary to
55 prevent waste, loss or dissipation of property, or those actions necessary to
56 provide for the care and support of such person or anyone legally dependent upon
57 him by a person of ordinary skills and intelligence commensurate with his
58 training and education;

59 (12) "Minor", any person who is under the age of eighteen years;

60 (13) "Partially disabled person", one who is unable by reason of any
61 physical or mental condition to receive and evaluate information or to
62 communicate decisions to such an extent that he lacks capacity to manage, in
63 part, his financial resources;

64 (14) "Partially incapacitated person", one who is unable by reason of any
65 physical or mental condition to receive and evaluate information or to
66 communicate decisions to the extent that he lacks capacity to meet, in part,
67 essential requirements for food, clothing, shelter, safety, or other care without
68 court-ordered assistance;

69 (15) "Protectee", a person for whose estate a conservator or limited
70 conservator has been appointed or with respect to whose estate a transaction has
71 been authorized by the court under section 475.092 without appointment of a
72 conservator or limited conservator;

73 (16) "Social service agency", a charitable organization organized and
74 incorporated as a not-for-profit corporation under the laws of this state and which
75 qualifies as an exempt organization within the meaning of section 501(c)(3), or
76 any successor provision thereto of the federal Internal Revenue Code;

77 (17) "Treatment", the prevention, amelioration or cure of a person's
78 physical and mental illnesses or incapacities;

79 (18) **"Unknown father", a person who:**

80 **(a) Is not a presumed father under sections 210.817 to 210.852,**
81 **RSMo;**

82 **(b) Has not registered with the putative father registry under**
83 **section 192.016, RSMo; or**

84 **(c) Has not filed a voluntary acknowledgment of paternity under**
85 **section 193.087, RSMo;**

86 **(19) "Ward" is a minor or an incapacitated person for whom a guardian**
87 **or limited guardian has been appointed.**

 475.070. 1. Before appointing a guardian or conservator for a minor,
2 notice of the petition therefor shall be served upon the following unless they have
3 signed such petition or have waived notice thereof:

4 (1) The minor, if over fourteen years of age;

5 (2) The parents of the minor, **except not an unknown father or a**
6 **parent whose identity is otherwise unknown and cannot be ascertained**
7 **at the time of the filing of the petition;**

8 (3) The spouse of the minor;

9 (4) If directed by the court:

10 (a) Any person who has been appointed guardian or any person having
11 care and custody of the minor;

12 (b) Any department, bureau or agency of the United States or of this state
13 or any political subdivision thereof, which makes or awards compensation,
14 pension, insurance or other allowance for the benefit of the ward's estate;

15 (c) Any department, bureau or agency of this state or any political
16 subdivision thereof or any charitable organization of this state, which may be
17 charged with the supervision, control or custody of the minor.

18 2. If the minor is over fourteen years of age, there shall be personal
19 service upon him if personal service can be had. Service on others may be had
20 in accordance with section 472.100, RSMo.

21 3. If a petition for the appointment of a guardian of a minor is filed for
22 the sole and specific purpose of school registration or medical insurance coverage,
23 upon the filing of an affidavit by the petitioner stating that, after due and
24 diligent effort to the best of his or her ability, the whereabouts or identity of
25 either or both parents of the minor remains unknown, the court may proceed with
26 the appointment of such a guardian without having obtained service upon the
27 parents of the minor.