

FIRST REGULAR SESSION

HOUSE BILL NO. 1031

94TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES ROBINSON (Sponsor), FALLERT, HODGES, STORCH,
RUCKER, TALBOY, DONNELLY, McCLANAHAN, KUESSNER, TILLEY,
AULL AND CASEY (Co-sponsors).

Read 1st time March 1, 2007 and copies ordered printed.

D. ADAM CRUMBLISS, Chief Clerk

1868L.031

AN ACT

To repeal sections 211.031 and 211.447, RSMo, and to enact in lieu thereof three new sections relating to foster care.

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

Section A. Sections 211.031 and 211.447, RSMo, are repealed and three new sections
2 enacted in lieu thereof, to be known as sections 135.342, 211.031, and 211.447, to read as
3 follows:

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

- 2 **(1) "Department", the department of revenue;**
3 **(2) "Director", the director of the department of revenue;**
4 **(3) "Tax liability", the tax due under chapter 143, RSMo, other than taxes withheld**
5 **under sections 143.191 to 143.265, RSMo.**

6 **2. Any person residing in this state who legally adopts a child who is in foster care**
7 **in this state shall be eligible to receive a tax credit of up to ten thousand dollars for**
8 **nonrecurring adoption expenses for each child adopted that may be applied to taxes due**
9 **under chapter 143, RSMo. Any business entity providing funds to an employee to enable**
10 **that employee to legally adopt a foster child shall be eligible to receive a tax credit of up to**
11 **ten thousand dollars for nonrecurring adoption expenses for each child adopted that may**

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.

12 be applied to taxes due under such business entity's state tax liability, except that only one
13 ten thousand dollar credit is available for each foster child that is adopted.

14 **3. Individuals may claim a tax credit for their total nonrecurring adoption expenses**
15 **in each year that the expenses are incurred. A claim for fifty percent of the credit shall be**
16 **allowed when the child is placed in the home. A claim for the remaining fifty percent shall**
17 **be allowed when the adoption is final. The total of these tax credits shall not exceed the**
18 **maximum limit of ten thousand dollars per child. The cumulative amount of tax credits**
19 **which may be claimed by taxpayers claiming the credit for nonrecurring adoption expenses**
20 **in any one fiscal year shall not exceed two million dollars.**

21 **4. Notwithstanding any provision of law to the contrary, any individual may assign,**
22 **transfer or sell tax credits allowed in this section. Any sale of tax credits claimed under**
23 **this section shall be at a discount rate of seventy-five percent or greater of the amount sold.**

24 **5. The department may promulgate such rules as are necessary to administer the**
25 **provisions of this section. Any rule or portion of a rule, as that term is defined in section**
26 **536.010, RSMo, that is created under the authority delegated in this section shall become**
27 **effective only if it complies with and is subject to all of the provisions of chapter 536,**
28 **RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are**
29 **nonseverable and if any of the powers vested with the general assembly pursuant to**
30 **chapter 536, RSMo, to review, to delay the effective date, or to disapprove and annul a rule**
31 **are subsequently held unconstitutional, then the grant of rulemaking authority and any**
32 **rule proposed or adopted after August 28, 2007, shall be invalid and void.**

33 **6. To the extent this section conflicts with other laws, the provisions of this section**
34 **shall prevail. This section shall not be subject to the provisions of sections 23.250 to 23.298,**
35 **RSMo.**

211.031. 1. Except as otherwise provided in this chapter, the juvenile court or the family
2 court in circuits that have a family court as provided in sections 487.010 to 487.190, RSMo, shall
3 have exclusive original jurisdiction in proceedings:

4 (1) Involving any child or person seventeen years of age who may be a resident of or
5 found within the county and who is alleged to be in need of care and treatment because:

6 (a) The parents, or other persons legally responsible for the care and support of the child
7 or person seventeen years of age, neglect or refuse to provide proper support, education which
8 is required by law, medical, surgical or other care necessary for his or her well-being; except that
9 reliance by a parent, guardian or custodian upon remedial treatment other than medical or
10 surgical treatment for a child or person seventeen years of age shall not be construed as neglect
11 when the treatment is recognized or permitted pursuant to the laws of this state;

- 12 (b) The child or person seventeen years of age is otherwise without proper care, custody
13 or support; or
- 14 (c) The child or person seventeen years of age was living in a room, building or other
15 structure at the time such dwelling was found by a court of competent jurisdiction to be a public
16 nuisance pursuant to section 195.130, RSMo;
- 17 (d) The child or person seventeen years of age is a child in need of mental health services
18 and the parent, guardian or custodian is unable to afford or access appropriate mental health
19 treatment or care for the child;
- 20 (2) Involving any child who may be a resident of or found within the county and who is
21 alleged to be in need of care and treatment because:
- 22 (a) The child while subject to compulsory school attendance is repeatedly and without
23 justification absent from school; or
- 24 (b) The child disobeys the reasonable and lawful directions of his or her parents or other
25 custodian and is beyond their control; or
- 26 (c) The child is habitually absent from his or her home without sufficient cause,
27 permission, or justification; or
- 28 (d) The behavior or associations of the child are otherwise injurious to his or her welfare
29 or to the welfare of others; or
- 30 (e) The child is charged with an offense not classified as criminal, or with an offense
31 applicable only to children; except that, the juvenile court shall not have jurisdiction over any
32 child fifteen and one-half years of age who is alleged to have violated a state or municipal traffic
33 ordinance or regulation, the violation of which does not constitute a felony, or any child who is
34 alleged to have violated a state or municipal ordinance or regulation prohibiting possession or
35 use of any tobacco product;
- 36 (3) Involving any child who is alleged to have violated a state law or municipal
37 ordinance, or any person who is alleged to have violated a state law or municipal ordinance prior
38 to attaining the age of seventeen years, in which cases jurisdiction may be taken by the court of
39 the circuit in which the child or person resides or may be found or in which the violation is
40 alleged to have occurred; except that, the juvenile court shall not have jurisdiction over any child
41 fifteen and one-half years of age who is alleged to have violated a state or municipal traffic
42 ordinance or regulation, the violation of which does not constitute a felony, and except that the
43 juvenile court shall have concurrent jurisdiction with the municipal court over any child who is
44 alleged to have violated a municipal curfew ordinance, and except that the juvenile court shall
45 have concurrent jurisdiction with the circuit court on any child who is alleged to have violated
46 a state or municipal ordinance or regulation prohibiting possession or use of any tobacco product;
- 47 (4) For the adoption of a person;

48 (5) For the commitment of a child or person seventeen years of age to the guardianship
49 of the department of social services as provided by law.

50 2. Transfer of a matter, proceeding, jurisdiction or supervision for a child or person
51 seventeen years of age who resides in a county of this state shall be made as follows:

52 (1) Prior to the filing of a petition and upon request of any party or at the discretion of
53 the juvenile officer, the matter in the interest of a child or person seventeen years of age may be
54 transferred by the juvenile officer, with the prior consent of the juvenile officer of the receiving
55 court, to the county of the child's residence or the residence of the person seventeen years of age
56 for future action;

57 (2) Upon the motion of any party or on its own motion prior to final disposition on the
58 pending matter, the court in which a proceeding is commenced may transfer the proceeding of
59 a child or person seventeen years of age to the court located in the county of the child's residence
60 or the residence of the person seventeen years of age, or the county in which the offense pursuant
61 to subdivision (3) of subsection 1 of this section is alleged to have occurred for further action;

62 (3) Upon motion of any party or on its own motion, the court in which jurisdiction has
63 been taken pursuant to subsection 1 of this section may at any time thereafter transfer jurisdiction
64 of a child or person seventeen years of age to the court located in the county of the child's
65 residence or the residence of the person seventeen years of age for further action with the prior
66 consent of the receiving court;

67 (4) Upon motion of any party or upon its own motion at any time following a judgment
68 of disposition or treatment pursuant to section 211.181, the court having jurisdiction of the cause
69 may place the child or person seventeen years of age under the supervision of another juvenile
70 court within or without the state pursuant to section 210.570, RSMo, with the consent of the
71 receiving court;

72 (5) Upon motion of any child or person seventeen years of age or his or her parent, the
73 court having jurisdiction shall grant one change of judge pursuant to Missouri Supreme Court
74 Rules;

75 (6) Upon the transfer of any matter, proceeding, jurisdiction or supervision of a child or
76 person seventeen years of age, certified copies of all legal and social documents and records
77 pertaining to the case on file with the clerk of the transferring juvenile court shall accompany the
78 transfer.

79 3. In any proceeding involving any child or person seventeen years of age taken into
80 custody in a county other than the county of the child's residence or the residence of a person
81 seventeen years of age, the juvenile court of the county of the child's residence or the residence
82 of a person seventeen years of age shall be notified of such taking into custody within
83 seventy-two hours.

84 4. When an investigation by a juvenile officer pursuant to this section reveals that the
85 only basis for action involves an alleged violation of section 167.031, RSMo, involving a child
86 who alleges to be home schooled, the juvenile officer shall contact a parent or parents of such
87 child to verify that the child is being home schooled and not in violation of section 167.031,
88 RSMo, before making a report of such a violation. Any report of a violation of section 167.031,
89 RSMo, made by a juvenile officer regarding a child who is being home schooled shall be made
90 to the prosecuting attorney of the county where the child legally resides.

91 **5. Notwithstanding the provisions of subsection 2 of this section, any child subject**
92 **to the jurisdiction of the juvenile court under subdivision (1) of subsection 1 of this section**
93 **who has been placed in a foster home shall not be relocated based solely on the relocation**
94 **of the child's parent or parents.**

211.447. 1. Any information that could justify the filing of a petition to terminate
2 parental rights may be referred to the juvenile officer by any person. The juvenile officer shall
3 make a preliminary inquiry and if it does not appear to the juvenile officer that a petition should
4 be filed, such officer shall so notify the informant in writing within thirty days of the referral.
5 Such notification shall include the reasons that the petition will not be filed. Thereupon, the
6 informant may bring the matter directly to the attention of the judge of the juvenile court by
7 presenting the information in writing, and if it appears to the judge that the information could
8 justify the filing of a petition, the judge may order the juvenile officer to take further action,
9 including making a further preliminary inquiry or filing a petition.

10 2. Except as provided for in subsection 3 of this section, a petition to terminate the
11 parental rights of the child's parent or parents shall be filed by the juvenile officer or the division,
12 or if such a petition has been filed by another party, the juvenile officer or the division shall seek
13 to be joined as a party to the petition, when:

14 (1) Information available to the juvenile officer or the division establishes that the child
15 has been in foster care for [at least fifteen of the most recent twenty-two months] **one year**; or

16 (2) A court of competent jurisdiction has determined the child to be an abandoned infant.
17 For purposes of this subdivision, an "infant" means any child one year of age or under at the time
18 of filing of the petition. The court may find that an infant has been abandoned if:

19 (a) The parent has left the child under circumstances that the identity of the child was
20 unknown and could not be ascertained, despite diligent searching, and the parent has not come
21 forward to claim the child; or

22 (b) The parent has, without good cause, left the child without any provision for parental
23 support and without making arrangements to visit or communicate with the child, although able
24 to do so; or

25 (3) A court of competent jurisdiction has determined that the parent has:

- 26 (a) Committed murder of another child of the parent; or
27 (b) Committed voluntary manslaughter of another child of the parent; or
28 (c) Aided or abetted, attempted, conspired or solicited to commit such a murder or
29 voluntary manslaughter; or
30 (d) Committed a felony assault that resulted in serious bodily injury to the child or to
31 another child of the parent.
- 32 3. If grounds exist for termination of parental rights pursuant to subsection 2 of this
33 section, the juvenile officer or the division may, but is not required to, file a petition to terminate
34 the parental rights of the child's parent or parents if:
- 35 (1) The child is being cared for by a relative; or
36 (2) There exists a compelling reason for determining that filing such a petition would
37 not be in the best interest of the child, as documented in the permanency plan which shall be
38 made available for court review; or
39 (3) The family of the child has not been provided such services as provided for in section
40 211.183.
- 41 4. The juvenile officer or the division may file a petition to terminate the parental rights
42 of the child's parent when it appears that one or more of the following grounds for termination
43 exist:
- 44 (1) The child has been abandoned. For purposes of this subdivision a "child" means any
45 child over one year of age at the time of filing of the petition. The court shall find that the child
46 has been abandoned if, for a period of six months or longer:
- 47 (a) The parent has left the child under such circumstances that the identity of the child
48 was unknown and could not be ascertained, despite diligent searching, and the parent has not
49 come forward to claim the child; or
50 (b) The parent has, without good cause, left the child without any provision for parental
51 support and without making arrangements to visit or communicate with the child, although able
52 to do so;
- 53 (2) The child has been abused or neglected. In determining whether to terminate parental
54 rights pursuant to this subdivision, the court shall consider and make findings on the following
55 conditions or acts of the parent:
- 56 (a) A mental condition which is shown by competent evidence either to be permanent
57 or such that there is no reasonable likelihood that the condition can be reversed and which
58 renders the parent unable to knowingly provide the child the necessary care, custody and control;
59 (b) Chemical dependency which prevents the parent from consistently providing the
60 necessary care, custody and control of the child and which cannot be treated so as to enable the
61 parent to consistently provide such care, custody and control;

62 (c) A severe act or recurrent acts of physical, emotional or sexual abuse toward the child
63 or any child in the family by the parent, including an act of incest, or by another under
64 circumstances that indicate that the parent knew or should have known that such acts were being
65 committed toward the child or any child in the family; or

66 (d) Repeated or continuous failure by the parent, although physically or financially able,
67 to provide the child with adequate food, clothing, shelter, or education as defined by law, or other
68 care and control necessary for the child's physical, mental, or emotional health and development;

69 (3) The child has been under the jurisdiction of the juvenile court for a period of one
70 year, and the court finds that the conditions which led to the assumption of jurisdiction still
71 persist, or conditions of a potentially harmful nature continue to exist, that there is little
72 likelihood that those conditions will be remedied at an early date so that the child can be returned
73 to the parent in the near future, or the continuation of the parent-child relationship greatly
74 diminishes the child's prospects for early integration into a stable and permanent home. In
75 determining whether to terminate parental rights under this subdivision, the court shall consider
76 and make findings on the following:

77 (a) The terms of a social service plan entered into by the parent and the division and the
78 extent to which the parties have made progress in complying with those terms;

79 (b) The success or failure of the efforts of the juvenile officer, the division or other
80 agency to aid the parent on a continuing basis in adjusting his circumstances or conduct to
81 provide a proper home for the child;

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

85 (d) Chemical dependency which prevents the parent from consistently providing the
86 necessary care, custody and control over the child and which cannot be treated so as to enable
87 the parent to consistently provide such care, custody and control; or

88 (4) The parent has been found guilty or pled guilty to a felony violation of chapter 566,
89 RSMo, when the child or any child in the family was a victim, or a violation of section 568.020,
90 RSMo, when the child or any child in the family was a victim. As used in this subdivision, a
91 "child" means any person who was under eighteen years of age at the time of the crime and who
92 resided with such parent or was related within the third degree of consanguinity or affinity to
93 such parent; or

94 (5) The child was conceived and born as a result of an act of forcible rape. When the
95 biological father has pled guilty to, or is convicted of, the forcible rape of the birth mother, such
96 a plea or conviction shall be conclusive evidence supporting the termination of the biological
97 father's parental rights; or

(6) The parent is unfit to be a party to the parent and child relationship because of a consistent pattern of committing a specific abuse, including but not limited to, abuses as defined in section 455.010, RSMo, child abuse or drug abuse before the child or of specific conditions directly relating to the parent and child relationship either of which are determined by the court to be of a duration or nature that renders the parent unable, for the reasonably foreseeable future, to care appropriately for the ongoing physical, mental or emotional needs of the child. It is presumed that a parent is unfit to be a party to the parent-child relationship upon a showing that within a three-year period immediately prior to the termination adjudication, the parent's parental rights to one or more other children were involuntarily terminated pursuant to subsection 2 or 3 of this section or subdivisions (1), (2), (3) or (4) of subsection 4 of this section or similar laws of other states; **or**

(7) The parent has, without good cause, failed to have contact with the child for a period of twelve months; or

(8) The parent has at least two other children in foster care at the time of birth of the child.

5. The juvenile court may terminate the rights of a parent to a child upon a petition filed by the juvenile officer or the division, or in adoption cases, by a prospective parent, if the court finds that the termination is in the best interest of the child and when it appears by clear, cogent and convincing evidence that grounds exist for termination pursuant to subsection 2, 3 or 4 of this section.

6. When considering whether to terminate the parent-child relationship pursuant to subsection 2 or 3 of this section or subdivision (1), (2), (3) or (4) of subsection 4 of this section, the court shall evaluate and make findings on the following factors, when appropriate and applicable to the case:

(1) The emotional ties to the birth parent;

(2) The extent to which the parent has maintained regular visitation or other contact with the child;

(3) The extent of payment by the parent for the cost of care and maintenance of the child when financially able to do so including the time that the child is in the custody of the division or other child-placing agency;

(4) Whether additional services would be likely to bring about lasting parental adjustment enabling a return of the child to the parent within an ascertainable period of time;

(5) The parent's disinterest in or lack of commitment to the child;

(6) The conviction of the parent of a felony offense that the court finds is of such a nature that the child will be deprived of a stable home for a period of years; provided, however, that incarceration in and of itself shall not be grounds for termination of parental rights;

134 (7) Deliberate acts of the parent or acts of another of which the parent knew or should
135 have known that subjects the child to a substantial risk of physical or mental harm.

136 7. The court may attach little or no weight to infrequent visitations, communications, or
137 contributions. It is irrelevant in a termination proceeding that the maintenance of the
138 parent-child relationship may serve as an inducement for the parent's rehabilitation.

139 8. In actions for adoption pursuant to chapter 453, RSMo, the court may hear and
140 determine the issues raised in a petition for adoption containing a prayer for termination of
141 parental rights filed with the same effect as a petition permitted pursuant to subsection 2, 3 or
142 4 of this section.

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