

FIRST REGULAR SESSION

# HOUSE BILL NO. 942

## 96TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE JOHNSON.

2071L.011

D. ADAM CRUMBLISS, Chief Clerk

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### AN ACT

To repeal section 135.327, RSMo, and to enact in lieu thereof two new sections relating to tax credits for adoptions.

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

Section A. Section 135.327, RSMo, is repealed and two new sections enacted in lieu thereof, to be known as sections 135.327 and 135.340, to read as follows:

135.327. 1. As used in this section, the following terms shall mean:

(1) "CASA", an entity which receives funding from the court-appointed special advocate fund established under section 476.777, including an association based in this state, affiliated with a national association, organized to provide support to entities receiving funding from the court-appointed special advocate fund;

(2) "Child advocacy centers", the regional child assessment centers listed in subsection 2 of section 210.001;

(3) "Contribution", **the amount of a donation to a qualified agency;**

(4) "Crisis care center", entities contracted with this state which provide temporary care for children whose age ranges from birth through seventeen years of age whose parents or guardian are experiencing an unexpected and unstable or serious condition that requires immediate action resulting in short-term care, usually three to five continuous, uninterrupted days, for children who may be at risk for child abuse, neglect, or in an emergency situation;

(5) "Department", the department of revenue;

(6) "Director", the director of the department of revenue;

(7) "Qualified agency", CASA, child advocacy centers, or a crisis care center;

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

17 (8) "Tax liability", the tax due under chapter 143 other than taxes withheld under  
18 sections 143.191 to 143.265.

19 2. Any person residing in this state who legally adopts a special needs child on or after  
20 January 1, 1988, and before January 1, 2000, shall be eligible to receive a tax credit of up to ten  
21 thousand dollars for nonrecurring adoption expenses for each child adopted that may be applied  
22 to taxes due under chapter 143. Any business entity providing funds to an employee to enable  
23 that employee to legally adopt a special needs child shall be eligible to receive a tax credit of up  
24 to ten thousand dollars for nonrecurring adoption expenses for each child adopted that may be  
25 applied to taxes due under such business entity's state tax liability, except that only one ten  
26 thousand dollar credit is available for each special needs child that is adopted.

27 3. Any person residing in this state who proceeds in good faith with the adoption of a  
28 special needs child on or after January 1, 2000, **but before January 1, 2012**, shall be eligible  
29 to receive a tax credit of up to ten thousand dollars for nonrecurring adoption expenses for each  
30 child that may be applied to taxes due under chapter 143; provided, however, that beginning on  
31 or after July 1, 2004, two million dollars of the tax credits allowed shall be allocated for the  
32 adoption of special needs children who are residents or wards of residents of this state at the time  
33 the adoption is initiated. Any business entity providing funds to an employee to enable that  
34 employee to proceed in good faith with the adoption of a special needs child shall be eligible to  
35 receive a tax credit of up to ten thousand dollars for nonrecurring adoption expenses for each  
36 child that may be applied to taxes due under such business entity's state tax liability, except that  
37 only one ten thousand dollar credit is available for each special needs child that is adopted.  
38 **Beginning January 1, 2012, the maximum limit on the amount of the tax credit available**  
39 **for each child shall be increased to twenty-five thousand dollars.**

40 4. Individuals and business entities may claim a tax credit for their total nonrecurring  
41 adoption expenses in each year that the expenses are incurred. A claim for fifty percent of the  
42 credit shall be allowed when the child is placed in the home. A claim for the remaining fifty  
43 percent shall be allowed when the adoption is final. The total of these tax credits shall not  
44 exceed the maximum limit of ten thousand dollars per child **for taxable years ending on or**  
45 **before December 31, 2011, and twenty-five thousand dollars per child for taxable years**  
46 **beginning on or after January 1, 2012.** The cumulative amount of tax credits which may be  
47 claimed by taxpayers claiming the credit for nonrecurring adoption expenses in any one fiscal  
48 year prior to July 1, 2004, shall not exceed two million dollars. The cumulative amount of tax  
49 credits that may be claimed by taxpayers claiming the credit for nonrecurring adoption expenses  
50 shall not be more than four million dollars but may be increased by appropriation in any fiscal  
51 year beginning on or after July 1, 2004; provided, however, that by December thirty-first  
52 following each July, if less than two million dollars in credits have been issued for adoption of

53 special needs children who are not residents or wards of residents of this state at the time the  
54 adoption is initiated, the remaining amount of the cap shall be available for the adoption of  
55 special needs children who are residents or wards of residents of this state at the time the  
56 adoption is initiated. For all fiscal years beginning on or after July 1, 2006, applications to claim  
57 the adoption tax credit for special needs children who are residents or wards of residents of this  
58 state at the time the adoption is initiated shall be filed between July first and April fifteenth of  
59 each fiscal year. For all fiscal years beginning on or after July 1, 2006, applications to claim the  
60 adoption tax credit for special needs children who are not residents or wards of residents of this  
61 state at the time the adoption is initiated shall be filed between July first and December  
62 thirty-first of each fiscal year.

63         5. Notwithstanding any provision of law to the contrary, any individual or business entity  
64 may assign, transfer or sell tax credits allowed in this section. Any sale of tax credits claimed  
65 pursuant to this section shall be at a discount rate of seventy-five percent or greater of the amount  
66 sold.

67         6. The director of revenue shall establish a procedure by which, for each fiscal year, the  
68 cumulative amount of tax credits authorized in this section is equally apportioned among all  
69 taxpayers within the two categories specified in subsection 3 of this section claiming the credit  
70 in that fiscal year. To the maximum extent possible, the director of revenue shall establish the  
71 procedure described in this subsection in such a manner as to ensure that taxpayers within each  
72 category can claim all the tax credits possible up to the cumulative amount of tax credits  
73 available for the fiscal year.

74         7. For all tax years beginning on or after January 1, 2006, a tax credit may be claimed  
75 in an amount equal to up to fifty percent of a verified contribution to a qualified agency and shall  
76 be named the children in crisis tax credit. The minimum amount of any tax credit issued shall  
77 not be less than fifty dollars and shall be applied to taxes due under chapter 143, excluding  
78 sections 143.191 to 143.265. A contribution verification shall be issued to the taxpayer by the  
79 agency receiving the contribution. Such contribution verification shall include the taxpayer's  
80 name, Social Security number, amount of tax credit, amount of contribution, the name and  
81 address of the agency receiving the credit, and the date the contribution was made. The tax credit  
82 provided under this subsection shall be initially filed for the year in which the verified  
83 contribution is made.

84         8. The cumulative amount of the tax credits redeemed shall not exceed the unclaimed  
85 portion of the resident adoption category allocation as described in this section. The director of  
86 revenue shall determine the unclaimed portion available. The amount available shall be equally  
87 divided among the three qualified agencies: CASA, child advocacy centers, or crisis care centers  
88 to be used towards tax credits issued. In the event tax credits claimed under one agency do not

89 total the allocated amount for that agency, the unused portion for that agency will be made  
90 available to the remaining agencies equally. In the event the total amount of tax credits claimed  
91 for any one agency exceeds the amount available for that agency, the amount redeemed shall and  
92 will be apportioned equally to all eligible taxpayers claiming the credit under that agency. After  
93 all children in crisis tax credits have been claimed, any remaining unclaimed portion of the  
94 reserved allocation for adoptions of special needs children who are residents or wards of  
95 residents of this state shall then be made available for adoption tax credit claims of special needs  
96 children who are not residents or wards of residents of this state at the time the adoption is  
97 initiated.

98           9. Prior to December thirty-first of each year, [the entities listed under the definition of]  
99 **each** qualified agency shall apply to the department of social services in order to verify their  
100 qualified agency status. Upon a determination that the agency is eligible to be a qualified  
101 agency, the department of social services shall provide a letter of eligibility to such agency. No  
102 later than February first of each year, the department of social services shall provide a list of  
103 qualified agencies to the department of revenue. All tax credit applications to claim the children  
104 in crisis tax credit shall be filed between July first and April fifteenth of each fiscal year. A  
105 taxpayer shall apply for the children in crisis tax credit by attaching a copy of the contribution  
106 verification provided by a qualified agency to such taxpayer's income tax return.

107           10. The tax credits provided under this section shall be subject to the provisions of  
108 section 135.333.

109           11. (1) In the event a credit denial, due to lack of available funds, causes a balance-due  
110 notice to be generated by the department of revenue, or any other redeeming agency, the taxpayer  
111 will not be held liable for any penalty or interest, provided the balance is paid, or approved  
112 payment arrangements have been made, within sixty days from the notice of denial.

113           (2) In the event the balance is not paid within sixty days from the notice of denial, the  
114 remaining balance shall be due and payable under the provisions of chapter 143.

115           12. The director shall calculate the level of appropriation necessary to issue all tax credits  
116 for nonresident special needs adoptions applied for under this section and provide such  
117 calculation to the speaker of the house of representatives, the president pro tempore of the senate,  
118 and the director of the division of budget and planning in the office of administration by January  
119 thirty-first of each year.

120           13. The department may promulgate such rules or regulations as are necessary to  
121 administer the provisions of this section. Any rule or portion of a rule, as that term is defined  
122 in section 536.010, that is created under the authority delegated in this section shall become  
123 effective only if it complies with and is subject to all of the provisions of chapter 536 and, if  
124 applicable, section 536.028. This section and chapter 536 are nonseverable and if any of the

125 powers vested with the general assembly pursuant to chapter 536 to review, to delay the effective  
126 date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of  
127 rulemaking authority and any rule proposed or adopted after August 28, 2006, shall be invalid  
128 and void.

129 14. Pursuant to section 23.253 of the Missouri sunset act:

130 (1) The provisions of the new program authorized under subsections 7 to 12 of this  
131 section shall automatically sunset six years after August 28, 2006, unless reauthorized by an act  
132 of the general assembly; and

133 (2) If such program is reauthorized, the program authorized under this section shall  
134 automatically sunset twelve years after the effective date of the reauthorization of this section;  
135 and

136 (3) This section shall terminate on September first of the calendar year immediately  
137 following the calendar year in which the program authorized under this section is sunset.

**135.340. 1. As used in this section, the following terms mean:**

2 (1) "Nonrecurring adoption expenses", reasonable and necessary adoption fees,  
3 court costs, attorney fees, and other expenses which are directly related to the legal  
4 adoption of a child and which are not incurred in violation of federal, state, or local law;

5 (2) "Tax credit", a credit against the tax otherwise due under chapter 143,  
6 excluding withholding tax imposed by sections 143.191 to 143.265, or otherwise due under  
7 chapter 147, 148, or 153;

8 (3) "Taxpayer", any individual subject to the tax imposed in chapter 143, excluding  
9 withholding tax imposed by sections 143.191 to 143.265, or any entity subject to the tax  
10 imposed in chapter 147, 148, or 153 that provides funds to an employee to enable the  
11 employee to adopt a child.

12 2. For all taxable years beginning on or after January 1, 2012, a taxpayer shall be  
13 allowed a tax credit for nonrecurring adoption expenses for each child adopted. If the  
14 amount of the tax credit issued exceeds the amount of the taxpayer's state tax liability for  
15 the tax year for which the credit is claimed, the difference shall not be refundable but may  
16 be carried forward to any of the taxpayer's five subsequent taxable years. Tax credits  
17 issued under this section may be transferred, sold, or assigned.

18 3. The tax credit authorized in this section shall be claimed at the time the taxpayer  
19 files a Missouri income tax return. To claim the tax credit allowed under this section, the  
20 taxpayer shall submit any certified documentation and information required by the  
21 department of revenue.

22 4. The department of revenue may promulgate rules to implement the provisions  
23 of this section. Any rule or portion of a rule, as that term is defined in section 536.010, that

24 is created under the authority delegated in this section shall become effective only if it  
25 complies with and is subject to all of the provisions of chapter 536 and, if applicable,  
26 section 536.028. This section and chapter 536 are nonseverable and if any of the powers  
27 vested with the general assembly under chapter 536 to review, to delay the effective date,  
28 or to disapprove and annul a rule are subsequently held unconstitutional, then the grant  
29 of rulemaking authority and any rule proposed or adopted after August 28, 2011, shall be  
30 invalid and void.

31       **5. Under section 23.253 of the Missouri sunset act:**

32       **(1) The provisions of the new program authorized under this section shall**  
33 **automatically sunset on December thirty-first six years after the effective date of this**  
34 **section unless reauthorized by an act of the general assembly; and**

35       **(2) If such program is reauthorized, the program authorized under this section**  
36 **shall automatically sunset on December thirty-first twelve years after the effective date of**  
37 **the reauthorization of this section; and**

38       **(3) This section shall terminate on September first of the calendar year immediately**  
39 **following the calendar year in which the program authorized under this section is sunset.**