

SECOND REGULAR SESSION

# HOUSE BILL NO. 1321

## 97TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVES ELLINGER (Sponsor), MIMS, CURTIS, KIRKTON,  
MCCANN BEATTY, NICHOLS, SCHUPP AND GARDNER (Co-sponsors).

4107L.021

D. ADAM CRUMBLISS, Chief Clerk

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### AN ACT

To repeal sections 211.444 and 453.030, RSMo, and to enact in lieu thereof two new sections relating to adoption.

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

Section A. Sections 211.444 and 453.030, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 211.444 and 453.030, to read as follows:

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

2. The written consent required by subsection 1 of this section may be executed before or after the institution of the proceedings and shall be acknowledged before a notary public. In lieu of such acknowledgment, the signature of the person giving the written consent shall be witnessed by 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 parents. The notary public or witnesses shall verify the identity of the party signing the consent.

3. The written consent required by subsection 1 of this section shall be valid and effective only after the child is at least [forty-eight] **seventy-two** hours old and if it complies with the other requirements of section 453.030.

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.

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

(b) 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 and has served a copy of the petition on the mother in accordance with section 506.100; or

(c) Filed with the putative father registry pursuant to section 192.016 a notice of intent to claim paternity or an acknowledgment of paternity either prior to or within fifteen days after the child's birth, and 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. Upon request by the petitioner and within one business day of such request, the clerk of the local court shall verify whether such written consents have been filed with the court.

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 executed in front of a judge or acknowledged before a notary public. If consent is executed in front of a judge, it shall be the duty of the judge to advise the consenting birth parent of the consequences of the consent. 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 or any attorney representing a party to the adoption proceeding. The notary public or witnesses shall verify the identity of the party signing the consent.

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

48           6. A consent is final when executed, unless the consenting party, prior to a final decree  
49 of adoption, alleges and proves by clear and convincing evidence that the consent was not freely  
50 and voluntarily given. The burden of proving the consent was not freely and voluntarily given  
51 shall rest with the consenting party. Consents in all cases shall have been executed not more  
52 than six months prior to the date the petition for adoption is filed.

53           7. A consent form shall be developed through rules and regulations promulgated by the  
54 department of social services. No rule or portion of a rule promulgated under the authority of  
55 this section shall become effective unless it has been promulgated pursuant to the provisions of  
56 chapter 536. If a written consent is obtained after August 28, 1997, but prior to the development  
57 of a consent form by the department and the written consent complies with the provisions of  
58 subsection 8 of this section, such written consent shall be deemed valid.

59           8. However, the consent form must specify that:

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

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

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

68           10. Where the person sought to be adopted is eighteen years of age or older, his or her  
69 written consent alone to his or her adoption shall be sufficient.

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

- 73           (1) A birth parent requests representation;
- 74           (2) The court finds that hiring an attorney to represent such birth parent would cause a
- 75 financial hardship for the birth parent; and
- 76           (3) The birth parent is not already represented by counsel.
- 77           12. Except in cases where the court determines that the adoptive parents are unable to
- 78 pay reasonable attorney fees and appoints pro bono counsel for the birth parents, the court shall
- 79 order the costs of the attorney fees incurred pursuant to subsection 11 of this section to be paid
- 80 by the prospective adoptive parents or the child-placing agency.

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