

FIRST REGULAR SESSION

HOUSE BILL NO. 546

98TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE SPENCER

1319H.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 453.010, 453.026, 453.030, 453.077, 453.080, and 453.110 as enacted by house revision bill no. 1299 merged with senate bill no. 491, ninety-seventh general assembly, second regular session, and section 453.110 as enacted by house revision bill no. 1299, ninety-seventh general assembly, second regular session, and to enact in lieu thereof seven new sections relating to adoptions, with penalty provisions.

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

Section A. Sections 453.010, 453.026, 453.030, 453.077, 453.080, and 453.110 as
2 enacted by house revision bill no. 1299 merged with senate bill no. 491, ninety-seventh general
3 assembly, second regular session, and section 453.110 as enacted by house revision bill no. 1299,
4 ninety-seventh general assembly, second regular session, are repealed and seven new sections
5 enacted in lieu thereof, to be known as sections 453.010, 453.026, 453.030, 453.077, 453.080,
6 453.110, and 453.700, to read as follows:

453.010. 1. Any person desiring to adopt another person as his or her child shall petition
2 the juvenile division of the circuit court of the county in which:

- 3 (1) The person seeking to adopt resides **or in an adjacent county**;
- 4 (2) The child sought to be adopted was born **or in an adjacent county**;
- 5 (3) The child is located at the time of the filing of the petition **or in an adjacent county**;

6 [or]

- 7 (4) Either birth person resides **or in an adjacent county**; or
- 8 (5) **The Missouri-licensed adoption agency or intermediary has offices.**

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.

9 2. A petition to adopt shall not be dismissed or denied on the grounds that the petitioner
10 is not domiciled or does not reside in any of the venues set forth in subdivision (2), (3) or (4) of
11 subsection 1 of this section.

12 3. If the person sought to be adopted is a child who is under the prior and continuing
13 jurisdiction of a court pursuant to the provision of chapter 211, any person desiring to adopt such
14 person as his or her child shall petition the juvenile division of the circuit court which has
15 jurisdiction over the child for permission to adopt such person as his or her child. Upon receipt
16 of a motion from the petitioner and consent of the receiving court, the juvenile division of the
17 circuit court which has jurisdiction over the child may transfer jurisdiction to the juvenile
18 division of a circuit court within any of the alternative venues set forth in subsection 1 of this
19 section.

20 4. If the petitioner has a spouse living and competent to join in the petition, such spouse
21 may join therein, and in such case the adoption shall be by them jointly. If such a spouse does
22 not join the petition the court in its discretion may, after a hearing, order such joinder, and if such
23 order is not complied with may dismiss the petition.

24 5. Upon receipt of a properly filed petition, [a court, as defined in this section,] **the**
25 **juvenile division of such circuit court** shall hear such petition in a timely fashion. A court or
26 any child-placing agency shall not deny or delay the placement of a child for adoption when an
27 approved family is available, regardless of the approved family's residence or domicile. The
28 court shall expedite the placement of a child for adoption pursuant to subsection 3 of this section.

29 6. A licensed child-placing agency may file a petition for transfer of custody if a birth
30 parent consents in writing by power of attorney for placement of a minor child, a consent to
31 adoption, or any other document which evidences a desire to place the child with the licensed
32 child-placing agency for the purposes of transfer of custody of the child to the licensed
33 child-placing agency. The written consent obtained from the birth parent shall strictly comply
34 with section 453.030.

453.026. 1. As early as is practical before a prospective adoptive parent accepts physical
2 custody of a child **six months of age or older**, the person placing the child for adoption, as
3 authorized by section 453.014, shall furnish to the court, the guardian ad litem and the
4 prospective adoptive parent a written report regarding the child.

5 2. The person placing the child shall not be held liable for incorrect information as
6 provided by others or unintentional errors when making the written report.

7 3. The children's division of the department of social services shall promulgate rules and
8 regulations regarding all written information that shall be furnished to the court, the guardian ad
9 litem and the prospective adoptive parent.

10 4. No rule or portion of a rule promulgated under the authority of this section shall
11 become effective unless it has been promulgated pursuant to the provisions of section 536.024.

 453.030. 1. In all cases the approval of the court of the adoption shall be required and
2 such approval shall be given or withheld as the welfare of the person sought to be adopted may,
3 in the opinion of the court, demand.

4 2. The written consent of the person to be adopted shall be required in all cases where
5 the person sought to be adopted is fourteen years of age or older, except where the court finds
6 that such child has not sufficient mental capacity to give the same. In a case involving a child
7 under fourteen years of age, the guardian ad litem shall ascertain the child's wishes and feelings
8 about his or her adoption by conducting an interview or interviews with the child, if appropriate
9 based on the child's age and maturity level, which shall be considered by the court as a factor in
10 determining if the adoption is in the child's best interests.

11 3. With the exceptions specifically enumerated in section 453.040, when the person
12 sought to be adopted is under the age of eighteen years, the written consent of the following
13 persons shall be required and filed in and made a part of the files and record of the proceeding:

14 (1) The mother of the child; and

15 (2) Only the man who:

16 (a) Is presumed to be the father pursuant to the subdivision (1), (2), or (3) of subsection
17 1 of section 210.822; or

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 in
31 front of a judge, it shall be the duty of the judge to advise the consenting birth parent of the
32 consequences of the consent. In lieu of such acknowledgment, the signature of the person giving
33 such written consent shall be witnessed by the signatures of at least two adult persons whose
34 signatures and addresses shall be plainly written thereon. The two adult witnesses shall not be

35 the prospective adoptive parents or any attorney representing a party to the adoption proceeding.
36 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] **twenty-four** 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 **or an attorney**, 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.

453.077. 1. When a child has been placed with the petitioner for the [required
2 six-month] **three-month** placement period **under section 453.080**, the person conducting the
3 preplacement assessment of the adoption or other persons authorized to conduct assessments
4 pursuant to section 453.070 shall provide the court with a postplacement assessment. The
5 specific content of which shall be determined by rule by the children's division of the department
6 of social services. The postplacement assessment shall include an update of the preplacement
7 assessment which was submitted to the court pursuant to section 453.070, and a report on the
8 emotional, physical and psychological status of the child. If an assessment is conducted after
9 August 28, 1997, but prior to the promulgation of rules and regulations by the department
10 concerning the contents of such assessment, any discrepancy between the contents of the actual
11 assessment and the contents of the assessment required by department rule shall not be used as
12 the sole basis for invalidating an adoption.

13 2. No rule or portion of a rule promulgated pursuant to the authority of this section shall
14 become effective unless it has been promulgated pursuant to the provisions of chapter 536.

453.080. 1. The court shall conduct a hearing to determine whether the adoption shall
2 be finalized. **Out of state adoptive petitioners may appear by their attorney and by video
3 conference rather than in person.** During such hearing, the court shall ascertain whether:

4 (1) The person sought to be adopted, if a child, has been in the lawful and actual custody
5 of the petitioner for a period of at least [six] **three** months prior to entry of the adoption decree;
6 except that the [six-month] **three-month** period [may] **shall** be waived **at the request of the
7 petitioner** if the person sought to be adopted is a child **under six months of age at the time the
8 petitioner obtains lawful and actual custody of the child or is a child** who is under the prior
9 and continuing jurisdiction of a court pursuant to chapter 211 and the person desiring to adopt
10 the child is the child's current foster parent. "Lawful and actual custody" shall include a transfer

11 of custody pursuant to the laws of this state, another state, a territory of the United States, or
12 another country;

13 (2) The court has received and reviewed a postplacement assessment on the monthly
14 contacts with the adoptive family pursuant to section 453.077, except for good cause shown in
15 the case of a child adopted from a foreign country;

16 (3) The court has received and reviewed an updated financial affidavit;

17 (4) The court has received the recommendations of the guardian ad litem and has
18 received and reviewed the recommendations of the person placing the child, the person making
19 the assessment and the person making the postplacement assessment;

20 (5) [There is compliance with the uniform child custody jurisdiction act, sections
21 452.440 to 452.550;

22 (6)] There is compliance with the Indian Child Welfare Act, if applicable;

23 [(7)] (6) There is compliance with the Interstate Compact on the Placement of Children
24 pursuant to section 210.620; and

25 [(8)] (7) It is fit and proper that such adoption should be made.

26 2. If a petition for adoption has been filed pursuant to section 453.010 and a transfer of
27 custody has occurred pursuant to section 453.110, the [court may authorize the filing for
28 finalization] **adoption may be finalized** in another state if the adoptive parents are domiciled
29 in that state.

30 3. If the court determines the adoption should be finalized, a [decree] **judgment** shall
31 be issued setting forth the facts and ordering that from the date of the [decree] **judgment** the
32 adoptee shall be for all legal intents and purposes the child of the petitioner or petitioners. The
33 court may decree that the name of the person sought to be adopted be changed, according to the
34 prayer of the petition.

35 4. Before the completion of an adoption, the exchange of information among the parties
36 shall be at the discretion of the parties. Upon completion of an adoption, further contact among
37 the parties shall be at the discretion of the adoptive parents. The court shall not have jurisdiction
38 to deny continuing contact between the adopted person and the birth parent, or an adoptive parent
39 and a birth parent. Additionally, the court shall not have jurisdiction to deny an exchange of
40 identifying information between an adoptive parent and a birth parent.

453.110. 1. No person, agency, organization or institution shall surrender custody of a
2 minor child, or transfer the custody of such a child to another, and no person, agency,
3 organization or institution shall take possession or charge of a minor child so transferred, without
4 first having filed a petition before the circuit court sitting as a juvenile court of the county where
5 the child may be, praying that such surrender or transfer may be made, and having obtained such
6 an order from such court approving or ordering transfer of custody.

7 2. If any such surrender or transfer is made without first obtaining such an order, such
8 court shall, on petition of any public official or interested person, agency, organization or
9 institution, order an investigation and report as described in section 453.070 to be completed by
10 the children's division and shall make such order as to the custody of such child in the best
11 interest of such child.

12 3. Any person who violates the terms of this section is guilty of a class E felony.

13 4. The investigation required by subsection 2 of this section shall be initiated by the
14 children's division within forty-eight hours of the filing of the court order requesting the
15 investigation and report and shall be completed within thirty days. The court shall order the
16 person having custody in violation of the provisions of this section to pay the costs of the
17 investigation and report.

18 5. This section shall not be construed to prohibit any parent, agency, organization or
19 institution from placing a child with another individual for care if the right to supervise the care
20 of the child and to resume custody thereof is retained, **to prohibit a parent from placing a child**
21 **with another individual for care as part of a preadoption placement with such individual**
22 **if the right to supervise the care of the child and to resume custody thereof is retained until**
23 **superseded by any court order regarding the legal or physical custody of the child,** or from
24 placing a child with a licensed foster home within the state through a child-placing agency
25 licensed by this state as part of a preadoption placement.

26 6. After the filing of a petition for the transfer of custody for the purpose of adoption,
27 the court may enter an order of transfer of custody if the court finds all of the following:

28 (1) A family assessment has been made as required in section 453.070 and has been
29 reviewed by the court;

30 (2) A recommendation has been made by the guardian ad litem;

31 (3) A petition for transfer of custody for adoption has been properly filed or an order
32 terminating parental rights has been properly filed;

33 (4) The financial affidavit has been filed as required under section 453.075;

34 (5) The written report regarding the child who is the subject of the petition containing
35 the information has been submitted as required by section 453.026;

36 (6) Compliance with the Indian Child Welfare Act, if applicable; and

37 (7) Compliance with the Interstate Compact on the Placement of Children pursuant to
38 section 210.620.

39 7. A hearing on the transfer of custody for the purpose of adoption is not required if:

40 (1) The conditions set forth in subsection 6 of this section are met;

41 (2) The parties agree and the court grants leave; and

42 (3) Parental rights have been terminated pursuant to section 211.444 or 211.447.

453.110. 1. No person, agency, organization or institution shall surrender custody of a
2 minor child, or transfer the custody of such a child to another, and no person, agency,
3 organization or institution shall take possession or charge of a minor child so transferred, without
4 first having filed a petition before the circuit court sitting as a juvenile court of the county where
5 the child may be, praying that such surrender or transfer may be made, and having obtained such
6 an order from such court approving or ordering transfer of custody.

7 2. If any such surrender or transfer is made without first obtaining such an order, such
8 court shall, on petition of any public official or interested person, agency, organization or
9 institution, order an investigation and report as described in section 453.070 to be completed by
10 the children's division and shall make such order as to the custody of such child in the best
11 interest of such child.

12 3. Any person violating the terms of this section shall be guilty of a class D felony.

13 4. The investigation required by subsection 2 of this section shall be initiated by the
14 children's division within forty-eight hours of the filing of the court order requesting the
15 investigation and report and shall be completed within thirty days. The court shall order the
16 person having custody in violation of the provisions of this section to pay the costs of the
17 investigation and report.

18 5. This section shall not be construed to prohibit any parent, agency, organization or
19 institution from placing a child with another individual for care if the right to supervise the care
20 of the child and to resume custody thereof is retained, **to prohibit a parent from placing a child**
21 **with another individual for care as part of a preadoption placement with such individual**
22 **if the right to supervise the care of the child and to resume custody thereof is retained until**
23 **superseded by any court order regarding the legal or physical custody of the child,** or from
24 placing a child with a licensed foster home within the state through a child-placing agency
25 licensed by this state as part of a preadoption placement.

26 6. After the filing of a petition for the transfer of custody for the purpose of adoption,
27 the court may enter an order of transfer of custody if the court finds all of the following:

28 (1) A family assessment has been made as required in section 453.070 and has been
29 reviewed by the court;

30 (2) A recommendation has been made by the guardian ad litem;

31 (3) A petition for transfer of custody for adoption has been properly filed or an order
32 terminating parental rights has been properly filed;

33 (4) The financial affidavit has been filed as required under section 453.075;

34 (5) The written report regarding the child who is the subject of the petition containing
35 the information has been submitted as required by section 453.026;

36 (6) Compliance with the Indian Child Welfare Act, if applicable; and

37 (7) Compliance with the Interstate Compact on the Placement of Children pursuant to
38 section 210.620.

39 7. A hearing on the transfer of custody for the purpose of adoption is not required if:

40 (1) The conditions set forth in subsection 6 of this section are met;

41 (2) The parties agree and the court grants leave; and

42 (3) Parental rights have been terminated pursuant to section 211.444 or 211.447.

**453.700. 1. Only an attorney licensed to practice law or a child-placing agency
2 licensed under the laws of the state of Missouri may place or cause to be placed an
3 advertisement or listing of the attorney's or agency's telephone number or other contact
4 information in a telephone directory or other advertising distributed within the state of
5 Missouri that states or implies that:**

6 **(1) A child is offered or wanted for adoption; or**

7 **(2) The attorney or agency is able to place, locate, or receive a child for adoption.**

8 **2. A person or entity that publishes a telephone directory or other means of
9 advertising or listing of contact information that is distributed in Missouri may publish an
10 advertisement or listing described in subsection 1 of this section only if the advertisement
11 or contact information contains the following:**

12 **(1) For an attorney licensed to practice law in Missouri, the attorney's current bar
13 number. However, an attorney listing in a telephone director or other listing under an
14 adoption or adoption-related category that only provides the attorney's name, address, and
15 telephone number need not include the attorney's bar number;**

16 **(2) For a child-placing agency licensed under the laws of Missouri, the licensure
17 number on the child-placing agency license. However, an agency listing in a telephone
18 directory or other listing under an adoption or adoption-related category that only
19 provides the agency's name, address, and telephone number need not include the agency's
20 licensure number.**

21 **3. A person who knowingly or intentionally violates the terms of this section shall
22 be guilty of a class A misdemeanor.**

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