

SECOND REGULAR SESSION

# SENATE BILL NO. 674

89TH GENERAL ASSEMBLY

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INTRODUCED BY SENATORS SIMS AND BENTLEY.

Read 1st time January 7, 1998, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

S2950.02I

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## AN ACT

To repeal sections 453.010, 453.030, 453.040, 453.070, 453.075, 453.077, 453.080 and 453.170, RSMo Supp. 1997, relating to adoption, and to enact in lieu thereof eight new sections relating to the same subject..

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

Section A. Sections 453.010, 453.030, 453.040, 453.070, 453.075, 453.077, 453.080 and 453.170, RSMo Supp. 1997, are repealed and eight new sections enacted in lieu thereof, to be known as sections 453.010, 453.030, 453.040, 453.070, 453.075, 453.077, 453.080 and 453.170, to read as follows:

453.010. 1. [Unless the person sought to be adopted is a child who is under the prior and continuing jurisdiction of a court pursuant to the provisions of chapter 211, RSMo,] Any person desiring to adopt another person as his **or her** child shall petition the juvenile division of the circuit court of the county in which:

- (1) The person seeking to adopt resides;
- (2) The child sought to be adopted was born;
- (3) The child is located at the time of the filing of the petition; or
- (4) Either birth person resides.

2. If the person sought to be adopted is a child who is under the prior and continuing jurisdiction of a court pursuant to the provision of chapter 211, RSMo, any person desiring to adopt such person as his **or her** child shall petition the juvenile division of the circuit court which has jurisdiction over the child for permission to adopt such person as his **or her** child. Upon

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

receipt of a motion from the petitioner and consent of the receiving court, the juvenile division of the circuit court which has jurisdiction over the child may transfer jurisdiction to the juvenile division of a circuit court within any of the alternative venues set forth in subsection 1 of this section.

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

4. Upon receipt of a properly filed petition, a court, as defined in section 453.010, shall hear said petition in a timely fashion.

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;

(2) A 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;

(b) 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) 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.

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. 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.

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.

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 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. 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 financial hardship for the birth parent.

13. The court may order the costs of the attorney fees incurred pursuant to the provisions of subsection 12 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.**

453.070. 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 for 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.

453.075. 1. The court shall require the petitioner in any proceeding for adoption to file at the time of filing the petition for permission to adopt, a signed and verified full accounting of any money, anything of value or other consideration paid or transferred by or on behalf of the petitioner in connection with the placement or adoption. The accounting shall show all payments or transfers made or to be made or consideration given or promised by or on behalf of the petitioner in connection with the placement or adoption, including:

(1) Hospital, medical and physician expenses incurred by the mother or a child in connection with the birth and any illness of the newborn child;

(2) Counseling services for a parent or child for a reasonable time before and after the child's placement for adoption;

(3) Expenses incurred in obtaining a preplacement assessment and an assessment during the proceeding for adoption;

(4) Reasonable legal expenses **of the birth parents**, court costs and travel or other administrative expenses connected with an adoption; [and]

(5) **Reasonable living expenses, including but not limited to, food, shelter, utilities, transportation or clothing expenses which are within the norms of the community in which the birth mother resides; and**

(6) Any other services **or items** the court finds [is] **are** reasonably necessary.

2. The court may decline to issue a decree of adoption and, in the event one of the petitioners is not a biological or adoptive parent of the child, may order the transfer of lawful custody from the petitioners to a licensed child placement agency if, after a hearing, it determines:

(1) That any of the payments, transfers or consideration were unreasonable; or

(2) That any of the payments, transfers or consideration were other than those permitted under section 568.175, RSMo; or

(3) That the petitioner has failed to report all of the payments, transfers or consideration given by or on behalf of the petitioner in connection with the placement or adoption.

453.077. 1. When a child has been placed with the petitioner for the required six month placement period, the person conducting the **pre-placement** assessment of the adoption **or other persons authorized to conduct assessments pursuant to section 453.070** shall provide the court with a post-placement assessment. The specific content of which shall be determined by rule by the department of social services, division of family services. The post-placement assessment shall include an update of the preplacement assessment which was submitted to the court pursuant to section 453.070, and a report on the emotional, physical and psychological status of the child.

2. No rule or portion of a rule promulgated [under] **pursuant to** the authority of this section shall become effective unless it has been promulgated pursuant to the provisions of [section 536.024] **chapter 536**, RSMo.

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) The court has received and reviewed a post-placement assessment on the monthly

contacts with the adoptive family;

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

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

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

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

(9) 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.**

453.170. 1. When an adoption occurs pursuant to the laws of other states of the United States, Missouri shall, from the date of adoption hold the adopted person to be for every purpose the lawful child of its parent or parents by adoption as fully as though born to them in lawful wedlock, and such adoption shall have the same force and effect as adoption [under] **pursuant to** the provisions of this chapter, including all inheritance rights.

2. When an adoption occurs in a foreign country and is recognized as a valid adoption by the United States Department of Justice and the United States Department of Immigration and [Natural] **Naturalization** Services, this state shall recognize the adoption. The department of health, upon receipt of proof of adoption as required in subsection 7 of section 193.125, RSMo, shall

issue a birth certificate for the adopted child upon request on forms prescribed and furnished by the state registrar pursuant to section 193.125, RSMo.

3. The adoptive parent or parents may petition the court pursuant to this section to request a change of name. The petition shall include a certified copy of the decree of adoption issued by the foreign country and documentation from the United States Department of Justice and the United States Department of Immigration and [Natural] **Naturalization** Services which shows the child lawfully entered the United States. The court shall recognize and give effect to the decree of the foreign country and grant a decree of recognition of the adoption and shall change the name of the adopted child to the name given by the adoptive parent, if such a request has been made.

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