

SECOND REGULAR SESSION

[PERFECTED]

# HOUSE BILL NO. 1572

## 94TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE FRANZ.

Read 1st time January 9, 2008 and copies ordered printed.

Read 2nd time January 10, 2008 and referred to the Special Committee on Family Services January 24, 2008.

Reported from the Special Committee on Family Services February 13, 2008 with the recommendation that the bill Do Pass by Consent. Referred to the Committee on Rules pursuant to Rule 25(21)(f).

Reported from the Committee on Rules February 21, 2008 with recommendation that the bill Do Pass by Consent with no time limit for debate.

Perfectured by Consent February 29, 2008.

D. ADAM CRUMBLISS, Chief Clerk

4170L.01P

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## 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.

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*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Section A. Sections 211.442, 211.444, 452.445, 452.455, 453.015, 453.040, 475.010, 2 and 475.070, RSMo, are repealed and eight new sections enacted in lieu thereof, to be known 3 as sections 211.442, 211.444, 452.445, 452.455, 453.015, 453.040, 475.010, and 475.070, to 4 read as follows:

211.442. As used in sections 211.442 to 211.487, unless the context clearly indicates 2 otherwise, the following terms mean:

- 3 (1) "Child", an individual under eighteen years of age;
- 4 (2) "Minor", any person who has not attained the age of eighteen years;

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.

5 (3) "Parent", a biological parent or parents of a child, as well as, the husband of a natural  
6 mother at the time the child was conceived, or a parent or parents of a child by adoption,  
7 including both the mother and the putative father of a child. The putative father of a child shall  
8 have no legal relationship unless he, prior to the entry of a decree under sections 211.442 to  
9 211.487, has acknowledged the child as his own by affirmatively asserting his paternity;

10 (4) **"Unknown father", a person who:**

11 (a) **Is not a presumed father under sections 210.817 to 210.853, RSMo;**

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

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

211.444. 1. The juvenile court may, upon petition of the juvenile officer or a  
2 child-placing agency licensed under sections 210.481 to 210.536, RSMo, in conjunction with a  
3 placement with such agency under subsection 6 of section 453.010, RSMo, or the court before  
4 which a petition for adoption has been filed pursuant to the provisions of chapter 453, RSMo,  
5 terminate the rights of a parent to a child if the court finds that such termination is in the best  
6 interests of the child and the parent has consented in writing to the termination of his or her  
7 parental rights.

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

15 3. The written consent required by subsection 1 of this section shall be valid and  
16 effective only after the child is at least forty-eight hours old and if it complies with the other  
17 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 instructions  
3 providing for the custody of a child, including visitation rights. This term does not include a  
4 decision relating to child support or any other monetary obligation of any person; but the court  
5 shall have the right in any custody determination where jurisdiction is had pursuant to section  
6 452.460 and where it is in the best interest of the child to adjudicate the issue of child support;

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

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

14 (4) "Home state" means the state in which, immediately preceding the filing of custody  
15 proceeding, the child lived with his parents, a parent, an institution; or a person acting as parent,  
16 for at least six consecutive months; or, in the case of a child less than six months old, the state  
17 in which the child lived from birth with any of the persons mentioned. Periods of temporary  
18 absence of any of the named persons are counted as part of the six-month or other period;

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

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

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

23 (a) **Is not a presumed father under sections 210.817 to 210.853, RSMo;**

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

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

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

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

12 3. In any case in which the paternity of a child has been determined by a court of  
13 competent jurisdiction and where the noncustodial parent is delinquent in the payment of child  
14 support in an amount in excess of ten thousand dollars, the custodial parent shall have the right

15 to petition a court of competent jurisdiction for the termination of the parental rights of the  
16 noncustodial parent.

17 4. When a person filing a petition for modification of a child custody decree owes past  
18 due child support to a custodial parent in an amount in excess of ten thousand dollars, such  
19 person shall post a bond in the amount of past due child support owed as ascertained by the  
20 division of child support enforcement or reasonable legal fees of the custodial parent, whichever  
21 is greater, before the filing of the petition. The court shall hold the bond in escrow until the  
22 modification proceedings pursuant to this section have been concluded wherein such bond shall  
23 be transmitted to the division of child support enforcement for disbursement to the custodial  
24 parent.

453.015. As used in sections 453.010 to 453.400, the following terms mean:

2 (1) "Minor" or "child", any person who has not attained the age of eighteen years or any  
3 person in the custody of the division of family services who has not attained the age of  
4 twenty-one;

5 (2) "Parent", a birth parent or parents of a child, including the putative father of the child,  
6 as well as the husband of a birth mother at the time the child was conceived, or a parent or  
7 parents of a child by adoption. The putative father shall have no legal relationship unless he has  
8 acknowledged the child as his own by affirmatively asserting his paternity;

9 (3) "Putative father", the alleged or presumed father of a child including a person who  
10 has filed a notice of intent to claim paternity with the putative father registry established in  
11 section 192.016, RSMo, and a person who has filed a voluntary acknowledgment of paternity  
12 pursuant to section 193.087, RSMo; and

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

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

17 (a) Is not a presumed father under sections 210.817 to 210.853, RSMo;

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

20 (c) Has not filed a voluntary acknowledgment of paternity under section 193.087,  
21 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 terminated pursuant to  
3 law, including section 211.444, RSMo, or section 211.447, RSMo, or other similar laws in other  
4 states;

5 (2) A parent of a child who has legally consented to a future adoption of the child;

6           (3) **An unknown father;**

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

9           [(4)] (5) A man who has not been established to be the father and who is not presumed  
10 by law to be the father, and who, after the conception of the child, executes a verified statement  
11 denying paternity and disclaiming any interest in the child and acknowledging that this statement  
12 is irrevocable when executed and follows the consent as set forth in section 453.030;

13           [(5)] (6) A parent or other person who has not executed a consent and who, after proper  
14 service of process, fails to file an answer or make an appearance in a proceeding for adoption or  
15 for termination of parental rights at the time such cause is heard;

16           [(6)] (7) A parent who has a mental condition which is shown by competent evidence  
17 either to be permanent or such that there is no reasonable likelihood that the condition can be  
18 reversed and which renders the parent unable to knowingly provide the child the necessary care,  
19 custody and control;

20           [(7)] (8) A parent who has for a period of at least six months, for a child one year of age  
21 or older, or at least sixty days, for a child under one year of age, immediately prior to the filing  
22 of the petition for adoption, willfully abandoned the child or, for a period of at least six months  
23 immediately prior to the filing of the petition for adoption, willfully, substantially and  
24 continuously neglected to provide him with necessary care and protection;

25           [(8)] (9) A parent whose rights to the child may be terminated for any of the grounds set  
26 forth in section 211.447, RSMo, and whose rights have been terminated after hearing and proof  
27 of such grounds as required by sections 211.442 to 211.487, RSMo. Such petition for  
28 termination may be filed as a count in an adoption petition.

          475.010. When used in this chapter, unless otherwise apparent from the context, the  
2 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 otherwise, before  
5 or after the appointment of a conservator, and liabilities of the estate which arise at or after the  
6 adjudication of disability or after the appointment of a conservator of the estate, including  
7 expenses of the adjudication and of administration. The term does not include demands or  
8 disputes regarding title of the protectee to specific assets alleged to be included in the estate;

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

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

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

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

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

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

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

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

34 (9) "Incapacitated person", one who is unable by reason of any physical or mental  
35 condition to receive and evaluate information or to communicate decisions to such an extent that  
36 he lacks capacity to meet essential requirements for food, clothing, shelter, safety or other care  
37 such that serious physical injury, illness, or disease is likely to occur. The term "incapacitated  
38 person" as used in this chapter includes the term "partially incapacitated person" unless otherwise  
39 specified or apparent from the context;

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

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

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

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

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

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

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

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

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

68 **(a) Is not a presumed father under sections 210.817 to 210.853, RSMo;**

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

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

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

475.070. 1. Before appointing a guardian or conservator for a minor, notice of the  
2 petition therefor shall be served upon the following unless they have signed such petition or have  
3 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 parent whose**  
6 **identity is otherwise unknown and cannot be ascertained at the time of the filing of the**  
7 **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 care and custody  
11 of the minor;

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

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

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

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

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