

FIRST REGULAR SESSION

HOUSE BILL NO. 371

97TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE COX.

1137H.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 453.030 and 453.050, RSMo, and to enact in lieu thereof two new sections relating to judicial procedure.

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

Section A. Sections 453.030 and 453.050, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 453.030 and 453.050, to read as follows:

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. In a case involving a child under fourteen years of age, the guardian ad litem shall ascertain the child's wishes and feelings about his or her adoption by conducting an interview or interviews with the child, if appropriate based on the child's age and maturity level, which shall be considered by the court as a factor in determining if the adoption is in the child's best interests.

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) Only the man who:

(a) Is presumed to be the father pursuant to the subdivision (1), (2), or (3) of subsection 1 of section 210.822; or

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.

18 (b) Has filed an action to establish his paternity in a court of competent jurisdiction no
19 later than fifteen days after the birth of the child and has served a copy of the petition on the
20 mother in accordance with section 506.100; or

21 (c) Filed with the putative father registry pursuant to section 192.016 a notice of intent
22 to claim paternity or an acknowledgment of paternity either prior to or within fifteen days after
23 the child's birth, and has filed an action to establish his paternity in a court of competent
24 jurisdiction no later than fifteen days after the birth of the child; or

25 (3) The child's current adoptive parents or other legally recognized mother and father.
26 Upon request by the petitioner and within one business day of such request, the clerk of the local
27 court shall verify whether such written consents have been filed with the court.

28 4. The written consent required in subdivisions (2) and (3) of subsection 3 of this section
29 may be executed before or after the commencement of the adoption proceedings, and shall be
30 **executed in front of a judge or** acknowledged before a notary public. **If consent is executed**
31 **in front of a judge, it shall be the duty of the judge to advise the consenting birth parent**
32 **of the consequences of the consent.** In lieu of such acknowledgment, the signature of the
33 person giving such written consent shall be witnessed by the signatures of at least two adult
34 persons whose signatures and addresses shall be plainly written thereon. The two adult witnesses
35 shall not be the prospective adoptive parents or any attorney representing a party to the adoption
36 proceeding. The notary public or witnesses shall verify the identity of the party signing the
37 consent.

38 5. The written consent required in subdivision (1) of subsection 3 of this section by the
39 birth parent shall not be executed anytime before the child is [forty-eight] **twenty-four** hours old.
40 Such written consent shall be executed in front of a judge or **acknowledged before** a notary
41 public. **If consent is executed in front of a judge, it shall be the duty of the judge to advise**
42 **the consenting party of the consequences of the consent.** In lieu of such acknowledgment,
43 the signature of the person giving such written consent shall be witnessed by the signatures of
44 at least two adult persons who are present at the execution whose signatures and addresses shall
45 be plainly written thereon and who determine and certify that the consent is knowingly and freely
46 given. The two adult witnesses shall not be the prospective adoptive parents or any attorney
47 representing a party to the adoption proceeding. The notary public or witnesses shall verify the
48 identity of the party signing the consent.

49 6. [The written consents shall be reviewed and, if found to be in compliance with this
50 section, approved by the court within three business days of such consents being presented to the
51 court. Upon review, in lieu of approving the consent within three business days, the court may
52 set a date for a prompt evidentiary hearing upon notice to the parties. Failure to review and
53 approve the written consent within three business days shall not void the consent, but a party may

54 seek a writ of mandamus from the appropriate court, unless an evidentiary hearing has been set
55 by the court pursuant to this subsection.

56 7. The written consent required in subsection 3 of this section may be withdrawn anytime
57 until it has been reviewed and accepted by a judge.

58 **8.] A consent is final when executed, unless the consenting party, prior to a final**
59 **decree of adoption, alleges and proves by clear and convincing evidence that the consent**
60 **was not freely and voluntarily given. The burden of proving the consent was not freely and**
61 **voluntarily given shall rest with the consenting party. Consents in all cases shall have been**
62 **executed not more than six months prior to the date the petition for adoption is filed.**

63 7. A consent form shall be developed through rules and regulations promulgated by the
64 department of social services. No rule or portion of a rule promulgated under the authority of
65 this section shall become effective unless it has been promulgated pursuant to the provisions of
66 chapter 536. If a written consent is obtained after August 28, 1997, but prior to the development
67 of a consent form by the department and the written consent complies with the provisions of
68 subsection [9] 8 of this section, such written consent shall be deemed valid.

69 [9.] 8. However, the consent form must specify that:

70 (1) The birth parent understands the importance of identifying all possible fathers of the
71 child and may provide the names of all such persons; and

72 (2) The birth parent understands that if he denies paternity, but consents to the adoption,
73 he waives any future interest in the child.

74 [10.] 9. The written consent to adoption required by subsection 3 and executed through
75 procedures set forth in subsection 5 of this section shall be valid and effective even though the
76 parent consenting was under eighteen years of age, if such parent was represented by a guardian
77 ad litem, at the time of the execution thereof.

78 [11.] 10. Where the person sought to be adopted is eighteen years of age or older, his **or**
79 **her** written consent alone to his **or her** adoption shall be sufficient.

80 [12.] 11. A birth parent, including a birth parent less than eighteen years of age, shall
81 have the right to legal representation and payment of any reasonable legal fees incurred
82 throughout the adoption process. In addition, the court may appoint an attorney to represent a
83 birth parent if:

84 (1) A birth parent requests representation;

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

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

88 [13.] 12. Except in cases where the court determines that the adoptive parents are unable
89 to pay reasonable attorney fees and appoints pro bono counsel for the birth parents, the court

90 shall order the costs of the attorney fees incurred pursuant to subsection [12] **11** of this section
91 to be paid by the prospective adoptive parents or the child-placing agency.

453.050. 1. The juvenile court may, upon application, permit a parent to waive the
2 necessity of [his] **such person's** consent to a future adoption of the child. However, that
3 approval cannot be granted until the child is at least [two days] **twenty-four hours** old.

4 2. The waiver of consent may be executed before or after the institution of the adoption
5 proceedings, and shall be **executed in front of a judge or** acknowledged before a notary public,
6 or in lieu of such acknowledgment, the signature of the person giving such written consent shall
7 be witnessed by the signatures of at least two adult persons whose addresses shall be plainly
8 written thereon. **If waiver of consent is executed in front of a judge, it shall be the duty of**
9 **the judge to advise the consenting party of the consequences of the waiver of consent.**

10 3. A waiver of consent shall be valid and effective even though the parent waiving
11 consent was under eighteen years of age at the time of the execution thereof.

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