

FIRST REGULAR SESSION

HOUSE BILL NO. 139

100TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE ELLINGTON.

0487H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal section 453.030, RSMo, and to enact in lieu thereof one new section relating to fathers' parental rights.

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

Section A. Section 453.030, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 453.030, to read as follows: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;

(2) Any man who:

(a) Is presumed to be the father pursuant to 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]~~ **sixty** days after the birth of the child and has served a copy of the petition on
20 the 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]~~ **sixty** days
23 after the child's birth, and has filed an action to establish his paternity in a court of competent
24 jurisdiction no later than ~~[fifteen]~~ **sixty** days after the birth of the child; and

25 (3) The child's current adoptive parents or other legally recognized mother and father.

26

27 Upon request by the petitioner and within one business day of such request, the clerk of the local
28 court shall verify whether such written consents have been filed with the court.

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

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

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

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

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

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

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

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

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

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

78 (1) A birth parent requests representation;

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

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

82 12. Except in cases where the court determines that the adoptive parents are unable to
83 pay reasonable attorney fees and appoints pro bono counsel for the birth parents, the court shall
84 order the costs of the attorney fees incurred pursuant to subsection 11 of this section to be paid
85 by the prospective adoptive parents or the child-placing agency.

86 13. The court shall receive and acknowledge a written consent to adoption properly
87 executed by a birth parent under this section when such consent is in the best interests of the
88 child.