

The Judicial Council Family Law Advisory Committee was primarily responsible for the drafting of the adoption and relinquishment act. Enclosed are the advisory committee's comments submitted to the legislature, which were updated to reflect changes made by the interim judiciary committee and the Senate Judiciary Committee. Despite the Revisor's note, due to a lack of funding at that time, the comments were not updated to reflect all the eventual legislative changes. However, also enclosed is a copy of the act which shows legislative departures from the advisory committee's recommendations at the time of enactment in 1990, along with the interim judiciary committee's report to the 1990 Legislature.

The comments below were made in connection with the original proposal of the Family Law Advisory Committee as reflected in 1989 SB 292. Senate Bill 292 was studied and amended by the Interim Judiciary Committee and reintroduced as 1990 SB 431. Senate Bill 431 was subsequently amended by the Senate Judiciary Committee. Additions have been made to the original comments to indicate where amendments by the Interim and Senate Committees have been made.

### INTRODUCTION

During the 1987 session, Senate Bill No. 337 was introduced and referred to the Senate Judiciary Committee. Senate Bill 337 would have made a limited number of substantive changes and partially recodified the adoption statutes. Although no action was taken on Senate Bill 337, it served as the impetus for a study of the adoption laws by the Family Law Advisory Committee. The members of the Family Law Advisory Committee are:

Judge Herbert W. Walton, Olathe  
Constance M. Achterberg, Salina  
Judge Sam Bruner, Olathe  
John Johntz Jr., Olathe  
Dr. Paul C. Laybourne, Lake Quivira  
Phyllis H. Macey, Topeka  
Professor Nancy Maxwell, Topeka  
Judge Jerry Mershon, Manhattan  
Brian J. Moline, Topeka  
Judge Wayne Phillips, Kansas City  
Judith C. Runnels, Topeka

In the course of its study, the advisory committee has received invaluable assistance from Sue McKenna, Peggy Baker and Barbara Stodgell of the Department of Social and Rehabilitation Services and Nancy Woodworth, an attorney with the firm of Stumbo, Stumbo, Hanson & Hendricks.

The proposed act which follows is the result of the advisory committee's study. Consolidation of the adoption and relinquishment statutes has been a primary goal of the committee. In addition to its new sections, the proposed act replaces existing provisions in articles 21 and 22 of chapter 59 and in chapters 38 and 65. In the hope of achieving greater clarity as to the application of particular provisions, the proposed act is divided into areas denominated as general provisions, adoption of minor child and adult adoptions. Additions to or departures from the present provisions are noted in the comments to the individual sections.

*As Amended by Senate Committee*

## **SENATE BILL No. 431**

By Special Committee on Judiciary

Re Proposal No. 31

12-21

12 AN ACT concerning adoption; enacting the Kansas adoption and  
13 relinquishment act; providing that certain health policies and con-  
14 tracts contain coverage with respect to adopted children; amending  
15 K.S.A. 38-1206, 40-2, 102 and 59-2203 and K.S.A. 1989 Supp. 65-  
16 504 and repealing the existing sections; also repealing K.S.A. 38-  
17 113, 38-114, 38-124, 38-125, 38-126, 38-127, 38-128, 59-2101, 59-  
18 2103, 59-2104, 59-2277, 59-2279, 59-2280 and 65-509 and K.S.A.  
19 1989 Supp. 38-1129, 59-2102, 59-2278, 59-2278a, 59-2278b and  
20 59-2278c.

21 *Be it enacted by the Legislature of the State of Kansas:*

22 New Section 1. Sections 1 through 32 shall be known and may  
23 be cited as the Kansas adoption and relinquishment act.  
24

25 New Sec. 2. As used in sections 1 through 32:  
 26 (a) "Adult adoption" means the adoption of an individual who  
 27 has attained the age of majority;  
 28 (b) "agency adoption" means the adoption of a minor child where  
 29 an agency has the authority to consent to the adoption;  
 30 (c) "independent adoption" means the adoption of a minor child  
 31 where the child's parent or parents, legal guardian or nonagency  
 32 person *in loco parentis* has the authority to consent to the adoption;  
 33 but does not include a stepparent adoption;  
 34 (d) "stepparent adoption" means the adoption of a minor child  
 35 by the spouse of a parent with the consent of that parent;  
 36 (e) "residence of a child" and "place where a child resides"  
 37 means:  
 38 (1) The residence of the child's mother if the child's parents are  
 39 not married;  
 40 (2) *the residence of the child's father, if the father has custody*  
 41 *and the child's parents are not married;*  
 42 (3) the residence of the child's father if the child's parents are  
 43 married; or  
 44 (4) the residence of the child's mother if the child's parents  
 45 are married, but the child's mother has established a separate, legal  
 46 residence and the child resides with the mother;  
 47 (f) "agency" means any public or private entity organized pur-  
 48 suant to Kansas law, or organized pursuant to the laws of the ju-  
 49 risdiction where located, having for its purpose the care and  
 50 maintenance of children, being authorized to place children for adop-  
 51 tion, consent to the adoption and to stand *in loco parentis* to such  
 52 children until they are adopted or reach majority; and  
 53 (g) "person *in loco parentis*" means an individual or organization  
 54 vested with the right to consent to the adoption of a child pursuant  
 55 to relinquishment or an order or judgment by a district court of  
 56 competent jurisdiction.  
 57 New Sec. 3. Any adult, or husband and wife jointly, may adopt  
 58 any minor or adult as their child in the manner provided in sections  
 59 1 through 32, except that one spouse cannot do so without the  
 60 consent of the other.

52 Comment

The committee has divided all adoptions into four basic categories. In addition to adult adoptions, there are three categories relating to the adoption of minor children: agency adoptions, independent adoptions and stepparent adoptions. Requirements vary with the type of adoption involved and it is hoped that the mere act of defining the different types of adoptions will aid courts and practitioners in identifying the provisions of law which are relevant to any given adoption.

The committee saw no need to restrict adoption petitioners to Kansas residents as was contemplated by Senate Bill 337. However, where the petitioner is a nonresident, the committee wished to insure that there is an appropriate contact with this state before an adoption can proceed in Kansas. Consequently, the committee requires in section 16 that either the petitioner or the child to be adopted is a resident of Kansas. In the definition in subsection (e), the committee has followed the common law rules for determining a child's residence.

The definition of agency in subsection (f) is intended to cover licensed, private agencies as well as the department of social and rehabilitation services.

The definition in subsection (g) is taken from current K.S.A. 38-124 relating to relinquishments.

53 Comment

This section is identical to K.S.A. 59-2101.

18 New Sec. 4. (a) Consent shall be in writing and shall be ac-  
19 knowledged before a judge of a court of record or before an officer  
20 authorized by law to take acknowledgments. If consent is acknowl-  
21 edged before a judge of a court of record, it shall be the duty of  
22 the court to advise the consenting person on the record of the  
23 consequences of the consent. A consent is final when executed,  
24 unless the consenting party, prior to final decree of adoption, alleges  
25 and proves by clear and convincing evidence that the consent was  
26 not freely and voluntarily given. The burden of proving the consent  
27 was not freely and voluntarily given shall rest with the consenting  
28 party.

29 (b) ~~Consent in all cases shall have been executed no sooner not~~  
30 ~~more than six months prior to the date the petition for adoption is~~  
31 ~~filed.~~

34 Comment

Subsection (a) parallels subsection (c) of K.S.A. 1987 Supp.  
59-2102 with some modifications.

As to consents acknowledged before a judge, the subsection  
imposes on the court the duty to advise the consenting person of  
the consequences of the consent. K.S.A. 38-127 imposes a similar  
duty where the relinquishment of a child to SRS is acknowledged  
before the court. The committee has added the requirement that  
the court carry out this duty on the record.

In In Re Adoption of Baby Girl H, 12 Kan.App.2d 223 (1987),  
a judge acknowledged a consent at the hospital some time within  
approximately one hour of the child's birth. While K.S.A.  
59-2102(c) purportedly makes a consent acknowledged before a  
judge irrevocable, the majority opinion in the Court of Appeals,  
decision found a legislative intent that the judge determine that  
such a consent is freely and voluntarily given and remanded the  
case to the trial court to make findings on this issue. The  
majority opinion also recommended that the consent be given on  
the record. It is the belief of the committee that parties and  
attorneys should be afforded greater confidence in consents and  
acknowledged before a judge and the additional requirements of  
proposed subsection (a) will assist in this regard.

Presently, 59-2102 (c) allows a consent to be revoked for  
any reason prior to filing. The committee has deleted this  
provision on the basis it serves no particular purpose and  
promotes an unnecessary race to the courthouse to protect an  
otherwise valid consent.

To promote stability for children who are the subject of  
adoptions, the proposal would add the requirement that the party  
attacking a consent show by "clear and convincing evidence" the  
consent was not freely and voluntarily given.

Subsection (b) was added to prevent potential abuse of  
"stale" consents by providing some indication the consenting  
party had knowledge of the relevant circumstances at the time  
adoption was contemplated and the consent was given.

32 New Sec. 5. Minority of a parent shall not invalidate a parent's  
33 consent or relinquishment, except that a minor parent shall have  
34 the advice of independent legal counsel as to the consequences of  
35 the consent or relinquishment prior to its execution. The attorney  
36 providing independent legal advice to the minor parent shall be  
37 present at the execution of the consent or relinquishment.

§5

Comment

Subsection (d) of K.S.A. 1987 Supp. 59-2102 states "Minority of a parent shall not invalidate a parent's consent." K.S.A. 38-113 and 125 contain similar provisions as to relinquishments.

Minors are afforded legal protection in regard to other decisions and it appears to the committee that the decision to give up a child merits attempts at protection as well. The proposed subsection would require independent legal counsel for a minor and the presence of the minor's attorney at the time the instrument is executed.

Questions naturally arise as to the means for providing and paying for such independent counsel. The committee considered the possibility of having independent counsel appointed by the court. However, at the time independent counsel is needed by the matter will not be pending before the court. The committee also considered the possibility of court-approved lists of eligible attorneys but the committee recognized a danger in any such lists being exclusive, particularly in regard to consents or relinquishments which may be executed out-of-state. As a practical matter, the petitioners for adoption or the child-placing agency will be responsible for the costs of such independent counsel. While there are concerns with the appearance of the petitioners or agency providing the independent counsel, there is also an incentive for such persons to insure a valid instrument is obtained and, consequently, to provide minors with attorneys who are truly independent of the petitioner or agency.

The proposal requires the minor's attorney to be present at the time of execution in light of the fact that advice provided at an earlier time may diminish in value due to the intervening passage of time and birth of the child.

The section applies to natural fathers as well as natural mothers. Where there is an actual conflict between the natural parents, independent counsel for each minor parent would be necessary.

38 New Sec. 6. A consent or relinquishment may not be given by  
39 the mother until 12 hours after the birth of a child and any consent  
40 or relinquishment given before such time is voidable.

36 Comment

Presently, the time at which a consent or relinquishment may be given is not statutorily addressed. The committee recognizes that the 24-hour waiting period will not assure a free and voluntary consent in every case, however, it does add a degree of protection that is not mandated under the present statutes. The committee was reluctant to suggest a significantly longer waiting period due to potential problems relating to temporary custody of the child.

Again, it should be noted the section applies to consents or relinquishments by fathers as well as mothers.

[The Interim Committee reduced the waiting period from 24 to 12 hours and made the waiting period applicable only to the mother.]

41 New Sec. 7. (a) A consent or relinquishment executed and ac-  
42 knowledged outside of this state, either in accordance with the law  
43 of this state or in accordance with the law of the place where ex-  
44 ecuted, is valid.

45 (b) Where a consent or relinquishment is signed in a foreign  
46 country, the execution of the consent or relinquishment shall be  
47 acknowledged or affirmed in accordance with the law and procedure  
48 of the foreign country.

49 (c) If the person signing a consent or relinquishment is in the  
50 military service of the United States, the execution of the consent  
51 or relinquishment may be acknowledged before a commissioned of-  
52 ficer and the signature of the officer shall be verified or acknowledged  
53 before a notary public or by such other procedure as is then in  
54 effect for such division or branch of the armed forces.

55 New Sec. 8. (a) Any person adopted as provided in sections 1  
56 through 32 shall assume the surname of the petitioner or petitioners  
57 for adoption, except that the court in its discretion may permit a  
58 different surname when requested by the petitioner or petitioners.  
59 When requested by the petitioner or petitioners, the court, in its  
60 discretion, may change the given name or names of the person  
61 adopted.

62 (b) When adopted, a person shall be entitled to the same personal  
63 and property rights as a birth child of the adoptive parent. The  
64 adoptive parent shall be entitled to exercise all the rights of a birth  
65 parent and be subject to all the liabilities of that relationship. Upon  
66 adoption, all the rights of birth parents to the adopted person, in-  
67 cluding their right to inherit from the person, shall cease, except  
68 the rights of a birth parent who is the spouse of the adopting parent.

37 Comment

The language in this section is taken from Illinois (S.H.A. ch. 40, § 1512) and involves a matter not currently addressed by Kansas statutes. Kansas case law states that "... a consent which complies with Kansas law will support a Kansas adoption regardless of whether it complies with the law of the state where it is executed." In Re Adoption of Gates, 6 Kan.App.2d 945, 946, 636 P.2d 818 (1981). The case law is not as clear as to the validity of a consent where there is compliance with the law of the state of execution, but some deficiency under Kansas law. Gates, supra; In Re Adoption of Trent, 229 Kan. 224, 624 P.2d 433 (1981); Jones v. Jones, 215 Kan. 102, 523 P.2d 743, cert. denied 419 U.S. 1032 (1974).

38 Comment

This section is virtually identical to present 59-2103(a) and (b). Subsection (c) of 59-2103 has been deleted as an unnecessary reference to visitation rights which exist under K.S.A. 38-129.

[The Interim Committee changed the term "natural" to "birth" when referring to parent, child or mother wherever it appears in the bill.]

26 New Sec. 9. The district court shall report the adoption to the  
27 state registrar of vital statistics.

28 New Sec. 10. Interstate placements of children shall comply with  
29 the procedures contained in the interstate compact on placement of  
30 children as set forth in K.S.A. 38-1202 and amendments thereto.  
31 Any professional providing services related to the placement of chil-  
32 dren for adoption who fails to comply with the provisions of the  
33 interstate compact for the placement of children is guilty of a class  
34 C misdemeanor. For the purposes of this section, "professional"  
35 means any person who receives payment or compensation for pro-  
36 viding services related to the placement of children for adoption.

37 New Sec. 11. (a) Except as otherwise authorized by law, no  
38 person shall request, receive, give or offer to give any consideration  
39 in connection with an adoption, or a placement for adoption, other  
40 than:

41 (1) Reasonable fees in the county of venue for legal and other  
42 professional services rendered in connection with the placement or  
43 adoption not to exceed customary fees for similar services by profes-  
44 sionals of equivalent experience and reputation where the services  
45 are performed;

46 (2) reasonable fees in the county of venue of a licensed child-  
47 placing agency;

48 (3) actual and necessary expenses, based on expenses in the  
49 county of venue, incident to placement or to the adoption proceeding;

50 (4) actual medical expenses of the mother attributable to preg-  
51 nancy and birth;

52 (5) actual medical expenses of the child; and  
53 (6) reasonable living expenses of the mother which are incurred  
54 during or as a result of the pregnancy.

55 (b) In an action for adoption, a detailed accounting of all con-  
56 sideration given, or to be given, and all disbursements made, or to  
57 be made, in connection with the adoption and the placement for  
58 adoption shall accompany the petition for adoption. Upon review of  
59 the accounting, the court shall disapprove any such consideration  
60 which the court determines to be unreasonable or in violation of  
61 this section and, to the extent necessary to comply with the pro-  
62 visions of this section, shall order reimbursement of any consideration  
63 already given in violation of this section.

64 (c) Giving or receiving excessive fees or expenses in violation of  
65 subsection (a) shall be a class E felony. Knowingly failing to list all  
66 consideration or disbursements as required by subsection (b) shall  
67 be a class B misdemeanor.

39 Comment

This section is identical to K.S.A. 59-2104.

3/0 Comment

The first sentence of this section is identical to K.S.A. 59-2278b and alerts practitioners to the provisions of the interstate compact on placement of children. The last two sentences of the section are new and are intended to promote compliance with the interstate compact. A similar amendment is recommended in K.S.A. 38-1206, the relevant section of the interstate compact.

3/1 Comment

This section closely follows K.S.A. 59-2278c. The phrase ". . . not to exceed customary fees in the locality for similar services by professionals of equivalent experience and reputation . . ." has been added in (a)(1). This is intended to discourage the marketing of children by limiting the profitability of such activity. Also, there are terminology changes from the present statute to clarify that this section applies to all adoptions.

[In regard to subsection (a)(1), the Interim Committee at the request of the Family Law Committee provided that fees for legal and other professional services would be evaluated by the court in terms of what is customary "where the services are performed." The Senate Committee amended the provision so that such fees shall be evaluated in terms of what is reasonable "in the county of venue." This approach was extended by the Senate Committee to subsections (a)(2) and (3). At a minimum, it appears inconsistent to have both phrases "in the county of venue" and "where the services are performed" in (a)(1). The Family Law Committee concluded that if legitimate, valuable services are performed out-of-state in connection with an adoption, it does not seem objectionable for the court to review such fees in terms of what is customary where the services are performed. To disallow such fees solely because they are beyond what is customary in the county of venue in Kansas would certainly inhibit certain nonresidents from being able to adopt in Kansas. We suspect that the underlying concern motivating the recommendation for the limiting provisions relates to the inability of the Kansas court to enforce its determinations in regard to fees which are clearly excessive or of questionable legitimacy. The addition of subsection (c) by the Senate Committee would appear to directly address this issue of enforcement.]

25 New Sec. 12. (a) The files and records of the court in adoption  
26 proceedings shall not be open to inspection or copy by persons other  
27 than the parties in interest and their attorneys, and representatives  
28 of the state department of social and rehabilitation services, except  
29 upon an order of the court expressly permitting the same. As used  
30 in this section, "parties in interest" shall not include genetic parents  
31 once a decree of adoption is entered.

32 (b) *The department of social and rehabilitation services may con-*  
33 *tact the adoptive parents of the minor child or the adopted adult*  
34 *at the request of the genetic parents in the event of a health or*  
35 *medical need. The department of social and rehabilitation services*  
36 *may contact the adopted adult at the request of the genetic parents*  
37 *for any reason. Identifying information shall not be shared with the*  
38 *genetic parents without the permission of the adoptive parents of*  
39 *the minor child or the adopted adult.*

40 New Sec. 13. (a) Except as otherwise provided in this section:

41 (1) No person shall advertise that such person will adopt, find  
42 an adoptive home for a child or otherwise places a child for adoption;

43 (2) no person shall offer to adopt, find a home for or otherwise  
44 place a child as an inducement to a woman to come to such person's  
45 maternity hospital or home during pregnancy or after delivery; and  
46 (3) no person shall offer to adopt, find a home for or otherwise  
47 place a child as an inducement to any parent, guardian or custodian  
48 of a child to place such child in such person's home, institution or  
49 establishment.

50 (b) The provisions of subsection (a)(1) shall not apply to a licensed  
51 child placement agency operating as authorized by Kansas law or to  
52 the department of social and rehabilitation services.

53 (c) As used in this section:

54 (1) "Advertise" means to communicate by newspaper, radio, tel-  
55 evision, handbills, placards or other print, broadcast or electronic  
56 medium;

57 (2) "person" means an individual, firm, partnership, corporation,  
58 joint venture or other association or entity; and

59 (3) "maternity hospital or home" means the same as provided in  
60 K.S.A. 65-502 and amendments thereto.

61 (d) Any person who violates the provisions of this section shall  
62 be guilty of a misdemeanor, and upon conviction shall be fined not  
63 less than \$5 nor more than \$50. Each and every day that the person  
64 fails or refuses to comply shall be deemed a separate offense under  
65 the provisions of this section.

§ 12 Comment

This section is identical to K.S.A. 59-2279, except that the last sentence is new. Once a decree of adoption is entered, genetic parents will not have access to the files except upon order of the court. This new provision is intended to promote integrity and security from intrusion for the adoptive family.

[It appears that subsection (b) added by the Senate Committee is intended to codify current practice of SRS in regard to facilitating communication between genetic parents and adopted children.]

§ 13 Comment

This section is identical to K.S.A. 65-509 except that subsection (d) of 65-509 is not retained and the criminal penalty in K.S.A. 65-514 is incorporated. This section is currently part of an act relating to maternity hospitals and boarding homes for children. However, the prohibitions of the section extend beyond such entities and practitioners are often unaware of the section due to its location in chapter 65. Consequently, the committee recommends that the section be relocated with the other adoption provisions.

The committee viewed the current exception for surrogate mother advertisements in subsection (d) of 65-509 as inappropriate for the adoption and relinquishment act and unnecessary in that the prohibitions in the section do not apply to such advertisements.



23 New Sec. 14. (a) Any parent or parents or person in *loco parentis*  
24 may relinquish a child to an agency, and if the agency accepts the  
25 relinquishment in writing, the agency shall stand in *loco parentis* to  
26 the child and shall have and possess over the child all rights of a  
27 parent or legal guardian, including the power to place the child for  
28 adoption and give consent thereto.

29 (b) All relinquishments to an agency under sections 1 through  
30 32 shall be in writing, in substantial conformity with the form for  
31 relinquishment contained in the appendix of forms following section  
32 32 and shall be executed by: (1) Both parents of the child; (2) one  
33 parent, if the other parent is deceased or the other parent's relin-  
34 quishment is found unnecessary under section 25; or (3) a person  
35 in *loco parentis*.

36 (c) The relinquishment shall be in writing and shall be acknowl-  
37 edged before a judge of a court of record or before an officer au-  
38 thorized by law to take acknowledgments. If the relinquishment is  
39 acknowledged before a judge of a court of record, it shall be the  
40 duty of the court to advise the relinquishing person on the record  
41 of the consequences of the relinquishment.

42 (d) Except as otherwise provided, in all cases where a parent or  
43 person in *loco parentis* has relinquished a child to the agency pur-  
44 suant to sections 1 through 32, all the rights of the parent or person  
45 in *loco parentis* shall be terminated, including the right to receive  
46 notice in a subsequent adoption proceeding involving the child. If  
47 a parent has relinquished a child to the agency pursuant to sections  
48 1 through 32, based on a belief that the child's other parent would  
49 relinquish the child to the agency, and such other parent does not  
50 relinquish such child to the agency, the rights of such parent who  
51 has relinquished a child to the agency shall not be terminated.

9 New Sec. 15. In addition to those requirements, where appli-  
10 cable, as set out in the provisions of sections 1 through 14, sections  
11 16 through 25 shall apply to adoptions of minor children.

5/14 Comment

This section replaces K.S.A. 38-113 and 114 and K.S.A. 38-124 through 128 which presently provide for relinquishments to child-placing agencies and SRS, respectively. See section 2 for definition of "person in *loco parentis*" and sections 5, 6, 7 and 25 for other provisions relating to relinquishments.

Subsection (c) allows a relinquishment to be acknowledged before the court or a person authorized to take acknowledgments. Currently, relinquishments to SRS are required to be acknowledged before the district court and the court has the duty to advise the relinquishing parent of the consequences of the relinquishment. This subsection adds the requirement that this duty be carried out on the record. See section 4 for similar provisions relating to acknowledgment of a consent to adoption.

Subsection (d) addresses termination of parental rights upon relinquishment, including the right to receive notice in a subsequent adoption proceeding. Presently, the statutes explicitly address termination of parental rights only in relinquishments to SRS (38-128). K.S.A. 59-2278(b) was amended in 1987 to state that notice of a subsequent adoption did not have to be given to relinquishing parents or parents whose rights have been terminated.

[The Interim Committee added the last sentence of subsection (d) to the effect that when one parent relinquishes with the belief the other parent will also relinquish, and the other parent does not, the parental rights of the relinquishing parent are not terminated.]

5/5 Comment

Specific provisions which are applicable only to adoptions of minor children (independent, agency and stepparent adoptions) are set out in sections 16 through 25.

12 New Sec. 16. (a) In an independent adoption venue shall be in  
13 the county in which the petitioner resides or in the county in which  
14 the child to be adopted resides.

15 (b) In an agency adoption venue shall be in:

16 (1) In the county in which the petitioner resides or;  
17 (2) in the county in which the child to be adopted resided prior  
18 to receipt of custody by the agency; or

19 (3) where the child placing agency is located if the child was a  
20 resident of Kansas prior to receipt of custody by the agency.

21 (c) In a stepparent adoption venue shall be in the county in  
22 which the petitioner resides.

23 (d) If the petitioner resides upon or is stationed at a United  
24 States military post or reservation within this state, and the child  
25 to be adopted is then residing with the petitioner, venue may be  
26 in the district court of the county in which the post or reservation  
27 is located, or in the district court of any county located immediately  
28 adjacent to such county.

29 (e) Where the residence of the child, as defined in section 2,  
30 serves as the basis for venue, a sworn affidavit shall be filed with  
31 the petition setting forth the factual basis for the child's residency.

516 Comment

Presently, venue in adoptions is governed by K.S.A. 59-2203. If the petitioner is a Kansas resident, venue is in the county in which the petitioner resides. If the petitioner is a nonresident, venue is in the county in which the child resides, or in an agency adoption, in the county where the agency is located.

Venue provisions implicitly have jurisdictional aspects. It is the position of the advisory committee that, for an adoption proceeding to be appropriate in Kansas, there should be substantial contact with the state either on the part of the petitioner or the child to be adopted. Where the petitioner is a nonresident and the residence of the child serves as the basis for venue and subject matter jurisdiction, the committee has attempted to insure there is an appropriate and sufficient contact with this state. The committee has defined "residence of a child" in section 2 and added subsection (e) of this section which requires a sworn affidavit setting forth the factual basis for the child's residency. This section would require such an affidavit in an agency adoption where the petitioner is a nonresident. The committee did not believe the presence of an agency in the proceedings should obviate the need for contact by either the child or petitioners with Kansas.

Subsection (d) is presently part of 59-2203.

[The Senate Committee added subsection (b)(3) which would allow venue in an agency adoption to be in the county where the child placing agency is located so long as the child was a resident of Kansas prior to receipt of custody by the agency.]

517 Comment

Subsection (a) is largely similar to K.S.A. 59-2277. The requirement to state the time of the child's birth in (a)(1)(B) is added to insure the 24-hour waiting period in section 6 is observed. Subsection (c) of 59-2277 requires a statement of "the facts showing the financial ability of the petitioner to assume the relationship." The committee has substituted in (a)(1)(C) a statement of the petitioner's suitability. The committee viewed financial ability as just one factor in regard to suitability and also omitted the necessity to allege facts showing suitability in the petition since substantiation of suitability will be contain-

32 New Sec. 17. (a) A petition for adoption shall be filed by the  
33 person desiring to adopt the child, and shall state:

34 (1) In an independent adoption: (A) The name, residence and  
35 address of the petitioner;

36 (B) the name of the child, the date, time and place of the child's  
37 birth, and the place at which the child resides;

38 (C) the suitability of the petitioner to assume the relationship;

39 (D) whether one or both parents are living and the name, date  
40 of birth, residence and address of those living, so far as known to  
41 the petitioner;

42 (E) the facts relied upon as eliminating the necessity for the  
43 consent, if the consent of either or both parents is not obtained;

(F) the information required by the uniform child custody jurisdiction act under K.S.A. 38-1309 and amendments thereto; and

(G) whether the interstate compact on placement of children, K.S.A. 38-1201 *et seq.* and amendments thereto, and the Indian child welfare act, 25 U.S.C. 1901 *et seq.*, are applicable and have been or will be complied with prior to the hearing;

(2) in an agency adoption, all requirements contained in subsection (a)(1) except subsection (a)(1)(E); or

(3) in a stepparent adoption, all requirements contained in subsection (a)(1) except that a statement of compliance with the interstate compact on placement of children is not required.

(b) The written consents to adoption required by section 18, the background information required by section 19, the accounting required by section 11 and any affidavit required by section 16 shall be filed with the petition for adoption.

New Sec. 18. (a) Consent to an independent adoption shall be given by: (1) The living parents of the child; or

(2) one of the parents of the child, if the other's consent is found unnecessary under section 25; or

(3) the legal guardian of the child, if both parents are dead or if their consent is found to be unnecessary under section 25; or

(4) the court entering an order under subsection (c)(1)(B) of K.S.A. 38-1584 and amendments thereto; and

(5) the judge of any court having jurisdiction over the child pursuant to the code for care of children, if parental rights have not been terminated; and

(6) the child sought to be adopted, if over 14 years of age and of sound intellect.

(b) Consent to an agency adoption shall be given by: (1) The authorized representative of the agency having authority to consent to the adoption of the child; and

(2) the child sought to be adopted, if over 14 years of age and of sound intellect.

(c) The provisions of subsection (a) shall apply to consent in a stepparent adoption, except that subsections (a)(3) and (4) shall not apply.

(d) A consent given by a parent or legal guardian shall be in substantial conformity with the form for consent contained in the appendix of forms following section 32.

(e) A consent given by a legal guardian, judge or agency shall set forth the authority to execute the consent and shall be accompanied by documents supporting that authority.

New Sec. 19. (a) The following information shall be filed with

ed in the assessment required by section 21. The committee has also required in (a)(1)(G) a reference to the interstate compact on placement of children and the Indian child welfare act to alert parties to the potential relevance of these acts.

Except for any affidavit which may be required under section 16, the requirements contained in proposed subsection (b) are currently located in K.S.A. 59-2278(a) and 59-2287c(b).

**§ 18** Comment

This section replaces K.S.A. 59-2102(a). 59-2102(a)(3) requires consent by "one of the parents if the other has failed or refused to assume the duties of a parent for two consecutive years or is incapable of giving consent; . . ." This alternative is merged into (a)(2) of the proposal by making failure to assume parental duties for two years a ground for eliminating the necessity of a parent's consent under section 25.

Subsection (a)(4) is new and recognizes the authority of a court to consent to an adoption under K.S.A. 38-1584(c)(1)(B).

Subsection (a)(5) is similar to 59-2102(a)(6), except that a reference to the Code for Care of Children has been inserted in lieu of the phrase "ward of the court".

Subsections (d) and (e) are new. Presently, there are no prescribed forms. The forms contained in the proposal are intended to give guidance to practitioners and to incorporate new provisions relating to such matters as the 24-hour waiting period, attorneys for minors and the duty of the court in acknowledgment of consents.

1 the petition in an independent or agency adoption: (1) A complete  
2 written genetic, medical and social history of the child and the  
3 parents;

4 (2) the names, dates of birth, addresses, telephone numbers, and  
5 social security numbers of each of the child's parents, if known;  
6 (3) any hospital records pertaining to the child or a properly  
7 executed authorization for release of those records; and

8 (4) the child's birth verification, which shall include the date,  
9 time and place of birth and the name of the attending physician.

10 (b) The genetic, medical and social history required by this sec-  
11 tion shall be in conformity with the rules and regulations adopted  
12 by the secretary of social and rehabilitation services and on forms  
13 provided by the secretary.

14 (c) If any information required to be filed under this section is  
15 not available, an affidavit explaining the reasons why it is not available  
16 shall be filed with the petition for adoption.

17 (d) The secretary of social and rehabilitation services shall adopt  
18 rules and regulations establishing procedures for updating a child's  
19 genetic, medical and social history if new information becomes known  
20 at a later date. The agency or person conducting the investigation  
21 under section 21 shall advise in writing each of the child's biological  
22 parents, if known, of those procedures.

23 (e) Any employee or agent of the department of social and re-  
24 habilitation services, a child-placing agency or a district court who  
25 intentionally destroys any information required to be filed under this  
26 section is guilty of a class C misdemeanor.

27 New Sec. 20. Pending the hearing in an independent or agency  
28 adoption, the court may make an appropriate order for the care and  
29 custody of the child. If the court makes an order for placement in  
30 a home not licensed to provide such care, then the home shall first  
31 be assessed by a person or agency authorized to make assessments  
32 under subsection (a) or (f) of section 21. In the absence of a pre-  
33 placement assessment, the court may make an order for placement  
34 in a home not licensed to provide for the care and custody of the  
35 child following an evidentiary hearing which shall include testimony  
36 by the petitioners. Such hearing shall be heard and determined by  
37 the court as expeditiously as possible.

38 New Sec. 21. (a) In independent and agency adoptions, the court  
39 shall require the petitioner to obtain an assessment by a court ap-  
40 proved social worker licensed to practice social work in Kansas or  
41 by a licensed child-placing agency of the advisability of the adoption.

42 (b) The petitioner shall file with the court, not less than 10 days  
43 before the hearing on the petition, a report of the assessment and,

319 Comment

This section replaces K.S.A. 59-2278a relating to background information on the adoptee. It continues the policy of requiring such information only in independent and agency adoptions.

Subsection (a) is virtually identical to the present statute.

Subsection (b) of the proposal is an abbreviated form of 59-2278a(b). The specific information required by the present subsection is covered by SRS's forms.

Subsection (c) is similar to 59-2278a(f), but recognizes a consenting party may not be available to sign the affidavit.

Subsection (d) of the proposal is virtually identical to subsection (c) of the present statute.

Subsection (e) of the proposal is identical to subsection (e) of the present statute.

320 Comment

Under 59-2278(b), the court has the authority to make appropriate orders for the care and custody of the child pending the hearing on the petition. The proposal would require a preplacement assessment before a temporary custody order could be issued. Exceptions are allowed, but only if the petitioners appear and testify as to the need for an exception.

However, in interstate adoptions, it is a violation of the interstate compact to cross a state line with the child without first obtaining approval from the receiving state. Normally that approval is based on a preplacement assessment.

[The last sentence was added by the Interim Committee.]

321 Comment

Section 21 addresses the assessment of the advisability of the adoption and generally follows the present requirements of subsections (c), (d) and (e) of K.S.A. 1988 Supp. 59-2278. The section continues the present policy of not requiring an assessment in stepparent adoptions.

1 if necessary, confirmation or clarification of the information filed  
2 under section 19.

3 (c) If there is no licensed social worker or licensed child-placing  
4 agency available to make the assessment and report to the court,  
5 the court may use the department of social and rehabilitation services  
6 for that purpose.

7 (d) The costs of making the assessment and report may be as-  
8 sessed as court costs in the case as provided in article 20 of chapter  
9 60 of the Kansas Statutes Annotated and amendments thereto.

10 (e) In making the assessment, the social worker, child-placing  
11 agency or department of social and rehabilitation services is au-  
12 thorized to observe the child in the petitioner's home, verify financial  
13 information of the petitioner, shall clear the name of the petitioner  
14 with the child abuse and neglect registry through the department  
15 of social and rehabilitation services and to contact the agency or  
16 individuals consenting to the adoption and confirm and, if necessary,  
17 clarify any genetic and medical history filed with the petition. This  
18 information shall be made a part of the report to the court. The  
19 report to the court by the social worker, child-placing agency or  
20 department of social and rehabilitation services shall include the  
21 results of the investigation of the petitioner, the petitioner's home  
22 and the ability of the petitioner to care for the child.

23 (f) In the case of a nonresident who is filing a petition to adopt  
24 a child in Kansas, the assessment and report required by this section  
25 must be completed in the petitioner's state of residence by a licensed  
26 social worker, a licensed child-placing agency or a comparable entity  
27 in that state and filed with the court not less than 10 days before  
28 the hearing on the petition.

29 (g) The assessment and report required by this section must have  
30 been completed not more than one year prior to the filing of the  
31 petition for adoption.

Subsections (b), (c), (d), (f) and (g) are identical to current provisions.

Subsection (a) substitutes "court approved" social worker for the current "court designated" social worker. This change is proposed to avoid the appearance that the court is directing work to particular social workers. It also recognizes that many assessments can be completed, in whole or in part, prior to the time the petition is filed and before the court would have an opportunity to "designate" a social worker.

In subsection (e), it is explicitly stated that the child is to be observed "in the petitioner's home". The proposal also gives the person making the assessment authority to verify financial information on the petitioner and to check the petitioner's name against the child abuse and neglect registry maintained by SRS.

In a number of independent adoptions, much of the assessment can be completed prior to filing of the petition. However, observation of the child in the petitioner's home generally won't occur until the petition has been filed and temporary custody given to the petitioners following a preplacement assessment as required by section 20. The preplacement assessment could then be supplemented to provide the completed assessment and report required to be filed 10 days before the hearing on the petition.

Typically in agency adoptions, the agency will have temporarily placed the child with the petitioners. Consequently, the entirety of the assessment and report, including observation of the child in the petitioners' home, will have been completed by the time the petition is filed.

In the case of nonresident petitioners, it should be noted the interstate compact on placement of children requires approval of the receiving state (generally based on a preplacement assessment) before the child can be placed in the petitioners' home. Subsequent to such preplacement assessment and placement, observation of the child in the petitioners' home will have to be made by the person authorized under subsection (f) and the assessment and report completed and filed 10 days prior to the hearing on the petition.

32 New Sec. 22. (a) Upon filing the petition, the court shall fix the  
33 time and place for the hearing. The time fixed for the hearing may  
34 be any time not less than 30 days nor more than 60 days from the  
35 date the petition is filed. The time fixed for the hearing may be  
36 extended by the court for good cause.

37 (b) In independent and stepparent adoptions notice of the hearing  
38 on the petition shall be given to the parents or presumed parents,  
39 unless parental rights have been previously terminated, and any  
40 other persons as the court may direct. Notice also shall be given in  
41 an independent adoption to a legal guardian of the child or individual  
42 *in loco parentis*.

43 (c) In an agency adoption notice of the hearing on the petition  
shall be given to the consenting agency unless waived.

44 (d) Notice given pursuant to this section shall not include a copy  
of the petition.

4 New Sec. 23. (a) Upon the hearing of the petition, the court  
5 shall consider the assessment and all evidence offered by any in-  
6 terested party. If the adoption is granted, the court shall make a  
7 final decree of adoption.

8 (b) If the adoption is denied, the court shall enter appropriate  
9 orders. Such orders may include an order giving temporary custody  
10 of the child to another person or agency for a period not to exceed  
11 30 days pending termination of the instant case or a new case being  
12 filed.

13 (c) The costs of the adoption proceedings shall be paid by the  
14 petitioner or as assessed by the court.

### § 22- Comment

Section 22 replaces provisions currently found in subsections (a) and (b) of K.S.A. 1988 Supp. 59-2278. Subsection (a) of the proposal eliminates the current possibility of a hearing in less than 30 days where (1) notice is waived by each living parent, (2) an assessment of the advisability of the adoption is not required and (3) there are no interested parties other than the petitioner and the consenting parties.

In independent and stepparent adoptions, subsection (b) requires notice to natural parents unless parental rights have been terminated. Any challenges to the free and voluntary nature of a consent should be raised and resolved at the hearing. The committee noted the questionable effectiveness of a waiver of notice included in a consent which is later attacked as not being free and voluntary.

Subsection (c) continues the policy currently found in 59-2278(b) of not giving notice to parents who have voluntarily relinquished their child.

### § 23 Comment

Section 23 replaces section (f) of K.S.A. 1988 Supp. 59-2278. Subsection (a) has the same import as the present provision.

Subsection (b) is new. The second sentence recognizes the possibility in an independent adoption that, if the adoption is denied, no person may be available to take custody of the child. If an appropriate resolution cannot be achieved within the 30 days, it will be necessary to institute proceedings under the code for care of children.

Subsection (c) allows the court to assess costs other than to the petitioner. The committee noted the possibility of appointing an attorney for an unknown or unlocated father under section 25 and a subsequent appearance by such father. If financially able, the committee saw no reason the costs of such attorney should not be assessed to the father.

15 New Sec. 24. The clerk of each district court shall provide a  
16 copy of the decree of adoption, a copy of the report of adoption  
17 required in section 9 and a copy of the information required in  
18 section 19 pertaining to any adoption of a minor to the secretary of  
19 social and rehabilitation services. All information pertaining to adop-  
20 tions of minors required to be provided to the secretary of social  
21 and rehabilitation services shall be maintained by the secretary and  
22 shall be subject to disclosure to the same extent as files and records  
23 of the court under section 12.

24 New Sec. 25. (a) The provisions of this section shall apply where  
25 a relinquishment or consent to an adoption has not been obtained  
26 from a parent and sections 14 and 18 state that the necessity of a  
27 parent's relinquishment or consent can be determined under this  
28 section.  
29 (b) Insofar as practicable, the provisions of this section applicable  
30 to the father also shall apply to the mother.

31 (c) The court shall appoint an attorney to represent any father  
32 who is unknown or whose whereabouts are unknown. If no person  
33 is identified as the father or a possible father, the court shall order  
34 publication notice of the hearing in such manner as the court deems  
35 appropriate.

36 (d) In a stepparent adoption, if a mother consents to the adoption  
37 of a child who (1) has a presumed father under subsection (a)(1), (2)  
38 or (3) of K.S.A. 38-1114 and amendments thereto, or (2) has a father  
39 as to whom the child is a legitimate child under prior law of this  
40 state or under the law of another jurisdiction, the consent of such  
41 father must be given to the adoption unless such father has failed  
42 or refused to assume the duties of a parent for two consecutive  
43 years, or is incapable of giving such consent. In determining whether

324 Comment

Section 24 essentially replaces K.S.A. 1988 Supp. 59-2278(g) and 59-2278a(d). Present provisions require that SRS be provided a copy of the social assessment. Rather than requiring the court to reproduce these often lengthy assessments, the committee has substituted the requirement that SRS be provided with a copy of the report of adoption made under section 9. If further information is necessary, SRS has access to court files and records under section 12. The proposal would make information submitted to SRS subject to disclosure to the same extent as court records and files under section 12.

325 Comment

Section 25 contains procedures to determine the necessity for obtaining a parent's consent or relinquishment and to terminate parental rights where appropriate. It replaces K.S.A. 1988 Supp. 38-1129 which is currently part of the parentage act. Since the section only has application in relation to relinquish-ments and consents to adoption, it was deemed more appropriate to relocate the section in this act.

Subsection (a) is intended to give a clearer statement of the section's application.

Generally, proceedings under this section will be directed towards the rights of the father. To avoid awkward and confusing language, the section speaks in such terms. Subsection (b) is identical to the current provision in K.S.A. 38-1126 of the parentage act and recognizes that, on occasion, it will be the rights of the mother which are at issue.

The first sentence of subsection (c) is the same as present 38-1129(f). The second sentence is similar to a provision in subsection (e) of the present statute, but has been relocated to this subsection since it will have application only where the father is unknown.

1 a father's consent is required under this subsection, the court may  
2 disregard incidental visitations, contacts, communications or  
3 contributions.

4 (e) Except as provided in subsection (d), if a mother desires to  
5 relinquish or consents to the adoption of such mother's child, a  
6 petition shall be filed in the district court to terminate the parental  
7 rights of the father, unless the father's relationship to the child has  
8 been previously terminated or determined not to exist by a court.  
9 The petition may be filed by the mother, the petitioner for adoption,  
10 the person or agency having custody of the child or the agency to  
11 which the child has been or is to be relinquished. Where appropriate,  
12 the request to terminate parental rights may be contained in a pe-  
13 tition for adoption. In an effort to identify the father, the court shall  
14 determine by deposition, affidavit or hearing, the following: (1)  
15 Whether there is a presumed father under K.S.A. 38-1114 and  
16 amendments thereto;

17 (2) whether there is a father whose relationship to the child has  
18 been determined by a court;

19 (3) whether there is a father as to whom the child is a legitimate  
20 child under prior law of this state or under the law of another  
21 jurisdiction;

22 (4) whether the mother was cohabitating with a man at the time  
23 of conception or birth of the child;

24 (5) whether the mother has received support payments or prom-  
25 ises of support with respect to the child or in connection with such  
26 mother's pregnancy; and

27 (6) whether any man has formally or informally acknowledged or  
28 declared such man's possible paternity of the child.

29 If the father is identified to the satisfaction of the court, or if more  
30 than one man is identified as a possible father, each shall be given  
31 notice of the proceeding in accordance with subsection (f).

32 (f) Notice of the proceeding shall be given to every person iden-  
33 tified as the father or a possible father by personal service, registered  
34 mail or in any other manner the court may direct. Proof of notice  
35 shall be filed with the court before the petition or request is heard.

36 (g) If, after the inquiry, the court is unable to identify the father  
37 or any possible father and no person has appeared claiming to be  
38 the father and claiming custodial rights, the court shall enter an  
39 order terminating the unknown father's parental rights with reference  
40 to the child without regard to subsection (h). If any person identified  
41 as the father or possible father of the child fails to appear or, if  
42 appearing, fails to claim custodial rights, such person's parental rights  
43 with reference to the child shall be terminated without regard to

Generally speaking, proceedings under 38-1129 are currently  
not available if the child has a presumed father under the  
parentage act, a father whose paternity has been determined or a  
father as to whom the child is a legitimate child under prior  
law. In other words, a relinquishment or consent to adoption  
must be obtained from such a father, unless his rights have been  
terminated or his consent is unnecessary under 59-2102(a)(3) for  
failure to assume parental duties for two years. This would be  
changed by section 25. Under this section, the necessity for any  
father's consent or relinquishment can be determined and parental  
rights terminated if appropriate grounds are established.

Subsection (d) limits the grounds for termination of certain  
natural fathers' parental rights in connection with stepparent  
adoptions. Generally, if the child was the product of a marriage  
or attempted marriage, the consent of the father must be obtained  
unless there was a failure to assume parental duties for two  
years. The committee justifies this differing treatment of  
certain fathers in stepparent adoptions on the basis there is not  
the urgency to create a new family for the child since the child  
is residing with the mother and stepfather.

Subsection (e) is essentially the same as present procedures.  
It does indicate that, where appropriate, proceedings under this  
section can be requested in the petition for adoption. Also, (1)  
(2) and (3) have been added since such fathers are now subject to  
this type of proceeding.

Subsection (f) replaces 38-1129(e) which provides for  
service ". . . in any manner the court directs." The manner of  
service must be reasonably calculated to give the father notice  
of the proceedings.

Subsection (g) contains provisions currently found in  
subsections (d) and (e) of 38-1129 and clarifies that a finding  
under (h) is not required in such situations.



subsection (h).

- 1 (h) When a father or alleged father appears and asserts parental
- 2 rights, the court shall determine parentage, if necessary pursuant to
- 3 the Kansas parentage act. If a father desires but is financially unable
- 4 to employ an attorney, the court shall appoint an attorney for the
- 5 father. Thereafter, the court may order that parental rights be ter-
- 6 minated, upon a finding by clear and convincing evidence, of any
- 7 of the following: (1) The father abandoned or neglected the child
- 8 after having knowledge of the child's birth;
- 9 (2) the father is unfit as a parent or incapable of giving consent;
- 10 (3) the father has made no reasonable efforts to support or com-
- 11 municate with the child after having knowledge of the child's birth;
- 12 (4) the father, after having knowledge of the pregnancy, failed
- 13 without reasonable cause to provide support for the mother during
- 14 the six months prior to the child's birth;
- 15 (5) the father abandoned the mother after having knowledge of
- 16 the pregnancy;
- 17 (6) the birth of the child was the result of rape of the mother;
- 18 or
- 19 (7) the father has failed or refused to assume the duties of a
- 20 parent for two consecutive years preceding the filing of the petition.

The court may disregard incidental visitations, contacts, communi-

cations or contributions.  
New Sec. 26. In addition to those requirements, where appli-

cable, as set out in the provisions of sections 1 through 14, sections

27 through 31 shall apply to adult adoptions.  
New Sec. 27. Venue shall be in the county in which the peti-

tioner or the adult to be adopted resides.  
New Sec. 28. (a) A petition for adult adoption shall be filed by

the person desiring to adopt the adult and shall state: (1) The name,

residence and address of the petitioner;

(2) the name, residence, address and date of birth of the adult

to be adopted;

(3) whether the petitioner or adult to be adopted is married and

if so, the name, residence and address of the spouse;

(4) the facts showing the reasons for the adoption;

(5) whether one or both of the parents of the adult to be adopted

are living and the name, residence and address of those living so

far as known to the petitioner or the adult to be adopted; and

(6) whether or not any change of name is requested.  
(b) The written consents required by section 29 and the ac-

Subsection (h) contains a new provision for appointment of an attorney for an indigent father who appears and asserts parental rights. The grounds are the same as those contained in 38-1129(d) with two exceptions. In (h)(4), "after having knowledge of the pregnancy" has been added. Apparently, at one time this ground was used to terminate unidentified or unlocatable fathers and a requirement of showing the father had knowledge of the pregnancy would have rendered this ground useless for such purpose. However, such fathers are adequately addressed by (g) of the proposal. The proposal also adds (h)(7). This provision is currently located in K.S.A. 1988 Supp. 59-2102(a)(3) relating to consent to adoption.

§ 26 Comment

Specific provisions which are applicable only to adult adoptions are set out in sections 27 through 31.

The present statutes seldom specifically address adult adoptions. (See K.S.A. 59-2101 and 59-2280) Since the considerations relevant to adoptions of minor children and adult adoptions differ in many respects, the committee deemed it appropriate to establish certain specific procedures for adult adoptions.

1 New Sec. 29. Before any adult is adopted consent to the adoption  
2 shall be given by: (a) The adult subject of the adoption or the legal  
3 guardian of a disabled adult subject of adoption; and  
4 (b) the spouse of the petitioner or the spouse's legal guardian if  
5 a disabled person.

6 New Sec. 30. (a) The court, by order, shall fix a time and place  
7 for hearing on the petition. The hearing may be with or without  
8 notice as the court shall direct and the court may hear the petition  
9 forthwith.

10 (b) The court may order that notice of the hearing be given to  
11 the parents of the adult subject of the adoption and shall require  
12 notice, unless waived, to any consenting party.

13 New Sec. 31. The petitioner or attorney for the petitioner, if a  
14 decree of adoption is entered, shall mail a certified copy of the  
15 decree to the former parent of the adult adoptee, if the parent has  
16 had no notice of the proceeding and, with reasonable diligence, can  
17 be located for service by first-class mail. The petitioner or the at-  
18 torney shall file proof of mailing with the court or shall file an affidavit  
19 setting forth the reasons for noncompliance if the reasons are not  
20 evident from the verified pleadings on file. Failure to give the notice  
21 required by this section shall not invalidate the adoption.

22 New Sec. 32. The forms contained in the appendix of forms are  
23 sufficient under sections 1 through 32.

24 APPENDIX OF FORMS

25 RELINQUISHMENT OF MINOR CHILD TO AGENCY

26 NOTICE TO PARENT OR PERSON IN LOCO PARENTIS:

27 This is an important legal document and by signing it you are permanently giving  
28 up all custody and other parental rights to the child named herein. You are to receive  
29 a copy of this document.

30 I, \_\_\_\_\_ (mother, father,  
31 person in loco parentis) of \_\_\_\_\_ a  
32 minor child, state:  
33 The child was born on \_\_\_\_\_ at (place  
34 of birth) at \_\_\_\_\_, m.  
35 I reside at \_\_\_\_\_, County of  
36 \_\_\_\_\_ and State of \_\_\_\_\_

37 (If the relinquishment is by a person in loco parentis the relinquishment shall have  
38 attached documents supporting the person's authority to execute the relinquishment.)  
39 I am of the age of \_\_\_\_\_ years and was  
40 born on \_\_\_\_\_

41 (If the relinquishing person is a minor, the relinquishment should set forth that,  
42  
43

31 Comment

As an adult may still be subject to a valid child support order and due to the consequences under Kansas Statutes relating to intestate succession or a previously executed last will and testament, it was determined that notice of the completed adoption should be given to former parents whose rights had been affected.

1 prior to signing the relinquishment, the person has received legal advice as to the  
2 relinquishment, from an attorney who does not represent the agency.)

3 I do hereby relinquish the child to (name of agency), which I understand will have  
4 full power and all the rights of a birth parent or legal guardian over the child,  
5 including the power to place the child for adoption and give consent thereto.

6 I wish to and understand that by signing this relinquishment I do permanently  
7 give up all custody and other parental rights I have to such child, including the right  
8 to receive notice of any subsequent adoption proceedings involving the child.

9 I have read and understand the above and I am signing it as my free and voluntary  
10 act.

11 Dated this \_\_\_\_\_ at \_\_\_\_\_ m.

12 \_\_\_\_\_  
13 \_\_\_\_\_  
14 (Parent or Person in loco parentis)

15 Certificate of Attorney for Relinquishing Minor Parent

16 I have fully explained that by signing this relinquishment \_\_\_\_\_  
17 is permanently giving up all parental rights to the child and (she) (he) has stated that  
18 such is (her) (his) intention and desire.

19 Dated \_\_\_\_\_

20 \_\_\_\_\_  
21 (Attorney)

22 ACKNOWLEDGMENT BEFORE JUDGE OF DISTRICT COURT

23 STATE OF \_\_\_\_\_ )  
24 ) SS:

25 COUNTY OF \_\_\_\_\_ )  
26 I, \_\_\_\_\_ Judge

27 of \_\_\_\_\_ (name and location of court),  
28 certify that \_\_\_\_\_ known to me

29 to be the same person whose name is subscribed to the foregoing relinquishment,  
30 appeared before me this day in person and acknowledged that (she) (he) signed for  
31 such relinquishment as (her) (his) free and voluntary act, for the specified purpose.

32 I have fully explained that by signing such relinquishment (she) (he) is permanently  
33 giving up all parental rights to such child and (she) (he) has stated that such is (her)  
34 (his) intention and desire.

35 Dated \_\_\_\_\_ at \_\_\_\_\_ m.

36 \_\_\_\_\_

37 JUDGE

38 ACKNOWLEDGMENT BEFORE NOTARIAL OFFICER

39 STATE OF \_\_\_\_\_ )  
40 ) SS:

41 COUNTY OF \_\_\_\_\_ )  
42 I, a notarial officer in and for the county and state aforesaid, certify that, known  
43 to me

to be the same person whose name is subscribed to the foregoing relinquishment,

1 appeared before me in person and acknowledged that the statements made in the  
2 foregoing relinquishment are true.

3 Dated \_\_\_\_\_ at \_\_\_\_\_ in.

4  
5 \_\_\_\_\_  
6 (SEAL, if any) (Signature of Notarial Officer)

7  
8 My Appointment Expires: \_\_\_\_\_ Title (and Rank) \_\_\_\_\_

9  
10 **ACCEPTANCE OF CHILD BY AGENCY:**

11 I, the undersigned, on behalf of \_\_\_\_\_  
12 do hereby accept custody of \_\_\_\_\_ (name of agency)  
13 \_\_\_\_\_ the above  
14 relinquished minor child.

15 \_\_\_\_\_  
16 (Date) \_\_\_\_\_ (Name and Title)

17  
18 **CONSENT TO ADOPTION OF MINOR CHILD**

19 **NOTICE TO PARENT OR LEGAL GUARDIAN:**

20 This is an important legal document and by signing it you are permanently giving  
21 up all custody and other parental rights to the child named herein, so as to permit  
22 the child's adoption. You are to receive a copy of this document.

23  
24 I, \_\_\_\_\_ (mother, father, legal  
25 guardian) of \_\_\_\_\_, a minor child, state:  
26 The child was born on \_\_\_\_\_ at \_\_\_\_\_  
27 (place of birth) at \_\_\_\_\_ in.

28 I reside at \_\_\_\_\_ County of \_\_\_\_\_  
29 \_\_\_\_\_ and State of \_\_\_\_\_  
30 (If the consent is by a legal guardian, the consent shall have attached documents  
31 supporting the guardian's appointment and the authority of the guardian to execute  
32 the consent.)

33 I am of the age of \_\_\_\_\_ years and was  
34 born on \_\_\_\_\_  
35 (If the consenting person is a minor, the consent should set forth that, prior to  
36 signing the consent, the person has received legal advice as to the consent, from an  
37 attorney who does not represent the petitioner for adoption.)

38 I do hereby consent and agree to the adoption of the child (by \_\_\_\_\_)  
39 or (and I do not require disclosure of the name or other identification of the adopting  
40 parent or parents)).

41 I wish to and understand that by signing this consent I do permanently give up  
42 all custody and other parental rights I have to such child.  
43

I have read and understand the above and I am signing it as my free and voluntary act.

Dated this \_\_\_\_\_ at \_\_\_\_\_ m.

(Parent or Legal Guardian)

Certificate of Attorney for Consenting Minor Parent

I have fully explained that by signing this consent \_\_\_\_\_ is permanently giving up all parental rights to the child and (she) (he) has stated that such is (her) (his) intention and desire.

Dated \_\_\_\_\_

ACKNOWLEDGMENT BEFORE JUDGE OF DISTRICT COURT

STATE OF \_\_\_\_\_ )

COUNTY OF \_\_\_\_\_ ) SS:

I, \_\_\_\_\_, Judge

of \_\_\_\_\_ (name and

location of court), certify that \_\_\_\_\_

known to me to be the same person whose name is subscribed to the foregoing

consent, appeared before me this day in person and acknowledged that (she) (he)

signed such consent as (her) (his) free and voluntary act, for the specified purpose.

I have fully explained that by signing such consent (she) (he) is permanently giving

up all parental rights to such child and (she) (he) has stated that such is (her) (his)

intention and desire.

Dated \_\_\_\_\_ at \_\_\_\_\_ m.

\_\_\_\_\_

ACKNOWLEDGMENT BEFORE NOTARIAL OFFICER

STATE OF \_\_\_\_\_ )

COUNTY OF \_\_\_\_\_ ) SS:

I, a notarial officer in and for the county and state aforesaid, certify that \_\_\_\_\_

known to me to be the same person whose name is subscribed to the foregoing

consent, appeared before me in person and acknowledged that the statements made

in the foregoing consent are true.

Dated \_\_\_\_\_ at \_\_\_\_\_ m.

\_\_\_\_\_

(Signature of Notarial Officer)

(SEAL, if any)

\_\_\_\_\_

Title (and Rank)

[My Appointment Expires: \_\_\_\_\_]

\_\_\_\_\_

1 AGENCY CONSENT TO ADOPTION OF MINOR CHILD  
 2 (Name of Agency), a (public) (private) entity having for its purpose the care and  
 3 maintenance of children, is located in and authorized under the laws of the state of  
 4 to place children for adoption, consent to the adoption and to stand in loco parents  
 5 to such children until they are adopted or reach majority.  
 6 (Name of Agency) is vested with the right to consent to the adoption of (Name of  
 7 Child), a minor child born (Date of Birth) at (Place of Birth), pursuant to [a relin-  
 8 quishment executed by (the parents of the child)(the person in loco parents to the  
 9 child) an order or judgment of the \_\_\_\_\_ court of \_\_\_\_\_  
 10 county, \_\_\_\_\_, a court of competent jurisdiction]. Documents sup-  
 11 porting the authority to execute this consent are attached hereto.  
 12 (Name of Agency) does hereby consent to the adoption of (Name of Child) by \_\_\_\_\_  
 13 resident(s) of \_\_\_\_\_ and does hereby surrender said child to said per-  
 14 son(s) for the purpose of adoption.  
 15 (Name of Agency) has authorized (Name of Authorized Representative) the under-  
 16 signed, as the authorized representative to execute consents to adoption on behalf of  
 17 said agency.

18 \_\_\_\_\_ (Date) \_\_\_\_\_ (Name and Title of  
 19 Authorized Representative)

20 ACKNOWLEDGMENT BEFORE NOTARIAL OFFICER

21 STATE OF \_\_\_\_\_ )  
 22 ) SS:  
 23 COUNTY OF \_\_\_\_\_ )  
 24 I, a notarial officer in and for the county and state aforesaid certify that \_\_\_\_\_  
 25 to the foregoing consent, appeared before me in person and acknowledged that the  
 26 statements made in the foregoing consent are true.  
 27 Dated \_\_\_\_\_ of \_\_\_\_\_ m.  
 28

29 \_\_\_\_\_ (Signature of Notarial Officer)  
 30

31 [My Appointment Expires: \_\_\_\_\_]  
 32 Title (and Rank)  
 33 Sec. 33. K.S.A. 38-1206 is hereby amended to read as follows:  
 34 38-1206. The courts, departments, agencies and officers of this state  
 35 and its subdivisions shall enforce this compact and shall do all things  
 36 appropriate to the effectuation of its purposes and intent which may  
 37 be within their respective jurisdictions. Failure to comply with the  
 38 provisions of the interstate compact on the placement of children by  
 39

[The agency consent form was added by the Senate Committee at  
 the request of the Family Law Committee.]

1 any professional providing services related to the placement of chil-  
 2 dren is a class C misdemeanor. For the purposes of this section,  
 3 "professional" means any person who receives payment or compen-  
 4 sation for providing services related to the placement of children for  
 5 adoption.

6 Sec. 34. K.S.A. 40-2-102 is hereby amended to read as follows:  
 7 40-2-102. All individual and group health insurance policies providing  
 8 coverage on an expense incurred basis and individual and group  
 9 service or indemnity type contracts issued by a profit or nonprofit  
 10 corporation which provides coverage for a family member of the  
 11 insured or subscriber shall, as to such family members' coverage,  
 12 also provide that the health insurance benefits applicable for children  
 13 shall be payable from the moment of birth with respect to a newly  
 14 born child of or a child adopted within 90 days of birth of such  
 15 child by the insured or subscriber from the moment of birth. Such  
 16 benefits shall include delivery expenses at birth of the birth mother  
 17 of a child adopted within 90 days of birth of such child by the  
 18 insured or subscriber subject to the same limitations contained in  
 19 such policy or contract applicable to the insured or subscriber. Such  
 20 benefits shall also be payable from at least the date of placement  
 21 with respect to any other child who has been placed for adoption  
 22 with the insured and for whom the application and consent pro-  
 23 cedures have been completed pursuant to applicable state or federal  
 24 law.

25 The coverage for newly born or adopted children shall consist of  
 26 coverage of injury or sickness including the necessary care and treat-  
 27 ment of medically diagnosed congenital defects and birth  
 28 abnormalities.

29 If payment of a specific premium or subscription fee is required  
 30 to provide coverage for a child, the policy or contract may require  
 31 that notification of birth of a newly born or adopted child and pay-  
 32 ment of the required premium or fees must be furnished to the  
 33 insurer or nonprofit service or indemnity corporation within thirty-  
 34 one (31) 31 days after the date of birth in order to have the coverage  
 35 continue beyond such thirty-one 31 day period.

36 Sec. 35. K.S.A. 59-2203 is hereby amended to read as follows:  
 37 59-2203. Proceedings for the probate of a will or for administration  
 38 shall be had in the county of the residence of the decedent at the  
 39 time of his or her death; of such decedent. If the decedent was not  
 40 a resident of this state, proceedings may be had in any county  
 41 wherein said where such decedent left any estate to be administered  
 42 as provided in K.S.A. 59-805 and amendments thereto. Proceedings  
 43 for the appointment of a guardian may be had in the county of the

1 proposed ward's residence or where the proposed ward may be  
 2 found. Proceedings for the appointment of a conservator shall be  
 3 had in the county of the proposed conservatee's residence; if the  
 4 proposed conservatee resides without this state, proceedings may be  
 5 had in any county in which any of the proposed conservatee's prop-  
 6 erty is situated. Proceedings for the administration of a partnership  
 7 estate by the surviving partner shall be had in the county of the  
 8 residence of the deceased partner at the time. If the deceased partner  
 9 is a nonresident of the state the proceedings may be had in any  
 10 county in which any of the partnership property is situated. Such  
 11 proceedings first legally commenced shall extend to all of the prop-  
 12 erty of the decedent or proposed conservatee in this state.

13 If the proceedings are instituted in more than one county, they  
 14 shall be stayed except in the county where first commenced until  
 15 final determination of venue. If the proper venue is determined to  
 16 be in another county, the district court, after making and retaining  
 17 a true copy of the entire file, shall transmit the original to the proper  
 18 county. Proceedings by a person seeking to adopt a child shall  
 19 be had in the county of the residence of such person if such  
 20 person is a resident of the state. If such person is a nonresident  
 21 of the state such proceedings shall be had in the county in  
 22 which the child to be adopted resides, except that if the child  
 23 is in the custody of an institution or agency authorized by the  
 24 laws of this state to place children for adoption such proceed-  
 25 ings shall be had in the county in which such institution or  
 26 agency is located. If such person resides upon or is stationed  
 27 at a United States military post or reservation within this state,  
 28 and the child to be adopted is then residing with such person,  
 29 adoption proceedings may be had in the district court of the  
 30 county in which such post or reservation is located, or in the  
 31 district court of any county located immediately adjacent to  
 32 such county.

33 Sec. 36. K.S.A. 1989 Supp. 65-504 is hereby amended to read  
 34 as follows: 65-504. (a) The secretary of health and environment shall  
 35 have the power to grant a license to a person, firm, corporation or  
 36 association to maintain a maternity hospital or home, or a boarding  
 37 home for children under 16 years of age. The license shall state the  
 38 name of the licensee, describe the particular premises in or at which  
 39 the business shall be carried on, whether it shall receive and care  
 40 for women or children, and the number of women or children that  
 41 may be treated, maintained, boarded or cared for at any one time.  
 42 No greater number of women or children than is authorized in the  
 43 license shall be kept in those premises and the business shall not



**CASE ANNOTATION \***

12. Cited; neither child's best interests nor parental fitness as controlling issues in adoption examined; importance of natural relation stressed. In re Adoption of E.J.H., 12 K.A.2d 746, 751, 757 P.2d 1268 (1988).

13. Voluntary termination of parental rights (38-125 et seq.) as also terminating obligation to support noted. State ex rel. Secretary of SRS v. Clear, 248 K. 109, 116, 804 P.2d 961 (1991).

**59-2104.**

**History:** L. 1939, ch. 180, § 176; L. 1976, ch. 242, § 28; Repealed, L. 1980, ch. 145, § 38; July 1.

**59-2105.**

**History:** L. 1982, ch. 182, § 147; L. 1983, ch. 140, § 44; Repealed, L. 1985, ch. 114, § 30; July 1.

Revisor's Note:

Later act, see 38-1129.

**59-2106 to 59-2110. Reserved.**

**KANSAS ADOPTION AND  
RELINQUISHMENT ACT**

Revisor's Note:

The adoption and relinquishment act was recommended by the Judicial Council and originally introduced as 1989 Senate Bill No. 292. Senate Bill No. 292 was referred for interim study to the Special Committee on Judiciary and reintroduced, as amended by the special committee, as 1990 Senate Bill No. 431. The Family Law Advisory Committee of the Judicial Council prepared comments to the proposed act which were distributed to the appropriate legislative committees. The original comments of the Family Law Advisory Committee have been edited by the Judicial Council to reflect changes made by the legislature in adopting the act. The revised comments are available from the Judicial Council.

Cross References to Related Sections:

Appeals, see 59-2401 et seq.

Child in need of care, procedure, see 38-1584.

Docket fees, see 59-104.

Interstate compact on the placement of children, see 38-1202.

**59-2111.** Citation of act, K.S.A. 59-2111 through 59-2143 shall be known and may be cited as the Kansas adoption and relinquishment act.

**History:** L. 1990, ch. 145, § 1; July 1.

**59-2112. Definitions.** As used in K.S.A. 59-2111 through 59-2143:

(a) "Adult adoption" means the adoption of an individual who has attained the age of majority;

(b) "agency adoption" means the adoption of a minor child where an agency has the authority to consent to the adoption;

(c) "independent adoption" means the adoption of a minor child where the child's parent or parents, legal guardian or nonagency

person in *loco parentis* has the authority to consent to the adoption; but does not include a stepparent adoption;

(d) "stepparent adoption" means the adoption of a minor child by the spouse of a parent with the consent of that parent;

(e) "residence of a child" and "place where a child resides" means:

(1) The residence of the child's mother if the child's parents are not married;

(2) the residence of the child's father, if the father has custody and the child's parents are not married;

(3) the residence of the child's father if the child's parents are married; or

(4) the residence of the child's mother if the child's parents are married, but the child's mother has established a separate, legal residence and the child resides with the mother;

(f) "agency" means any public or private entity organized pursuant to Kansas law, or organized pursuant to the laws of the jurisdiction where located, having for its purpose the care and maintenance of children, being authorized to place children for adoption, consent to the adoption and to stand in *loco parentis* to such children until they are adopted or reach majority; and

(g) "person in *loco parentis*" means an individual or organization vested with the right to consent to the adoption of a child pursuant to relinquishment or an order or judgment by a district court of competent jurisdiction.

History: L. 1980, ch. 145, § 2, July 1.

**59-2113. Who may adopt.** Any adult, or husband and wife jointly, may adopt any minor or adult as their child in the manner provided in K.S.A. 59-2111 through 59-2143, except that one spouse cannot do so without the consent of the other.

History: L. 1980, ch. 145, § 3, July 1.

Source or Prior Law:  
59-2101.

**59-2114. Written consent required, acknowledgment; revocability of consent when.**

(a) Consent shall be in writing and shall be acknowledged before a judge of a court of record or before an officer authorized by law to take acknowledgments. If consent is acknowledged before a judge of a court of record, it shall be the duty of the court to advise the consenting person of the consequences of the consent. A consent is final when executed, unless the consenting party, prior to final decree of adoption, alleges and proves by clear and

on the record

convincing evidence that the consent was not freely and voluntarily given. The burden of proving the consent was not freely and voluntarily given shall rest with the consenting party.

(b) Consent in all cases shall have been executed not more than six months prior to the date the petition for adoption is filed.

History: L. 1990, ch. 145, § 4; July 1.

Source or Prior Law:  
89-2102(c).

**59-2115.** Consent or relinquishment; minor parent. Minority of a parent shall not invalidate a parent's consent or relinquishment, except that a minor parent shall have the advice of independent legal counsel as to the consequences of the consent or relinquishment prior to its execution. The attorney providing independent legal advice to the minor parent shall be present at the execution of the consent or relinquishment. Unless the minor parent is otherwise represented by independent legal counsel, the petitioner or child placing agency shall provide independent legal counsel to the minor parent at such petitioner's or child placing agency's sole expense.

History: L. 1990, ch. 145, § 5; July 1.

Source or Prior Law:  
59-2102(d), 38-113, 38-125.

**59-2116.** Same; time of execution. A consent or relinquishment may not be given by the mother for accepted until 12 hours after the birth of a child. Any consent or relinquishment given by the mother before 12 hours after the birth of a child is voidable.

History: L. 1990, ch. 145, § 6; July 1.

**59-2117.** Same; execution and acknowledgment outside of state, in foreign country or by person in military service. (a) A consent or relinquishment executed and acknowledged outside of this state, either in accordance with the law of this state or in accordance with the law of the place where executed, is valid.

(b) Where a consent or relinquishment is signed in a foreign country, the execution of the consent or relinquishment shall be acknowledged or affirmed in accordance with the law and procedure of the foreign country.

(c) If the person signing a consent or relinquishment is in the military service of the United States, the execution of the consent or relinquishment may be acknowledged before a commissioned officer and the signature of the officer shall be verified or acknowledged before

a notary public or by such other procedure as is then in effect for such division or branch of the armed forces.

History: L. 1990, ch. 145, § 7; July 1.

**59-2118. Effect of adoption; name; rights of child, parents.** (a) Any person adopted as provided in K.S.A. 59-2111 through 59-2143 shall assume the surname of the petitioner or petitioners for adoption, except that the court in its discretion may permit a different surname when requested by the petitioner or petitioners. When requested by the petitioner or petitioners, the court, in its discretion, may change the given name or names of the person adopted.

(b) When adopted, a person shall be entitled to the same personal and property rights as a [birth] child of the adoptive parent. The adoptive parent shall be entitled to exercise all the rights of a [birth] parent and be subject to all the liabilities of that relationship. Upon adoption, all the rights of [birth] parents to the adopted person, including their right to inherit from the person, shall cease, except the rights of a [birth] parent who is the spouse of the adopting parent.

History: L. 1990, ch. 145, § 8; July 1.

Source or Prior Law:  
59-2103(a), (b).

**59-2119. Report of adoption.** The district court shall report the adoption to the state registrar of vital statistics.

History: L. 1990, ch. 145, § 9; July 1.

Source or Prior Law:  
59-2104.

**59-2120. Interstate adoption; procedures.** Interstate placements of children shall comply with the procedures contained in the interstate compact on placement of children as set forth in K.S.A. 38-1202 and amendments thereto. Any professional providing services related to the placement of children for adoption who fails to comply with the provisions of the interstate compact for the placement of children is guilty of a class C misdemeanor. For the purposes of this section, "professional" means any person who receives payment or compensation for providing services related to the placement of children for adoption.

History: L. 1990, ch. 145, § 10; July 1.

Source or Prior Law:  
59-2278b.

**59-2121. Payment for adoption; limitation; approval by court.** (a) Except as otherwise

authorized by law, no person shall request, receive, give or offer to give any consideration in connection with an adoption, or a placement for adoption, other than:

*deleted*  
*in the locality*

(1) Reasonable fees for legal and other professional services rendered in connection with the placement or adoption not to exceed customary fees for similar services by professionals of equivalent experience and reputation where the services are performed, except that fees for legal and other professional services as provided in this section performed outside the state shall not exceed customary fees for similar services when performed in the state of Kansas;

(2) reasonable fees in the state of Kansas of a licensed child-placing agency;

(3) actual and necessary expenses, based on expenses in the state of Kansas, incident to placement or to the adoption proceedings;

(4) actual medical expenses of the mother attributable to pregnancy and birth;

(5) actual medical expenses of the child; and

(6) reasonable living expenses of the mother which are incurred during or as a result of the pregnancy.

(b) In an action for adoption, a detailed accounting of all consideration given, or to be given, and all disbursements made, or to be made, in connection with the adoption and the placement for adoption shall accompany the petition for adoption. Upon review of the accounting, the court shall disapprove any such consideration which the court determines to be unreasonable or in violation of this section and, to the extent necessary to comply with the provisions of this section, shall order reimbursement of any consideration already given in violation of this section.

(c) Knowingly and intentionally receiving or accepting clearly excessive fees or expenses in violation of subsection (a) shall be a class E felony. Knowingly failing to list all consideration or disbursements as required by subsection (b) shall be a class B misdemeanor.

History: L. 1990, ch. 145, § 11; July 1.

Source or Prior Law:  
59-2278c.

**59-2122. Files and records of adoption.**

(4) The files and records of the court in adoption proceedings shall not be open to inspection or copy by persons other than the parties in interest and their attorneys, and representatives of the state department of social and rehabilitation services, except upon an order

of the court expressly permitting the same. As used in this section, "parties in interest" shall not include genetic parents once a decree of adoption is entered.

(b) The department of social and rehabilitation services may contact the adoptive parents of the minor child or the adopted adult at the request of the genetic parents in the event of a health or medical need. The department of social and rehabilitation services may contact the adopted adult at the request of the genetic parents for any reason. Identifying information shall not be shared with the genetic parents without the permission of the adoptive parents of the minor child or the adopted adult. The department of social and rehabilitation services may contact the genetic parents at the request of the adoptive parents of the minor child or the adopted adult in the event of a health or medical need. The department of social and rehabilitation services may contact the genetic parents at the request of the adopted adult for any reason.

History: L. 1990, ch. 145, § 12; July 1,

59-2279  
Source or Prior Law:

**59-2123. Certain advertisements and offers relating to adopting and placing children prohibited; definitions.** (a) Except as otherwise provided in this section:

(1) No person shall advertise that such person will adopt, find an adoptive home for a child or otherwise place a child for adoption;

(2) no person shall offer to adopt, find a home for or otherwise place a child as an inducement to a woman to come to such person's maternity hospital or home during pregnancy or after delivery; and

(3) no person shall offer to adopt, find a home for or otherwise place a child as an inducement to any parent, guardian or custodian of a child to place such child in such person's home, institution or establishment.

(b) The provisions of subsection (a)(1) shall not apply to a licensed child placement agency operating as authorized by Kansas law or to the department of social and rehabilitation services.

(c) As used in this section:

(1) "Advertise" means to communicate by newspaper, radio, television, handbills, placards or other print, broadcast or electronic medium;

(2) "person" means an individual, firm, partnership, corporation, joint venture or other association or entity; and

(3) "maternity hospital or home" means the same as provided in K.S.A. 65-502 and amendments thereto.

(4) Any person who violates the provisions of this section shall be guilty of a class C misdemeanor.

History: L. 1990, ch. 145, § 13; July 1.

Source or Prior Law:  
65-509.

**59-2124. Relinquishment of child to agency.** (a) Any parent or person in *loco parentis* may relinquish a child to an agency, and if the agency accepts the relinquishment in writing, the agency shall stand *in loco parentis* to the child and shall have and possess over the child all rights of a parent or legal guardian, including the power to place the child for adoption and give consent thereto. (b) All relinquishments to an agency under K.S.A. 59-2111 through 59-2143, and amendments thereto, shall be in writing, in substantial conformity with the form for relinquishment contained in the appendix of forms following K.S.A. 59-2143, and amendments thereto, and shall be executed by: (1) Both parents of the child; (2) one parent, if the other parent is deceased or the other parent's relinquishment is found unnecessary under K.S.A. 59-2136, and amendments thereto; or (3) a person *in loco parentis*.

(c) The relinquishment shall be in writing and shall be acknowledged before a judge of a court of record or before an officer authorized by law to take acknowledgments. If the relinquishment is acknowledged before a judge of a court of record, it shall be the duty of the court to advise the relinquishing person of the consequences of the relinquishment.

(d) Except as otherwise provided, in all cases where a parent or person *in loco parentis* has relinquished a child to the agency pursuant to K.S.A. 59-2111 through 59-2143, and amendments thereto, all the rights of the parent or person *in loco parentis* shall be terminated, including the right to receive notice in a subsequent adoption proceeding involving the child. If a parent has relinquished a child to the agency pursuant to K.S.A. 59-2111 through 59-2143, and amendments thereto, based on a belief that the child's other parent would relinquish the child to the agency, and such other parent does not relinquish such child to the agency, the rights of such parent who has relinquished a child to the agency shall not be terminated.

10/11  
deleted  
from the record

History: L. 1990, ch. 145, § 14; July 1.

Source or Prior Law:  
38-113, 38-114, 38-124 through 38-128.

**59-2125.** Application of K.S.A. 59-2126 through 59-2136. In addition to those requirements, where applicable, as set out in the provisions of K.S.A. 59-2111 through 59-2124, K.S.A. 59-2126 through 59-2136 shall apply to adoptions of minor children.

History: L. 1990, ch. 145, § 15; July 1.

**59-2126.** Venue. (a) In an independent adoption venue shall be in the county in which the petitioner resides or in the county in which the child to be adopted resides.

(b) In an agency adoption venue shall be:  
(1) In the county in which the petitioner resides;

(2) in the county in which the child to be adopted resided prior to receipt of custody by the agency; or

(3) where the child placing agency is located, in the county in which the petitioner resides or where the child resides;

(c) If the petitioner resides upon or is stationed at a United States military post or reservation within this state, and the child to be adopted is then residing with the petitioner, venue may be in the district court of the county in which the post or reservation is located, or in the district court of any county located immediately adjacent to such county.

(e) Where the residence of the child, as defined in K.S.A. 59-2112, serves as the basis for venue, a sworn affidavit shall be filed with the petition setting forth the factual basis for the child's residency.

History: L. 1990, ch. 145, § 16; July 1.

Source or Prior Law:  
59-2203.

**59-2127.** Jurisdiction in certain agency adoptions. (a) If the basis for venue in an agency adoption is subsection (b)(3) of K.S.A. 59-2126 and the petitioner does not reside in Kansas and the child to be adopted did not reside in Kansas prior to receipt of custody by the agency, the court shall determine whether or not to exercise its jurisdiction under this act based on the best interests of the child. For this purpose the court shall consider the following factors:

(1) If another state recently was the child's or mother's home state;



- (2) if another state has a closer connection with the child or the child's adoptive or genetic parent or parents;
  - (3) if substantial evidence concerning the child's present or future care, protection, training and personal relationships is more readily available in another state;
  - (4) the unavailability of placement opportunities for such child within the state of Kansas; and
  - (5) any other factor the court deems relevant in its determination of whether or not to exercise its jurisdiction.
- (b) Before determining whether or not to exercise its jurisdiction the court may communicate with a court of another state and exchange information pertinent to the assumption of jurisdiction by either court with a view to assuring that jurisdiction will be exercised by such court of another state and that a forum will be available to the parties.
  - (c) If the court determines not to exercise its jurisdiction, it may dismiss the proceedings, or it may stay the proceedings upon condition that an adoption proceeding be promptly commenced in another named state or upon any other conditions which may be just and proper.

History: L. 1990, ch. 145, § 17; July 1.

**59-2128.** Petition for adoption; consents, background information, accounting, residency affidavit, filing. (a) A petition for adoption shall be filed by the person desiring to adopt the child, and shall state:

- (1) In an independent adoption: (A) The name, residence and address of the petitioner;
- (B) the name of the child, the date, time and place of the child's birth, and the place at which the child resides;
- (C) the suitability of the petitioner to assume the relationship;
- (D) whether one or both parents are living and the name, date of birth, residence and address of those living, so far as known to the petitioner;
- (E) the facts relied upon as eliminating the necessity for the consent, if the consent of either or both parents is not obtained;
- (F) the information required by the uniform child custody jurisdiction act under K.S.A. 38-1309 and amendments thereto; and
- (G) whether the interstate compact on placement of children, K.S.A. 38-1201 *et seq.*, and amendments thereto, and the Indian child welfare act, 25 U.S.C. 1901 *et seq.*, are ap-

licable and have been or will be complied with prior to the hearing;

(2) in an agency adoption, all requirements contained in subsection (a)(1) except subsection (a)(1)(E), and if applicable, the factual basis upon which the court should determine to exercise its jurisdiction as provided in K.S.A. 59-2127; or

(3) in a stepparent adoption, all requirements contained in subsection (a)(1) except that a statement of compliance with the interstate compact on placement of children is not required.

(b) The written consents to adoption required by K.S.A. 59-2129, and amendments thereto, the background information required by K.S.A. 59-2130, the accounting required by K.S.A. 59-2121 and any affidavit required by K.S.A. 59-2126 shall be filed with the petition for adoption.

History: L. 1990, ch. 145, § 18; July 1.

Source or Prior Law:  
59-2277, 59-2278(a), 59-2287(c)(b).

**59-2129.** Consent. (a) Consent to an independent adoption shall be given by: (1) The living parents of the child; or

(2) one of the parents of the child, if the other's consent is found unnecessary under K.S.A. 59-2136; or

(3) the legal guardian of the child, if both parents are dead or if their consent is found to be unnecessary under K.S.A. 59-2136; or

(4) the court entering an order under subsection (c)(1)(B) of K.S.A. 38-1584 and amendments thereto; and

(5) the judge of any court having jurisdiction over the child pursuant to the code for care of children, if parental rights have not been terminated; and

(6) the child sought to be adopted, if over 14 years of age and of sound intellect.

(b) Consent to an agency adoption shall be given by: (1) The authorized representative of the agency having authority to consent to the adoption of the child; and

(2) the child sought to be adopted, if over 14 years of age and of sound intellect.

(c) The provisions of subsection (a) shall apply to consent in a stepparent adoption, except that subsections (a)(3) and (4) shall not apply.

(d) A consent given by a parent, legal guardian or agency shall be in substantial conformity with the form for consent contained in the appendix of forms following K.S.A. 59-2143.

(e) A consent given by a legal guardian, judge or agency shall set forth the authority to execute the consent and shall be accompanied by documents supporting that authority.

History: L. 1990, ch. 145, § 19; July 1.

Source or Prior Law:  
59-2102(a).

**59-2130.** Independent and agency adoptions; background information on adoptee and parents; filing; disclosure. (a) The following information shall be filed with the petition in an independent or agency adoption: (1) A complete written genetic, medical and social history of the child and the parents;

(2) the names, dates of birth, addresses, telephone numbers, and social security numbers of each of the child's parents, if known;

(3) any hospital records pertaining to the child or a properly executed authorization for release of those records; and

(4) the child's birth verification, which shall include the date, time and place of birth and the name of the attending physician.

(b) The genetic, medical and social history required by this section shall be in conformity with the rules and regulations adopted by the secretary of social and rehabilitation services and on forms provided by the secretary.

(c) If any information required to be filed under this section is not available, an affidavit explaining the reasons why it is not available shall be filed with the petition for adoption.

(d) The secretary of social and rehabilitation services shall adopt rules and regulations establishing procedures for updating a child's genetic, medical and social history if new information becomes known at a later date. The agency or person conducting the investigation under K.S.A. 59-2132 shall advise in writing each of the child's biological parents, if known, of those procedures.

(e) Any employee or agent of the department of social and rehabilitation services, a child-placing agency or a district court who intentionally destroys any information required to be filed under this section is guilty of a class C misdemeanor.

History: L. 1990, ch. 145, § 20; July 1.

Source or Prior Law:  
59-2273a.

**59-2131.** Same; temporary orders. Pending the hearing in an independent or agency adoption, the court may make an appropriate order for the care and custody of the child. If

the court makes an order for placement in a home not licensed to provide such care, then the home shall first be assessed by a person or agency authorized to make assessments under subsection (a) or (f) of K.S.A. 59-2132. In the absence of a preplacement assessment, the court may make an order for placement in a home not licensed to provide for the care and custody of the child following an evidentiary hearing which shall include testimony by the petitioners. Such hearing shall be heard and determined by the court as expeditiously as possible.

History: L. 1980, ch. 145, § 21, July 1.

Source or Prior Law:  
59-2278(b).

**59-2132.** Same; assessment, investigation and report. (a) In independent and agency adoptions, the court shall require the petitioner to obtain an assessment by a court approved social worker licensed to practice social work in Kansas or by a licensed child-placing agency of the advisability of the adoption.

(b) The petitioner shall file with the court, not less than 10 days before the hearing on the petition, a report of the assessment and, if necessary, confirmation or clarification of the information filed under K.S.A. 59-2130.

(c) If there is no licensed social worker or licensed child-placing agency available to make the assessment and report to the court, the court may use the department of social and rehabilitation services for that purpose.

(d) The costs of making the assessment and report may be assessed as court costs in the case as provided in article 20 of chapter 60 of the Kansas Statutes Annotated and amendments thereto.

(e) In making the assessment, the social worker, child-placing agency or department of social and rehabilitation services is authorized to observe the child in the petitioner's home, verify financial information of the petitioner, shall clear the name of the petitioner with the child abuse and neglect registry through the department of social and rehabilitation services and to contact the agency or individuals consenting to the adoption and confirm and, if necessary, clarify any genetic and medical history filed with the petition. This information shall be made a part of the report to the court. The report to the court by the social worker, child-placing agency or department of social and rehabilitation services shall include the results of the investigation of the petitioner, the

petitioner's home and the ability of the petitioner to care for the child.

(f) In the case of a nonresident who is filing a petition to adopt a child in Kansas, the assessment and report required by this section must be completed in the petitioner's state of residence by a licensed social worker, a licensed child-placing agency or a comparable entity in that state and filed with the court not less than 10 days before the hearing on the petition.

(g) The assessment and report required by this section must have been completed not more than one year prior to the filing of the petition for adoption.

History: L. 1990, ch. 145, § 22; July 1.

Source or Prior Law:  
59-2278(e), (c) and (e).

**59-2133.** Notice. (a) Upon filing the petition, the court shall fix the time and place for the hearing. The time fixed for the hearing may be any time not less than 30 days nor more than 60 days from the date the petition is filed. The time fixed for the hearing may be extended by the court for good cause.

(b) In independent and stepparent adoptions notice of the hearing on the petition shall be given to the parents or presumed parents, unless parental rights have been previously terminated, and any other persons as the court may direct. Notice also shall be given in an independent adoption to a legal guardian of the child or individual in *loco parentis*.

(c) In an agency adoption notice of the hearing on the petition shall be given to the consenting agency unless waived.

(d) Notice given pursuant to this section shall not include a copy of the petition.

History: L. 1990, ch. 145, § 23; July 1.

Source or Prior Law:  
59-2278(e), (b).

**59-2134.** Hearing. (a) Upon the hearing of the petition, the court shall consider the assessment and all evidence, including evidence relating to determination of whether or not the court should exercise its jurisdiction as provided in K.S.A. 59-2137 offered by any interested party. If the adoption is granted, the court shall make a final decree of adoption.

(b) If the adoption is denied, the court shall enter appropriate orders. Such orders may include an order giving temporary custody of the child to another person or agency for a period not to exceed 30 days pending termination of the instant case or a new case being filed.

(c) The costs of the adoption proceedings shall be paid by the petitioner or as assessed by the court.

History: L. 1990, ch. 145, § 24, July 1.

Source or Prior Law:  
59-2278(f).

**59-2135.** Same; information to be provided to department of social and rehabilitation services. The clerk of each district court shall provide a copy of the decree of adoption, a copy of the report of adoption required in K.S.A. 59-2119 and a copy of the information required in K.S.A. 59-2130 pertaining to any adoption of a minor to the secretary of social and rehabilitation services. All information pertaining to adoptions of minors required to be provided to the secretary of social and rehabilitation services shall be maintained by the secretary and shall be subject to disclosure to the same extent as files and records of the court under K.S.A. 59-2122.

History: L. 1990, ch. 145, § 25, July 1.

Source or Prior Law:  
59-2278(g), 59-2278a(c).

**59-2136.** Relinquishment and adoption; proceedings to terminate parental rights. (a) The provisions of this section shall apply where a relinquishment or consent to an adoption has not been obtained from a parent and K.S.A. 59-2124 and 59-2129, and amendments thereto, state that the necessity of a parent's relinquishment or consent can be determined under this section.

(b) Insofar as practicable, the provisions of this section applicable to the father also shall apply to the mother and those applicable to the mother also shall apply to the father.

(c) In stepparent adoptions under subsection (d), the court may appoint an attorney to represent any father who is unknown or whose whereabouts are unknown. In all other cases, the court shall appoint an attorney to represent any father who is unknown or whose whereabouts are unknown. If no person is identified as the father or a possible father, the court shall order publication notice of the hearing in such manner as the court deems appropriate.

(d) In a stepparent adoption, if a mother consents to the adoption of a child who has a presumed father under subsection (a)(1), (2) or (3) of K.S.A. 38-1114 and amendments thereto, or who has a father as to whom the child is a legitimate child under prior law of this state or under the law of another jurisdiction, the consent of such father must be given to the

adoption unless such father has failed or refused to assume the duties of a parent for two consecutive years next preceding the filing of the petition for adoption or is incapable of giving such consent. In determining whether a father's consent is required under this subsection, the court may disregard incidental visitations, contacts, communications or contributions. In determining whether the father has failed or refused to assume the duties of a parent for two consecutive years next preceding the filing of the petition for adoption, there shall be a rebuttable presumption that if the father, after having knowledge of the child's birth, has knowingly failed to provide a substantial portion of the child support as required by judicial decree, when financially able to do so, for a period of two years next preceding the filing of the petition for adoption, then such father has failed or refused to assume the duties of a parent.

(c) Except as provided in subsection (d), if a mother desires to relinquish or consents to the adoption of such mother's child, a petition shall be filed in the district court to terminate the parental rights of the father, unless the father's relationship to the child has been previously terminated or determined not to exist by a court. The petition may be filed by the mother, the petitioner for adoption, the person or agency having custody of the child or the agency to which the child has been or is to be relinquished. Where appropriate, the request to terminate parental rights may be contained in a petition for adoption. If the request to terminate parental rights is not filed in connection with an adoption proceeding, venue shall be in the county in which the child, the mother or the presumed or alleged father resides or is found. In an effort to identify the father, the court shall determine by deposition, affidavit or hearing, the following: (1) Whether there is a presumed father under K.S.A. 38-1114 and amendments thereto;

(2) whether there is a father whose relationship to the child has been determined by a court;

(3) whether there is a father as to whom the child is a legitimate child under prior law of this state or under the law of another jurisdiction;

(4) whether the mother was cohabitating with a man at the time of conception or birth of the child;

(5) whether the mother has received support payments or promises of support with re-

spect to the child or in connection with such mother's pregnancy; and

(6) whether any man has formally or informally acknowledged or declared such man's possible paternity of the child.

If the father is identified to the satisfaction of the court, or if more than one man is identified as a possible father, each shall be given notice of the proceeding in accordance with subsection (f).

(f) Notice of the proceeding shall be given to every person identified as the father or a possible father by personal service, registered mail or in any other manner the court may direct. Proof of notice shall be filed with the court before the petition or request is heard.

(g) If, after the inquiry, the court is unable to identify the father or any possible father and no person has appeared claiming to be the father and claiming custodial rights, the court shall enter an order terminating the unknown father's parental rights with reference to the child without regard to subsection (h). If any person identified as the father or possible father of the child fails to appear or, if appearing, fails to claim custodial rights, such person's parental rights with reference to the child shall be terminated without regard to subsection (h).

(h) When a father or alleged father appears and asserts parental rights, the court shall determine parentage, if necessary pursuant to the Kansas parentage act. If a father desires but is financially unable to employ an attorney, the court shall appoint an attorney for the father. Thereafter, the court may order that parental rights be terminated, upon a finding by clear and convincing evidence, of any of the following: (1) The father abandoned or neglected the child after having knowledge of the child's birth;

(2) the father is unfit as a parent or incapable of giving consent;

(3) the father has made no reasonable efforts to support or communicate with the child after having knowledge of the child's birth;

(4) the father, after having knowledge of the pregnancy, failed without reasonable cause to provide support for the mother during the six months prior to the child's birth;

(5) the father abandoned the mother after having knowledge of the pregnancy;

(6) the birth of the child was the result of rape of the mother; or



(7) the father has failed or refused to assume the duties of a parent for two consecutive years next preceding the filing of the petition. In making a finding under this subsection, the court may disregard incidental visitations, contacts, communications or contributions. In determining whether the father has failed or refused to assume the duties of a parent for two consecutive years next preceding the filing of the petition for adoption, there shall be a rebuttable presumption that if the father, after having knowledge of the child's birth, has knowingly failed to provide a substantial portion of the child support as required by judicial decree, when financially able to do so, for a period of two years next preceding the filing of the petition for adoption, then such father has failed or refused to assume the duties of a parent.

History: L. 1990, ch. 145, § 26; L. 1991, ch. 167, § 1; July 1.

Source or Prior Law:  
38-1129, 59-2102(a)(3).

**59-2137.** Application of K.S.A. 59-2138 through 59-2142. In addition to those requirements, where applicable, as set out in the provisions of K.S.A. 59-2111 through 59-2124, K.S.A. 59-2138 through 59-2142 shall apply to adult adoptions.

History: L. 1990, ch. 145, § 27; July 1.

**59-2138.** Venue. Venue shall be in the county in which the petitioner or the adult to be adopted resides.

History: L. 1990, ch. 145, § 28; July 1.

**59-2139.** Petition. (a) A petition for adult adoption shall be filed by the person desiring to adopt the adult and shall state: (1) The name, residence and address of the petitioner; (2) the name, residence, address and date of birth of the adult to be adopted;

(3) whether the petitioner or adult to be adopted is married and if so, the name, residence and address of the spouse;

(4) the facts showing the reasons for the adoption;

(5) whether one or both of the parents of the adult to be adopted are living and the name, residence and address of those living so far as known to the petitioner or the adult to be adopted; and

(6) whether or not any change of name is requested.

(b) The written consents required by K.S.A. 59-2140, and amendments thereto, and

the accounting required by K.S.A. 59-2121 shall be filed with the petition for adoption.  
History: L. 1990, ch. 145, § 29; July 1.

**59-2140. Consent.** Before any adult is adopted consent to the adoption shall be given by: (a) The adult subject of the adoption or the legal guardian of a disabled adult subject of adoption; and

(b) the spouse of the petitioner or the spouse's legal guardian if a disabled person.

History: L. 1990, ch. 145, § 30; July 1.

Source or Prior Law:  
59-2101.

**59-2141. Notice and hearing.** (a) The court, by order, shall fix a time and place for hearing on the petition. The hearing may be with or without notice as the court shall direct and the court may hear the petition forthwith.

(b) The court may order that notice of the hearing be given to the parents of the adult subject of the adoption and shall require notice, unless waived, to any consenting party.

History: L. 1990, ch. 145, § 31; July 1.

Source or Prior Law:  
59-2250.

**59-2142. Copy of decree to former parent.** The petitioner or attorney for the petitioner, if a decree of adoption is entered, shall mail a certified copy of the decree to the former parent of the adult adoptee, if the parent has had no notice of the proceeding and, with reasonable diligence, can be located for service by first-class mail. The petitioner or the attorney shall file proof of mailing with the court or shall file an affidavit setting forth the reasons for noncompliance if the reasons are not evident from the verified pleadings on file. Failure to give the notice required by this section shall not invalidate the adoption.

History: L. 1990, ch. 145, § 32; July 1.

**59-2143. Forms.** The forms contained in the appendix of forms are sufficient under K.S.A. 59-2111 through 59-2143.

#### APPENDIX OF FORMS

#### RELINQUISHMENT OF MINOR CHILD TO AGENCY

##### NOTICE TO PARENT OR PERSON IN LOCO PARENTIS:

This is an important legal document and by signing it you are permanently giving up all custody and other parental rights to the child named herein. You are to receive a copy of this document.

I, \_\_\_\_\_, (mother, father, person in loco parentis) of \_\_\_\_\_, a minor child, state:

The child was born on \_\_\_\_\_ at \_\_\_\_\_ (place of birth) at \_\_\_\_\_

I reside at \_\_\_\_\_, County of \_\_\_\_\_ and State of \_\_\_\_\_

(If the relinquishment is by a person in loco parentis the relinquishment shall have attached documents supporting the person's authority to execute the relinquishment.)

I am of the age of \_\_\_\_\_ years and was born on \_\_\_\_\_

(If the relinquishing person is a minor, the relinquishment should set forth that, prior to signing the relinquishment, the person has received legal advice as to the relinquishment, from an attorney who does not represent the agency.)

I do hereby relinquish the child to \_\_\_\_\_ (name of agency), which I understand will have full power and all the rights of a birth parent or legal guardian over the child, including the power to place the child for adoption and give consent thereto.

I wish to and understand that by signing this relinquishment I do permanently give up all custody and other parental rights I have to such child, including the right to receive notice of any subsequent adoption proceedings involving the child.

I have read and understand the above and I am signing it as my free and voluntary act.

Dated this \_\_\_\_\_, at \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
(Parent or Person in loco parentis)

Certificate of Attorney for Relinquishing Minor Parent  
I have fully explained that by signing this relinquishment \_\_\_\_\_ is permanently giving up all parental rights to the child and (she) (he) has stated that such is (her) (his) intention and desire.

Dated \_\_\_\_\_, at \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
(Attorney)

ACKNOWLEDGMENT BEFORE JUDGE  
OF DISTRICT COURT

STATE OF \_\_\_\_\_ }  
COUNTY \_\_\_\_\_ } SS:

I, \_\_\_\_\_, Judge of \_\_\_\_\_

certify that \_\_\_\_\_, known to me to be the same person whose name is subscribed to the foregoing relinquishment, appeared before me this day in person and acknowledged that (she) (he) signed for such relinquishment as (her) (his) free and voluntary act, for the specified purpose.

I have fully explained that by signing such relinquishment (she) (he) is permanently giving up all parental rights to such child and (she) (he) has stated that such is (her) (his) intention and desire.

Dated \_\_\_\_\_, at \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_  
JUDGE

ACKNOWLEDGMENT BEFORE  
NOTARIAL OFFICER

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ ) SS:

I, a notarial officer in and for the county and state  
aforesaid, certify that \_\_\_\_\_, known to me to be the  
same person whose name is subscribed to the foregoing  
relinquishment, appeared before me in person and ac-  
knowledged that the statements made in the foregoing  
relinquishment are true.

Dated \_\_\_\_\_ at \_\_\_\_\_ m.

(Signature of Notarial Officer)

(SEAL, if any).

[My Appointment Expires \_\_\_\_\_ Title (and Rank) \_\_\_\_\_]

ACCEPTANCE OF CHILD BY AGENCY:

I, the undersigned, on behalf of \_\_\_\_\_,  
do hereby accept custody of \_\_\_\_\_  
the above relinquished minor child.

(Date) \_\_\_\_\_ (Name and Title) \_\_\_\_\_

CONSENT TO ADOPTION OF MINOR CHILD

NOTICE TO PARENT OR LEGAL GUARDIAN:  
This is an important legal document and by signing it  
you are permanently giving up all custody and other pa-  
rental rights to the child named herein, so as to permit  
the child's adoption. You are to receive a copy of this  
document.

I, \_\_\_\_\_ (mother, father,  
legal guardian) of \_\_\_\_\_, a minor child,  
state: \_\_\_\_\_ at \_\_\_\_\_

The child was born on \_\_\_\_\_ at \_\_\_\_\_  
m.

I reside at \_\_\_\_\_ County of \_\_\_\_\_  
and State of \_\_\_\_\_

(If the consent is by a legal guardian, the consent shall  
have attached documents supporting the guardian's ap-  
pointment and the authority of the guardian to execute  
the consent.)

I am of the age of \_\_\_\_\_ years and was born on \_\_\_\_\_

(If the consenting person is a minor, the consent should  
set forth that, prior to signing the consent, the person has  
received legal advice as to the consent, from an attorney  
who does not represent the petitioner for adoption.)

I do hereby consent and agree to the adoption of the  
child (by \_\_\_\_\_) or (and I do not require disclosure  
of the name or other identification of the adopting parent  
or parents).

I wish to and understand that by signing this consent  
I do permanently give up all custody and other parental  
rights I have to such child.

I have read and understand the above and I am signing  
it as my free and voluntary act.

Dated this \_\_\_\_\_ at \_\_\_\_\_  
m.

(Parent or Legal Guardian)

Certificate of Attorney for Consenting Minor Parent

I have fully explained that by signing this consent \_\_\_\_\_ is permanently giving up all parental rights to the child and (she) (he) has stated that such is (her) (his) intention and desire.

Dated \_\_\_\_\_

Attorney

ACKNOWLEDGMENT BEFORE JUDGE OF DISTRICT COURT

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ ) SS:

I, \_\_\_\_\_ Judge of \_\_\_\_\_ (name and location of court), certify that \_\_\_\_\_ known to me to be the same person whose name is subscribed to the foregoing consent, appeared before me this day in person and acknowledged that (she) (he) signed such consent as (her) (his) free and voluntary act, for the specified purpose.

I have fully explained that by signing such consent (she) (he) is permanently giving up all parental rights to such child and (she) (he) has stated that such is (her) (his) intention and desire.

Dated \_\_\_\_\_ at \_\_\_\_\_ m.

JUDGE

ACKNOWLEDGMENT BEFORE NOTARIAL OFFICER

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ ) SS:

I, a notarial officer in and for the county and state aforesaid, certify that \_\_\_\_\_ known to me to be the same person whose name is subscribed to the foregoing consent, appeared before me in person and acknowledged that the statements made in the foregoing consent are true.

Dated \_\_\_\_\_ at \_\_\_\_\_ m.

(Signature of Notarial Officer)

(SEAL, if any)

Title (and Rank)

[My Appointment Expires: \_\_\_\_\_]

AGENCY CONSENT TO ADOPTION OF MINOR CHILD

(Name of Agency) a (public/private) entity having for its purpose the care and maintenance of children, is located in and authorized under the laws of the state of \_\_\_\_\_ to place children for adoption, consent to the adoption and to stand in loco parentis to such children until they are adopted or reach majority.

(Name of Agency) is vested with the right to consent to the adoption of (Name of Child)

a minor child born \_\_\_\_\_ (Date of Birth) at \_\_\_\_\_ (Place of Birth)

pursuant to, in relinquishment executed by (the parents of the child)(the person in loco parentis to the child) [an order or judgment of the \_\_\_\_\_ court of \_\_\_\_\_ county, \_\_\_\_\_, a court of competent jurisdiction]. Documents supporting the authority to execute this consent are attached hereto.

\_\_\_\_\_ (Name of Agency) does hereby consent to the adoption of (Name of Child) by \_\_\_\_\_ resident(s) of \_\_\_\_\_ and does hereby surrender said child to said person(s) for the purpose of adoption.

\_\_\_\_\_ (Name of Agency) has authorized \_\_\_\_\_ (Name of Authorized Representative) the undersigned, as the authorized representative to execute consents to adoption on behalf of said agency.

\_\_\_\_\_  
(Date) \_\_\_\_\_ (Name and Title of Authorized Representative)

ACKNOWLEDGMENT BEFORE  
NOTARIAL OFFICER

STATE OF \_\_\_\_\_ }  
COUNTY OF \_\_\_\_\_ } SS:

\_\_\_\_\_, a notarial officer in and for the county and state aforesaid certify that \_\_\_\_\_ known to me to be the same person whose name is subscribed to the foregoing consent, appeared before me in person and acknowledged that the statements made in the foregoing consent are true.  
Dated \_\_\_\_\_ at \_\_\_\_\_ m.

(SEAL, if any) \_\_\_\_\_ (Signature of Notarial Officer)

[My Appointment Expires: \_\_\_\_\_ This (and blank)

History: L. 1990, ch. 145, § 33, July 1.

Article 22.—PROBATE PROCEDURE

Cross References to Related Sections:  
Cypres rule; amendment or construction of will or trust to preserve federal estate tax deduction, see 59-22401.

GENERAL PROVISIONS

59-2201.

CASE ANNOTATIONS

22. Cited; failure to file final accounting (59-2247) did not deprive court of jurisdiction to order final settlement. In re Estate of Newland, 240 K. 249, 354, 730 P.2d 351 (1986).

23. Chapter 59 as containing no procedures for notice of contested guardian ad litem fees noted; rules in civil cases apply. In re Guardianship of K.M.W., 13 K.A.2d 640, 646, 777 P.2d 1274 (1989).

59-2203.

Venue. Proceedings for the probate of a will or for administration shall be had in the county of the residence of the decedent at the time of such decedent's death if the

## RE: PROPOSAL NO. 31 - ADOPTION\*

Proposal No. 31 directs the Committee to evaluate the basic types of adoption as well as the procedures for adoption including, but not limited to, venue, rights of adopted persons, costs of the proceedings, files and records of adoption, and procedures in the event the adoption is denied.

### Background

S.B. 337, which would have made significant changes in the adoption laws, was introduced in 1987 by the Senate Committee on Judiciary, referred to Ways and Means, and then referred to Judiciary. No action was taken on the bill but the underlying reasons for the draft became the springboard for a study by the Family Law Advisory Committee (FLAC) of the Judicial Council. Under S.B. 337 non-residents were banned from private adoptions in Kansas. Under 1989 S.B. 292, which resulted from the study undertaken by FLAC, nonresidents can adopt but under certain safeguards.

Basic to legislation such as S.B. 292 has been the need for controls on private adoption in order to combat the opinion that ". . . Kansas is known as a baby supermarket" by some attorneys in certain states such as Michigan. The proposed act would reorganize and recodify current law, scattered throughout the statute books, into four main areas: adoption of adults, agency adoptions, independent adoptions, and stepparent adoptions.

Many of the initial sections of S.B. 292, as a result, are primarily the reorganization of current law regarding adoption and relinquishment. There are some provisions that would enact a change from current law. These are as follows:

1. Consent to adoption would be final when executed unless the consenting party can prove by clear and convincing evidence that the consent was not freely and voluntarily given. The standard of proof under current law is by a preponderance of the evidence. According to the bill, consent is final when executed, whereas under current law, consent is not final until filed. Further, consent could not be executed prior to six months before the date the adoption petition is filed.

---

\* S.B. 431 accompanies this report.

2. There would be a mandatory duty to advise, by independent legal counsel, parents who are under the age of majority, as to the consequences of the consent or relinquishment. The attorney is further required to be present at the execution of the consent or relinquishment.

3. Consent or relinquishment could not be given before 24 hours after the birth of a child and any consent or relinquishment before this time would be void. This is not addressed in current law.

4. A consent, relinquishment, execution, or acknowledgment outside of Kansas, in a foreign country or in the military would be valid in Kansas if done in accordance with the law of the other state, foreign country, or as prescribed for military situations, *i.e.*, consent or relinquishment is acknowledged before a commissioned officer whose signature is verified or acknowledged before a notary public or according to some other procedure in effect for that particular division or branch of the military. This matter is not currently addressed in Kansas law.

5. A consent procedure is provided whereby it is recognized that the court has the authority to consent to an adoption under the Code for the Care of Children. New prescribed consent forms are provided.

6. The bill establishes a mechanism whereby the necessity for a father's consent or relinquishment can be determined and termination of parental rights can be achieved where appropriate. Such proceedings are not available under current law. There is a limitation imposed on the grounds for termination of certain natural fathers' parental rights in stepparent adoptions. In general, in stepparent adoptions, the father's consent must be obtained if the child was the result of a marriage or attempted marriage unless there was a failure to assume parental duties for two years.

7. A penalty provision is inserted for the first time in Kansas for failure to comply with the Interstate Compact on Placement of Children in instances involving interstate placements of children. The criminal penalty imposed would make any professional who fails to comply guilty of a class C misdemeanor.

A professional is defined as anyone who receives payment or compensation for providing adoption placement services.

8. S.B. 292 changes current law to require substantial contact with Kansas either on the part of the petitioner or the child. In those instances where the petitioner is a nonresident and the residence of the child is the basis of venue, residence is determined as defined in the bill. A sworn affidavit is required to set forth the factual basis for the child's residency, such as would happen when the petitioner is a nonresident. Venue, under current adoption law, is the county in which the petitioner (prospective adoptive parent) resides if the petitioner is a Kansas resident. For a nonresident petitioner, venue is in the county where the child resides or the county where the agency handling the adoption is located.

9. Preplacement assessments are required in independent and agency adoptions before a temporary custody order can be issued when placement would be in an unlicensed care home. In the absence of a preplacement assessment, the court can order temporary placement following an evidentiary hearing.

10. The adoption notice procedure is changed by eliminating the current provision that allows a hearing upon the filing of a petition in less than 30 days under certain circumstances. Under the proposal a hearing may be anytime after 30 days but not more than 60 days after the petition is filed. An extension is allowed for good cause.

11. The bill recognizes that, in independent adoptions, the situation could materialize wherein no person may be available to take custody of the child. If a solution cannot be accomplished within a 30-day time frame, it would necessitate the institution of proceedings under the Code for the Care of Children.

12. Presently, the Department of Social and Rehabilitation Services (SRS) is provided with a copy of any social assessment. S.B. 292 requires that SRS be provided with a copy of the report of adoption. All information supplied to SRS will be subject to the same disclosure restraints as files and records of the court.



13. Statutory provisions regarding adult adoptions are new since current law only addresses the adoption of minors. The bill provides venue is allowed in the county in which the petitioner or the adult to be adopted resides. Consent shall be given by the adult to be adopted or the legal guardian of a disabled adult and the petitioner's spouse or the spouse's guardian. A hearing can be held with or without notice to the parent(s) of the adult to be adopted. A copy of the decree of adoption must be mailed by certified mail to the former parent of the adoptee, if no notice was given to the former parent and that parent can be located by reasonable diligence.

#### Committee Activity

During the deliberations, the Committee heard from several concerned individuals who are, or have been, involved in the adoption process.

The Johnson County District Court Administrative Judge, also chairman of FLAC of the Judicial Council, reviewed the research undertaken by FLAC. S.B. 292 represents the end product of that endeavor, undertaken in 1987. The judge recommended further changes intended to improve the bill. For example, the judge recommended, on behalf of FLAC, that a consent or relinquishment made before 24 hours after birth be made "voidable" instead of "void." FLAC also recommends a change in the reasonable fee section so that reasonable fees could be based on customary fees "where the services are performed" and not "in the county of venue." A final suggestion was that the section dealing with relinquishment to an agency be modified to reflect that one parent's rights would not be relinquished until the other parent's rights are relinquished.

An adoption specialist from SRS spoke in favor of S.B. 292 and made additional suggestions. The conferee recommended a change in the investigation and assessment stage that would require SRS to "clear the name of the petitioner with the Child Abuse and Neglect Registry" instead of "verify financial information of the petitioner" as contained in the bill. The conferee opposed the provision that the court may give temporary custody of a child to SRS for a period not to exceed 30 days. The objection to such commitments is that it leaves SRS without authority to plan for the child.

The conferee who spoke on behalf of Independent Adoptions suggested that biological fathers should be able to give consent or relinquishment to adoption anytime after birth instead of having to wait 24 hours. This witness further recommended files and records of the adoption proceedings be open to birth parents.

A delegate from Kansas Children's Service League spoke in favor of the bill as a whole, but expressed concern over the costs involved in providing independent legal counsel for minor parents.

Several individuals appeared, including adoptive parents, birth mothers, and an adoptee, to voice selected concerns with adoption procedures. Concern was expressed over the liabilities involved when dealing with special needs children who have emotional or behavioral disorders. The desirability of an SRS adoption specialist was advocated to help families who adopt children with emotional or behavioral problems. It was further suggested that adoptive families be fully informed as to the extent of the problems a child might have. Special training programs were suggested as a way to help cope with these children. The term birth child, birth parent, or birth mother should be used in the bill in place of "natural" and the adoptee should not be charged a fee for background information. It was also suggested that adoption records should never be closed permanently; that adoptees, at age 18, should have access to adoption records; and that birth parents should be allowed to have the name of the child, at 18 years of age.

An attorney who handles adoptions submitted written testimony and expressed general support for the bill but suggested the 24-hour waiting period should be shortened to allow for the fact that many mothers leave the hospital sooner than 24 hours; a natural father's consent should also be able to be taken before the 24-hour time period; and a provision should be included for a waiver of notice, knowingly made, by the natural parents for such proceedings. The waiver should be separate from the consent form. Other areas the attorney believed will place additional burden on counsel and are a cause for concern include the requirement of independent legal counsel for minors; a preplacement assessment order for the court to approve temporary custody; more specific notice for possible natural fathers; court-appointed counsel for natural fathers who wish to object but cannot afford counsel; and consent and relinquishment forms complying with the statutory examples.

#### Conclusions and Recommendations

After much deliberation and discussion of the various issues and emotions that surround adoption proceedings, the Committee voted to make the following amendments to S.B. 292:

1. change the word "void" to "voidable" regarding consent or relinquishment to adoption prior to the 24-hour waiting period;
2. strike "in the county of venue" and substitute "where the services are performed" regarding the basis for reasonable fees;
3. add a provision to the relinquishment of a child to an agency whereby one parent's rights would not be relinquished until the other parent's rights are relinquished;
4. strike the provision regarding the assessment and evaluation of petitioners as to the advisability of adoptions that requires SRS to "verify" the financial condition of the petitioner and substitute "shall clear the name of the petitioner with the Child Abuse and Neglect Registry";
5. change the term "natural" to "birth" when referring to parent, child, or mother wherever it appears in the bill;
6. change the mandatory time for consent from 24 to 12 hours for the birth mother and to allow the birth father to consent or relinquish anytime after birth;
7. add a requirement regarding temporary orders that would give priority to the hearing which allows the court to place a child in an unlicensed home following an evidentiary hearing which shall include testimony from the petitioners; and
8. add a provision to S.B. 292 that would allow adoptive parents' insurance to cover expenses at birth of both the newly born child and the birth mother.

An additional recommendation of the Committee followed an extensive discussion concerning post-adoption services and improvements that might be made in this area. The Committee voted to recommend to SRS that the agency report back to the appropriate subcommittee during the 1990 Session regarding measures that can be taken to strengthen and improve post-adoption services and to take other actions as necessary.

No Committee action was taken on the provision that the court may give temporary custody to SRS not to exceed 30 days. In addition, no recommendations were made on the cost of independent counsel or the liability issues. The Committee discussed the liability concern at length and concluded that, if a parent exercised reasonable control of a child, that parent would not be liable for the actions of the child.

Further, the Committee recommends that SRS investigate the State Adoption Center Concept and report its findings to the standing House and Senate Judiciary Committees as well as to the Ways and Means and Appropriations Committees.

Respectfully submitted,

November 30, 1989

Rep. Mike O'Neal, Chairperson  
Special Committee on Judiciary

Sen. Wint Winter, Jr.,  
Vice-Chairperson  
Sen. Dick Bond  
Sen. Paul Feleciano, Jr.\*  
Sen. Bill Morris  
Sen. Lana Oleen  
Sen. Nancy Parrish  
Sen. Jack Steineger

Rep. Denise Everhart  
Rep. Clyde Graeber  
Rep. Gilbert Gregory  
Rep. Robert Krehbiel  
Rep. Barbara Lawrence  
Rep. J. C. Long  
Rep. Alex Scott  
Rep. John Solbach  
Rep. Hank Turnbaugh

\* Ranking minority member.

## SENATE BILL No. 431

By Special Committee on Judiciary

Re Proposal No. 31

12-21

16 AN ACT concerning adoption; enacting the Kansas adoption and  
 17 relinquishment act; providing that certain health policies and con-  
 18 tracts contain coverage with respect to adopted children; amending  
 19 K.S.A. 38-1206, 40-2, 102 and 59-2203 and K.S.A. 1989 Supp. 65-  
 20 504 and repealing the existing sections; also repealing K.S.A. 38-  
 21 113, 38-114, 38-124, 38-125, 38-126, 38-127, 38-128, 59-2101, 59-  
 22 2103, 59-2104, 59-2277, 59-2279, 59-2280 and 65-509 and K.S.A.  
 23 1989 Supp. 38-1129, 59-2102, 59-2278, 59-2278a, 59-2278b and  
 24 59-2278c.  
 25  
 26

27 Be it enacted by the Legislature of the State of Kansas:

28 New Section 1. Sections 1 through 32 shall be known and may  
 29 be cited as the Kansas adoption and relinquishment act.

30 New Sec. 2. As used in sections 1 through 32:

31 (a) "Adult adoption" means the adoption of an individual who  
 32 has attained the age of majority;

33 (b) "agency adoption" means the adoption of a minor child where  
 34 an agency has the authority to consent to the adoption;

35 (c) "independent adoption" means the adoption of a minor child  
 36 where the child's parent or parents, legal guardian or nonagency  
 37 person *in loco parentis* has the authority to consent to the adoption;  
 38 but does not include a stepparent adoption;

39 (d) "stepparent adoption" means the adoption of a minor child  
 40 by the spouse of a parent with the consent of that parent;

41 (e) "residence of a child" and "place where a child resides"  
 42 means:

43 (1) The residence of the child's mother if the child's parents are  
 44 not married;

45 (2) the residence of the child's father if the child's parents are  
 46 married; or

47 (3) the residence of the child's mother if the child's parents are  
 48 married, but the child's mother has established a separate, legal

48 residence and the child resides with the mother;

49 (f) "agency" means any public or private entity organized pur-  
 50 suant to Kansas law, or organized pursuant to the laws of the ju-  
 51 risdiction where located, having for its purpose the care and  
 52 maintenance of children, being authorized to place children for adop-  
 53 tion, consent to the adoption and to stand *in loco parentis* to such  
 54 children until they are adopted or reach majority; and

55 (g) "person *in loco parentis*" means an individual or organization  
 56 vested with the right to consent to the adoption of a child pursuant  
 57 to relinquishment or an order or judgment by a district court of  
 58 competent jurisdiction.

59 New Sec. 3. Any adult, or husband and wife jointly, may adopt  
 60 any minor or adult as their child in the manner provided in sections  
 61 1 through 32, except that one spouse cannot do so without the  
 62 consent of the other.

63 New Sec. 4. (a) Consent shall be in writing and shall be ac-  
 64 knowledged before a judge of a court of record or before an officer  
 65 authorized by law to take acknowledgments. If consent is acknowl-  
 66 edged before a judge of a court of record, it shall be the duty of  
 67 the court to advise the consenting person on the record of the  
 68 consequences of the consent. A consent is final when executed,  
 69 unless the consenting party, prior to final decree of adoption, alleges  
 70 and proves by clear and convincing evidence that the consent was  
 71 not freely and voluntarily given. The burden of proving the consent  
 72 was not freely and voluntarily given shall rest with the consenting  
 73 party.

74 (b) Consent in all cases shall have been executed no sooner than  
 75 six months prior to the date the petition for adoption is filed.

76 New Sec. 5. Minority of a parent shall not invalidate a parent's  
 77 consent or relinquishment, except that a minor parent shall have  
 78 the advice of independent legal counsel as to the consequences of  
 79 the consent or relinquishment prior to its execution. The attorney  
 80 providing independent legal advice to the minor parent shall be  
 81 present at the execution of the consent or relinquishment.

82 New Sec. 6. A consent or relinquishment may not be given by  
 83 the mother until 12 hours after the birth of a child and any consent  
 84 or relinquishment given before such time is voidable.

85 New Sec. 7. (a) A consent or relinquishment executed and ac-  
 86 knowledged outside of this state, either in accordance with the law  
 87 of this state or in accordance with the law of the place where ex-  
 88 ecuted, is valid.

89 (b) Where a consent or relinquishment is signed in a foreign  
 90 country, the execution of the consent or relinquishment shall be

acknowledged or affirmed in accordance with the law and procedure of the foreign country.

(c) If the person signing a consent or relinquishment is in the military service of the United States, the execution of the consent or relinquishment may be acknowledged before a commissioned officer and the signature of the officer shall be verified or acknowledged before a notary public or by such other procedure as is then in effect for such division or branch of the armed forces.

New Sec. 8. (a) Any person adopted as provided in sections 1 through 32 shall assume the surname of the petitioner or petitioners for adoption, except that the court in its discretion may permit a different surname when requested by the petitioner or petitioners. When requested by the petitioner or petitioners, the court, in its discretion, may change the given name or names of the person adopted.

(b) When adopted, a person shall be entitled to the same personal and property rights as a birth child of the adoptive parent. The adoptive parent shall be entitled to exercise all the rights of a birth parent and be subject to all the liabilities of that relationship. Upon adoption, all the rights of birth parents to the adopted person, including their right to inherit from the person, shall cease, except the rights of a birth parent who is the spouse of the adopting parent.

New Sec. 9. The district court shall report the adoption to the state registrar of vital statistics.

New Sec. 10. Interstate placements of children shall comply with the procedures contained in the interstate compact on placement of children as set forth in K.S.A. 38-1202 and amendments thereto. Any professional providing services related to the placement of children for adoption who fails to comply with the provisions of the interstate compact for the placement of children is guilty of a class C misdemeanor. For the purposes of this section, "professional" means any person who receives payment or compensation for providing services related to the placement of children for adoption.

New Sec. 11. (a) Except as otherwise authorized by law, no person shall request, receive, give or offer to give any consideration in connection with an adoption, or a placement for adoption, other than:

(1) Reasonable fees for legal and other professional services rendered in connection with the placement or adoption not to exceed customary fees for similar services by professionals of equivalent experience and reputation where the services are performed;

(2) reasonable fees of a licensed child-placing agency;

(3) actual and necessary expenses incident to placement or to the

adoption proceeding;

(4) actual medical expenses of the mother attributable to pregnancy and birth;

(5) actual medical expenses of the child; and

(6) reasonable living expenses of the mother which are incurred during or as a result of the pregnancy.

(b) In an action for adoption, a detailed accounting of all consideration given, or to be given, and all disbursements made, or to be made, in connection with the adoption and the placement for adoption shall accompany the petition for adoption. Upon review of the accounting, the court shall disapprove any such consideration which the court determines to be unreasonable or in violation of this section and, to the extent necessary to comply with the provisions of this section, shall order reimbursement of any consideration already given in violation of this section.

New Sec. 12. The files and records of the court in adoption proceedings shall not be open to inspection or copy by persons other than the parties in interest and their attorneys, and representatives of the state department of social and rehabilitation services, except upon an order of the court expressly permitting the same. As used in this section, "parties in interest" shall not include genetic parents once a decree of adoption is entered.

New Sec. 13. (a) Except as otherwise provided in this section: (1) No person shall advertise that such person will adopt, find an adoptive home for a child or otherwise place a child for adoption;

(2) no person shall offer to adopt, find a home for or otherwise place a child as an inducement to a woman to come to such person's maternity hospital or home during pregnancy or after delivery; and (3) no person shall offer to adopt, find a home for or otherwise place a child as an inducement to any parent, guardian or custodian of a child to place such child in such person's home, institution or establishment.

(b) The provisions of subsection (a)(1) shall not apply to a licensed child placement agency operating as authorized by Kansas law or to the department of social and rehabilitation services.

(c) As used in this section:

(1) "Advertise" means to communicate by newspaper, radio, television, handbills, placards or other print, broadcast or electronic medium;

(2) "person" means an individual, firm, partnership, corporation, joint venture or other association or entity; and

(3) "maternity hospital or home" means the same as provided in K.S.A. 65-502 and amendments thereto.

(d) Any person who violates the provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be fined not less than \$5 nor more than \$50. Each and every day that the person fails or refuses to comply shall be deemed a separate offense under the provisions of this section.

New Sec. 14. (a) Any parent or parents or person *in loco parentis* may relinquish a child to an agency, and if the agency accepts the relinquishment in writing, the agency shall stand *in loco parentis* to the child and shall have and possess over the child all rights of a parent or legal guardian, including the power to place the child for adoption and give consent thereto.

(b) All relinquishments to an agency under sections 1 through 32 shall be in writing, in substantial conformity with the form for relinquishment contained in the appendix of forms following section 32 and shall be executed by: (1) Both parents of the child; (2) one parent, if the other parent is deceased or the other parent's relinquishment is found unnecessary under section 25; or (3) a person *in loco parentis*.

(c) The relinquishment shall be in writing and shall be acknowledged before a judge of a court of record or before an officer authorized by law to take acknowledgments. If the relinquishment is acknowledged before a judge of a court of record, it shall be the duty of the court to advise the relinquishing person on the record of the consequences of the relinquishment.

(d) Except as otherwise provided, in all cases where a parent or person *in loco parentis* has relinquished a child to the agency pursuant to sections 1 through 32, all the rights of the parent or person *in loco parentis* shall be terminated, including the right to receive notice in a subsequent adoption proceeding involving the child. If a parent has relinquished a child to the agency pursuant to sections 1 through 32, based on a belief that the child's other parent would relinquish the child to the agency, and such other parent does not relinquish such child to the agency, the rights of such parent who has relinquished a child to the agency shall not be terminated.

New Sec. 15. In addition to those requirements, where applicable, as set out in the provisions of sections 1 through 14, sections 16 through 25 shall apply to adoptions of minor children.

New Sec. 16. (a) In an independent adoption venue shall be in the county in which the petitioner resides or in the county in which the child to be adopted resides.

(b) In an agency adoption venue shall be in the county in which the petitioner resides or in the county in which the child to be adopted resided prior to receipt of custody by the agency.

(c) In a stepparent adoption venue shall be in the county in which the petitioner resides.

(d) If the petitioner resides upon or is stationed at a United States military post or reservation within this state, and the child to be adopted is then residing with the petitioner, venue may be in the district court of the county in which the post or reservation is located, or in the district court of any county located immediately adjacent to such county.

(e) Where the residence of the child, as defined in section 2, serves as the basis for venue, a sworn affidavit shall be filed with the petition setting forth the factual basis for the child's residency.

New Sec. 17. (a) A petition for adoption shall be filed by the person desiring to adopt the child, and shall state:

(1) In an independent adoption: (A) The name, residence and address of the petitioner;

(B) the name of the child, the date, time and place of the child's birth, and the place at which the child resides;

(C) the suitability of the petitioner to assume the relationship;

(D) whether one or both parents are living and the name, date of birth, residence and address of those living, so far as known to the petitioner;

(E) the facts relied upon as eliminating the necessity for the consent, if the consent of either or both parents is not obtained;

(F) the information required by the uniform child custody jurisdiction act under K.S.A. 38-1309 and amendments thereto; and

(G) whether the interstate compact on placement of children, K.S.A. 38-1201 *et seq.* and amendments thereto, and the Indian child welfare act, 25 U.S.C. 1901 *et seq.*, are applicable and have been or will be complied with prior to the hearing;

(2) in an agency adoption, all requirements contained in subsection (a)(1) except subsection (a)(1)(E); or

(3) in a stepparent adoption, all requirements contained in subsection (a)(1) except that a statement of compliance with the interstate compact on placement of children is not required.

(b) The written consents to adoption required by section 18, the background information required by section 19, the accounting required by section 11 and any affidavit required by section 16 shall be filed with the petition for adoption.

New Sec. 18. (a) Consent to an independent adoption shall be given by: (1) The living parents of the child; or

(2) one of the parents of the child, if the other's consent is found unnecessary under section 25; or

(3) the legal guardian of the child, if both parents are dead or

263 if their consent is found to be unnecessary under section 25; or  
 264 (4) the court entering an order under subsection (c)(1)(B) of  
 265 K.S.A. 38-1584 and amendments thereto; and  
 266 (5) the judge of any court having jurisdiction over the child pur-  
 267 suant to the code for care of children, if parental rights have not  
 268 been terminated; and  
 269 (6) the child sought to be adopted, if over 14 years of age and  
 270 of sound intellect.  
 271 (b) Consent to an agency adoption shall be given by: (1) The  
 272 authorized representative of the agency having authority to consent  
 273 to the adoption of the child; and  
 274 (2) the child sought to be adopted, if over 14 years of age and  
 275 of sound intellect.  
 276 (c) The provisions of subsection (a) shall apply to consent in a  
 277 stepparent adoption, except that subsections (a)(3) and (4) shall not  
 278 apply.  
 279 (d) A consent given by a parent or legal guardian shall be in  
 280 substantial conformity with the form for consent contained in the  
 281 appendix of forms following section 32.  
 282 (e) A consent given by a legal guardian, judge or agency shall  
 283 set forth the authority to execute the consent and shall be accom-  
 284 panied by documents supporting that authority.  
 285 New Sec. 19. (a) The following information shall be filed with  
 286 the petition in an independent or agency adoption: (1) A complete  
 287 written genetic, medical and social history of the child and the  
 288 parents;  
 289 (2) the names, dates of birth, addresses, telephone numbers, and  
 290 social security numbers of each of the child's parents, if known;  
 291 (3) any hospital records pertaining to the child or a properly  
 292 executed authorization for release of those records; and  
 293 (4) the child's birth verification, which shall include the date,  
 294 time and place of birth and the name of the attending physician.  
 295 (b) The genetic, medical and social history required by this sec-  
 296 tion shall be in conformity with the rules and regulations adopted  
 297 by the secretary of social and rehabilitation services and on forms  
 298 provided by the secretary.  
 299 (c) If any information required to be filed under this section is  
 300 not available, an affidavit explaining the reasons why it is not available  
 301 shall be filed with the petition for adoption.  
 302 (d) The secretary of social and rehabilitation services shall adopt  
 303 rules and regulations establishing procedures for updating a child's  
 304 genetic, medical and social history if new information becomes known  
 305 at a later date. The agency or person conducting the investigation

306 under section 21 shall advise in writing each of the child's biological  
 307 parents, if known, of those procedures.  
 308 (e) Any employee or agent of the department of social and re-  
 309 habilitation services, a child-placing agency or a district court who  
 310 intentionally destroys any information required to be filed under this  
 311 section is guilty of a class C misdemeanor.  
 312 New Sec. 20. Pending the hearing in an independent or agency  
 313 adoption, the court may make an appropriate order for the care and  
 314 custody of the child. If the court makes an order for placement in  
 315 a home not licensed to provide such care, then the home shall first  
 316 be assessed by a person or agency authorized to make assessments  
 317 under subsection (a) or (f) of section 21. In the absence of a pre-  
 318 placement assessment, the court may make an order for placement  
 319 in a home not licensed to provide for the care and custody of the  
 320 child following an evidentiary hearing which shall include testimony  
 321 by the petitioners. Such hearing shall be heard and determined by  
 322 the court as expeditiously as possible.  
 323 New Sec. 21. (a) In independent and agency adoptions, the court  
 324 shall require the petitioner to obtain an assessment by a court ap-  
 325 proved social worker licensed to practice social work in Kansas or  
 326 by a licensed child-placing agency of the advisability of the adoption.  
 327 (b) The petitioner shall file with the court, not less than 10 days  
 328 before the hearing on the petition, a report of the assessment and,  
 329 if necessary, confirmation or clarification of the information filed  
 330 under section 19.  
 331 (c) If there is no licensed social worker or licensed child-placing  
 332 agency available to make the assessment and report to the court,  
 333 the court may use the department of social and rehabilitation services  
 334 for that purpose.  
 335 (d) The costs of making the assessment and report may be as-  
 336 sessed as court costs in the case as provided in article 20 of chapter  
 337 60 of the Kansas Statutes Annotated and amendments thereto.  
 338 (e) In making the assessment, the social worker, child-placing  
 339 agency or department of social and rehabilitation services is au-  
 340 thorized to observe the child in the petitioner's home, verify financial  
 341 information of the petitioner, shall clear the name of the petitioner  
 342 with the child abuse and neglect registry through the department  
 343 of social and rehabilitation services and to contact the agency or  
 344 individuals consenting to the adoption and confirm and, if necessary,  
 345 clarify any genetic and medical history filed with the petition. This  
 346 information shall be made a part of the report to the court. The  
 347 report to the court by the social worker, child-placing agency or  
 348 department of social and rehabilitation services shall include the

349 results of the investigation of the petitioner, the petitioner's home  
350 and the ability of the petitioner to care for the child.

351 (f) In the case of a nonresident who is filing a petition to adopt  
352 a child in Kansas, the assessment and report required by this section  
353 must be completed in the petitioner's state of residence by a licensed  
354 social worker, a licensed child-placing agency or a comparable entity  
355 in that state and filed with the court not less than 10 days before  
356 the hearing on the petition.

357 (g) The assessment and report required by this section must have  
358 been completed not more than one year prior to the filing of the  
359 petition for adoption.

360 New Sec. 22. (a) Upon filing the petition, the court shall fix the  
361 time and place for the hearing. The time fixed for the hearing may  
362 be any time not less than 30 days nor more than 60 days from the  
363 date the petition is filed. The time fixed for the hearing may be  
364 extended by the court for good cause.

365 (b) In independent and stepparent adoptions notice of the hearing  
366 on the petition shall be given to the parents or presumed parents,  
367 unless parental rights have been previously terminated, and any  
368 other persons as the court may direct. Notice also shall be given in  
369 an independent adoption to a legal guardian of the child or individual  
370 *in loco parentis*.

371 (c) In an agency adoption notice of the hearing on the petition  
372 shall be given to the consenting agency unless waived.

373 New Sec. 23. (a) Upon the hearing of the petition, the court  
374 shall consider the assessment and all evidence offered by any in-  
375 terested party. If the adoption is granted, the court shall make a  
376 final decree of adoption.

377 (b) If the adoption is denied, the court shall enter appropriate  
378 orders. Such orders may include an order giving temporary custody  
379 of the child to another person or agency for a period not to exceed  
380 30 days pending termination of the instant case or a new case being  
381 filed.

382 (c) The costs of the adoption proceedings shall be paid by the  
383 petitioner or as assessed by the court.

384 New Sec. 24. The clerk of each district court shall provide a  
385 copy of the decree of adoption, a copy of the report of adoption  
386 required in section 9 and a copy of the information required in  
387 section 19 pertaining to any adoption of a minor to the secretary of  
388 social and rehabilitation services. All information pertaining to adop-  
389 tions of minors required to be provided to the secretary of social  
390 and rehabilitation services shall be maintained by the secretary and  
391 shall be subject to disclosure to the same extent as files and records

392 of the court under section 12.

393 New Sec. 25. (a) The provisions of this section shall apply where  
394 a relinquishment or consent to an adoption has not been obtained  
395 from a parent and sections 14 and 18 state that the necessity of a  
396 parent's relinquishment or consent can be determined under this  
397 section.

398 (b) Insofar as practicable, the provisions of this section applicable  
399 to the father also shall apply to the mother.

400 (c) The court shall appoint an attorney to represent any father  
401 who is unknown or whose whereabouts are unknown. If no person  
402 is identified as the father or a possible father, the court shall order  
403 publication notice of the hearing in such manner as the court deems  
404 appropriate.

405 (d) In a stepparent adoption, if a mother consents to the adoption  
406 of a child who (1) has a presumed father under subsection (a)(1), (2)  
407 or (3) of K.S.A. 38-1114 and amendments thereto, or (2) has a father  
408 as to whom the child is a legitimate child under prior law of this  
409 state or under the law of another jurisdiction, the consent of such  
410 father must be given to the adoption unless such father has failed  
411 or refused to assume the duties of a parent for two consecutive  
412 years, or is incapable of giving such consent. In determining whether  
413 a father's consent is required under this subsection, the court may  
414 disregard incidental visitations, contacts, communications or  
415 contributions.

416 (e) Except as provided in subsection (d), if a mother desires to  
417 relinquish or consents to the adoption of such mother's child, a  
418 petition shall be filed in the district court to terminate the parental  
419 rights of the father, unless the father's relationship to the child has  
420 been previously terminated or determined not to exist by a court.  
421 The petition may be filed by the mother, the petitioner for adoption,  
422 the person or agency having custody of the child or the agency to  
423 which the child has been or is to be relinquished. Where appropriate,  
424 the request to terminate parental rights may be contained in a pe-  
425 tition for adoption. In an effort to identify the father, the court shall  
426 determine by deposition, affidavit or hearing, the following: (1)  
427 Whether there is a presumed father under K.S.A. 38-1114 and  
428 amendments thereto;

429 (2) whether there is a father whose relationship to the child has  
430 been determined by a court;

431 (3) whether there is a father as to whom the child is a legitimate  
432 child under prior law of this state or under the law of another  
433 jurisdiction;

434 (4) whether the mother was cohabitating with a man at the time



of conception or birth of the child;

(5) whether the mother has received support payments or promises of support with respect to the child or in connection with such mother's pregnancy; and

(6) whether any man has formally or informally acknowledged or declared such man's possible paternity of the child.

If the father is identified to the satisfaction of the court, or if more than one man is identified as a possible father, each shall be given notice of the proceeding in accordance with subsection (f).

(f) Notice of the proceeding shall be given to every person identified as the father or a possible father by personal service, registered mail or in any other manner the court may direct. Proof of notice shall be filed with the court before the petition or request is heard.

(g) If, after the inquiry, the court is unable to identify the father or any possible father and no person has appeared claiming to be the father and claiming custodial rights, the court shall enter an order terminating the unknown father's parental rights with reference to the child without regard to subsection (h). If any person identified as the father or possible father of the child fails to appear or, if appearing, fails to claim custodial rights, such person's parental rights with reference to the child shall be terminated without regard to subsection (h).

(h) When a father or alleged father appears and asserts parental rights, the court shall determine parentage, if necessary pursuant to the Kansas parentage act. If a father desires but is financially unable to employ an attorney, the court shall appoint an attorney for the father. Thereafter, the court may order that parental rights be terminated, upon a finding by clear and convincing evidence, of any of the following: (1) The father abandoned or neglected the child after having knowledge of the child's birth;

(2) the father is unfit as a parent or incapable of giving consent;

(3) the father has made no reasonable efforts to support or communicate with the child after having knowledge of the child's birth;

(4) the father, after having knowledge of the pregnancy, failed without reasonable cause to provide support for the mother during the six months prior to the child's birth;

(5) the father abandoned the mother after having knowledge of the pregnancy;

(6) the birth of the child was the result of rape of the mother; or

(7) the father has failed or refused to assume the duties of a parent for two consecutive years preceding the filing of the petition.

The court may disregard incidental visitations, contacts, communi-

cations or contributions.

New Sec. 26. In addition to those requirements, where applicable, as set out in the provisions of sections 1 through 14, sections 27 through 31 shall apply to adult adoptions.

New Sec. 27. Venue shall be in the county in which the petitioner or the adult to be adopted resides.

New Sec. 28. (a) A petition for adult adoption shall be filed by the person desiring to adopt the adult and shall state: (1) The name, residence and address of the petitioner;

(2) the name, residence, address and date of birth of the adult to be adopted;

(3) whether the petitioner or adult to be adopted is married and if so, the name, residence and address of the spouse;

(4) the facts showing the reasons for the adoption;

(5) whether one or both of the parents of the adult to be adopted are living and the name, residence and address of those living so far as known to the petitioner or the adult to be adopted; and

(6) whether or not any change of name is requested.

(b) The written consents required by section 29 and the accounting required by section 11 shall be filed with the petition for adoption.

New Sec. 29. Before any adult is adopted consent to the adoption shall be given by: (a) The adult subject of the adoption or the legal guardian of a disabled adult subject of adoption; and

(b) the spouse of the petitioner or the spouse's legal guardian if a disabled person.

New Sec. 30. (a) The court, by order, shall fix a time and place for hearing on the petition. The hearing may be with or without notice as the court shall direct and the court may hear the petition forthwith.

(b) The court may order that notice of the hearing be given to the parents of the adult subject of the adoption and shall require notice, unless waived, to any consenting party.

New Sec. 31. The petitioner or attorney for the petitioner, if a decree of adoption is entered, shall mail a certified copy of the decree to the former parent of the adult adoptee, if the parent has had no notice of the proceeding and, with reasonable diligence, can be located for service by first-class mail. The petitioner or the attorney shall file proof of mailing with the court or shall file an affidavit setting forth the reasons for noncompliance if the reasons are not evident from the verified pleadings on file. Failure to give the notice required by this section shall not invalidate the adoption.

New Sec. 32. The forms contained in the appendix of forms are



sufficient under sections 1 through 32.

APPENDIX OF FORMS

RELINQUISHMENT OF MINOR CHILD TO AGENCY

564

STATE OF \_\_\_\_\_ )

) SS:

COUNTY OF \_\_\_\_\_ )

I, \_\_\_\_\_, Judge of \_\_\_\_\_, (name and location of court),

certify that \_\_\_\_\_, known to me

to be the same person whose name is subscribed to the foregoing relinquishment,

appeared before me this day in person and acknowledged that (she) (he) signed for

such relinquishment as (her) (his) free and voluntary act, for the specified purpose.

I have fully explained that by signing such relinquishment (she) (he) is permanently

giving up all parental rights to such child and (she) (he) has stated that such is (her)

(his) intention and desire.

Dated \_\_\_\_\_, at \_\_\_\_\_, m.

\_\_\_\_\_

JUDGE

ACKNOWLEDGMENT BEFORE NOTARIAL OFFICER

STATE OF \_\_\_\_\_ )

) SS:

COUNTY OF \_\_\_\_\_ )

I, a notarial officer in and for the county and state aforesaid, certify that, known

to me \_\_\_\_\_,

to be the same person whose name is subscribed to the foregoing relinquishment,

appeared before me in person and acknowledged that the statements made in the

foregoing relinquishment are true.

Dated \_\_\_\_\_, at \_\_\_\_\_, m.

\_\_\_\_\_

(SEAL, if any)

(Signature of Notarial Officer)

\_\_\_\_\_

Title (and Rank)

My Appointment Expires: \_\_\_\_\_

ACCEPTANCE OF CHILD BY AGENCY:

I, the undersigned, on behalf of \_\_\_\_\_, (name of agency)

do hereby accept custody of \_\_\_\_\_, the above

relinquished minor child.

\_\_\_\_\_

(Date)

(Name and Title)

CONSENT TO ADOPTION OF MINOR CHILD

NOTICE TO PARENT OR LEGAL GUARDIAN:

This is an important legal document and by signing it you are permanently giving

up all custody and other parental rights to the child named herein, so as to permit

the child's adoption. You are to receive a copy of this document.

561

562

563

564

565

566

567

568

569

570

571

572

573

574

575

576

577

578

579

580

581

582

583

584

585

586

587

588

589

590

591

592

593

594

595

596

598

599

600

601

602

603

604

person in loco parentis) of \_\_\_\_\_, a

minor child, state: \_\_\_\_\_, (mother, father,

The child was born on \_\_\_\_\_, at (place

of birth) at \_\_\_\_\_, m.

I reside at \_\_\_\_\_, County of \_\_\_\_\_

(If the relinquishment is by a person in loco parentis the relinquishment shall have

attached documents supporting the person's authority to execute the relinquishment.)

I am of the age of \_\_\_\_\_ years and was

born on \_\_\_\_\_.

(If the relinquishing person is a minor, the relinquishment should set forth that,

prior to signing the relinquishment, the person has received legal advice as to the

relinquishment, from an attorney who does not represent the agency.)

I do hereby relinquish the child to (name of agency), which I understand will have

full power and all the rights of a birth parent or legal guardian over the child,

including the power to place the child for adoption and give consent thereto.

I wish to and understand that by signing this relinquishment I do permanently

give up all custody and other parental rights I have to such child, including the right

to receive notice of any subsequent adoption proceedings involving the child.

I have read and understand the above and I am signing it as my free and voluntary

act.

Dated this \_\_\_\_\_, at \_\_\_\_\_, m.

\_\_\_\_\_

(Parent or Person in loco parentis)

Certificate of Attorney for Relinquishing Minor Parent

I have fully explained that by signing this relinquishment \_\_\_\_\_

is permanently giving up all parental rights to the child and (she) (he) has stated that

such is (her) (his) intention and desire.

Dated \_\_\_\_\_

\_\_\_\_\_

(Attorney)

ACKNOWLEDGMENT BEFORE JUDGE OF DISTRICT COURT

\_\_\_\_\_

606 I, \_\_\_\_\_, (mother, father, legal  
 607 guardian) of \_\_\_\_\_, a minor child, state:  
 608 The child was born on \_\_\_\_\_ at  
 609 (place of birth) at \_\_\_\_\_ m.  
 610 I reside at \_\_\_\_\_, County of  
 611 \_\_\_\_\_ and State of \_\_\_\_\_.  
 612 (If the consent is by a legal guardian, the consent shall have attached documents  
 613 supporting the guardian's appointment and the authority of the guardian to execute  
 614 the consent.)  
 615 I am of the age of \_\_\_\_\_ years and was  
 616 born on \_\_\_\_\_.  
 617 (If the consenting person is a minor, the consent should set forth that, prior to  
 618 signing the consent, the person has received legal advice as to the consent, from an  
 619 attorney who does not represent the petitioner for adoption.)  
 620 I do hereby consent and agree to the adoption of the child [(by \_\_\_\_\_)  
 621 or (and I do not require disclosure of the name or other identification of the adopting  
 622 parent or parents)].  
 623 I wish to and understand that by signing this consent I do permanently give up  
 624 all custody and other parental rights I have to such child.  
 625 I have read and understand the above and I am signing it as my free and voluntary  
 626 act.  
 627 Dated this \_\_\_\_\_ at \_\_\_\_\_ m.  
 628 \_\_\_\_\_  
 629 (Parent or Legal Guardian)  
 630 Certificate of Attorney for Consenting Minor Parent  
 631 I have fully explained that by signing this consent \_\_\_\_\_ is  
 632 permanently giving up all parental rights to the child and (she) (he) has stated that  
 633 such is (her) (his) intention and desire.  
 634 Dated \_\_\_\_\_  
 635 \_\_\_\_\_  
 636 Attorney

ACKNOWLEDGMENT BEFORE JUDGE OF DISTRICT COURT

637 STATE OF \_\_\_\_\_ ) SS:  
 638 COUNTY OF \_\_\_\_\_ )  
 639 I, \_\_\_\_\_, Judge  
 640 of \_\_\_\_\_ (name and  
 641 location of court), certify that \_\_\_\_\_  
 642 known to me to be the same person whose name is subscribed to the foregoing  
 643 consent, appeared before me this day in person and acknowledged that (she) (he)  
 644 signed such consent as (her) (his) free and voluntary act, for the specified purpose.  
 645 I have fully explained that by signing such consent (she) (he) is permanently giving  
 646 up all custody and other parental rights I have to such child.  
 647

648 up all parental rights to such child and (she) (he) has stated that such is (her) (his)  
 649 intention and desire.  
 650 Dated \_\_\_\_\_ at \_\_\_\_\_ m.  
 651 \_\_\_\_\_  
 652 JUDGE  
 653 ACKNOWLEDGMENT BEFORE NOTARIAL OFFICER  
 654 STATE OF \_\_\_\_\_ ) SS:  
 655 COUNTY OF \_\_\_\_\_ )

ACKNOWLEDGMENT BEFORE NOTARIAL OFFICER

656 I, a notarial officer in and for the county and state aforesaid, certify that \_\_\_\_\_  
 657 known to me to be the same person whose name is subscribed to the foregoing  
 658 consent, appeared before me in person and acknowledged that the statements made  
 659 in the foregoing consent are true.  
 660 Dated \_\_\_\_\_ at \_\_\_\_\_ m.  
 661 \_\_\_\_\_  
 662 (SEAL, if any) (Signature of Notarial Officer)  
 663 \_\_\_\_\_  
 664 \_\_\_\_\_  
 665 Title (and Rank)  
 666 [My Appointment Expires: \_\_\_\_\_]  
 667 Sec. 33. K.S.A. 38-1206 is hereby amended to read as follows:  
 668 38-1206. The courts, departments, agencies and officers of this state  
 669 and its subdivisions shall enforce this compact and shall do all things  
 670 appropriate to the effectuation of its purposes and intent which may  
 671 be within their respective jurisdictions. Failure to comply with the  
 672 provisions of the interstate compact on the placement of children by  
 673 any professional providing services related to the placement of children by  
 674 dren is a class C misdemeanor. For the purposes of this section,  
 675 "professional" means any person who receives payment or compen-  
 676 sation for providing services related to the placement of children for  
 677 adoption.

678 Sec. 34. K.S.A. 40-2,102 is hereby amended to read as follows:  
 679 40-2,102. All individual and group health insurance policies providing  
 680 coverage on an expense incurred basis and individual and group  
 681 service or indemnity type contracts issued by a profit or nonprofit  
 682 corporation which provides coverage for a family member of the  
 683 insured or subscriber shall, as to such family members' coverage,  
 684 also provide that the health insurance benefits applicable for children  
 685 shall be payable from the moment of birth with respect to a newly  
 686 born child of or a child adopted within 90 days of birth of such  
 687 child by the insured or subscriber from the moment of birth. Such  
 688 benefits shall include delivery expenses at birth of the birth mother  
 689 of a child adopted within 90 days of birth of such child by the

insured or subscriber subject to the same limitations contained in such policy or contract applicable to the insured or subscriber. Such benefits shall also be payable from at least the date of placement with respect to any other child who has been placed for adoption with the insured and for whom the application and consent procedures have been completed pursuant to applicable state or federal law.

The coverage for newly born or adopted children shall consist of coverage of injury or sickness including the necessary care and treatment of medically diagnosed congenital defects and birth abnormalities. If payment of a specific premium or subscription fee is required to provide coverage for a child, the policy or contract may require that notification of birth of a newly born or adopted child and payment of the required premium or fees must be furnished to the insurer or nonprofit service or indemnity corporation within thirty-one (31) days after the date of birth in order to have the coverage continue beyond such thirty-one 31 day period.

Sec. 35. K.S.A. 59-2203 is hereby amended to read as follows: 59-2203. Proceedings for the probate of a will or for administration shall be had in the county of the residence of the decedent at the time of his or her death; of such decedent. If the decedent was not a resident of this state, proceedings may be had in any county wherein said where such decedent left any estate to be administered as provided in K.S.A. 59-805 and amendments thereto. Proceedings for the appointment of a guardian may be had in the county of the proposed ward's residence or where the proposed ward may be found. Proceedings for the appointment of a conservator shall be had in the county of the proposed conservatee's residence; if the proposed conservatee resides without this state, proceedings may be had in any county in which any of the proposed conservatee's property is situated. Proceedings for the administration of a partnership estate by the surviving partner shall be had in the county of the residence of the deceased partner at the time. If the deceased partner is a nonresident of the state the proceedings may be had in any county in which any of the partnership property is situated. Such proceedings first legally commenced shall extend to all of the property of the decedent or proposed conservatee in this state.

If the proceedings are instituted in more than one county, they shall be stayed except in the county where first commenced until final determination of venue. If the proper venue is determined to be in another county, the district court, after making and retaining a true copy of the entire file, shall transmit the original to the proper

733  
734  
735  
736  
737  
738  
739  
740  
741  
742  
743  
744  
745  
746  
747

county. Proceedings by a person seeking to adopt a child shall be had in the county of the residence of such person if such person is a resident of the state. If such person is a nonresident of the state such proceedings shall be had in the county in which the child to be adopted resides, except that if the child is in the custody of an institution or agency authorized by the laws of this state to place children for adoption such proceedings shall be had in the county in which such institution or agency is located. If such person resides upon or is stationed at a United States military post or reservation within this state, and the child to be adopted is then residing with such person, adoption proceedings may be had in the district court of the county in which such post or reservation is located, or in the district court of any county located immediately adjacent to such county.

748  
749  
750  
751  
752  
753  
754  
755  
756  
757  
758  
759  
760  
761  
762  
763  
764  
765  
766  
767  
768  
769  
770  
771  
772

Sec. 36. K.S.A. 1989 Supp. 65-504 is hereby amended to read as follows: 65-504. (a) The secretary of health and environment shall have the power to grant a license to a person, firm, corporation or association to maintain a maternity hospital or home, or a boarding home for children under 16 years of age. The license shall state the name of the licensee, describe the particular premises in or at which the business shall be carried on, whether it shall receive and care for women or children, and the number of women or children that may be treated, maintained, boarded or cared for at any one time. No greater number of women or children than is authorized in the license shall be kept in those premises and the business shall not be carried on in a building or place not designated in the license. The license shall be kept posted in a conspicuous place in the hospital or house in which the business is conducted. No license shall be granted for a term exceeding one year. The secretary of health and environment shall grant no license in any case until careful inspection of the maternity hospital or home, or home for children shall have been made according to the terms of this act and until such maternity hospital or home, or home for children has complied with all the requirements of this act. No license shall be granted without the approval of the secretary of social and rehabilitation services, except that the secretary of health and environment may issue, without the approval of the secretary of social and rehabilitation services, a temporary permit to operate for a period not to exceed 90 days upon receipt of an initial application for license.

773  
774  
775

(b) In all cases where the secretary of social and rehabilitation services deems it necessary, an investigation of the home shall be made under the supervision of the secretary of social and rehabili-

776 tation services or other designated qualified agents. For that purpose  
 777 and for any subsequent investigations they shall have the right of  
 778 entry and access to the premises of the home and to any information  
 779 deemed necessary to the completion of the investigation. In all cases  
 780 where an investigation is made, a report of the investigation of such  
 781 home shall be filed with the secretary of health and environment.  
 782 In cases where neither approval or disapproval can be given within  
 783 a period of 30 days following formal request for such a study, the  
 784 secretary of health and environment may issue a temporary license  
 785 without fee pending final approval or disapproval of the home or  
 786 facility.

787 (c) Whenever the secretary of health and environment refuses to  
 788 grant a license to an applicant, the secretary shall issue an order to  
 789 that effect stating the reasons for such denial and within five days  
 790 after the issuance of such order shall notify the applicant of the  
 791 refusal. Upon application not more than 15 days after the date of  
 792 its issuance a hearing on the order shall be held in accordance with  
 793 the provisions of the Kansas administrative procedure act.

794 (d) When the secretary of health and environment finds upon  
 795 investigation or is advised by the secretary of social and rehabilitation  
 796 services that any of the provisions of this act or the provisions of  
 797 section 13 are being violated, or such maternity hospital or home,  
 798 or home for children is maintained without due regard to the health,  
 799 comfort or morality of the residents, the secretary of health and  
 800 environment, after giving notice and conducting a hearing in ac-  
 801 cordance with the provisions of the Kansas administrative procedure  
 802 act, shall issue an order revoking such license and such order shall  
 803 clearly state the reason for such revocation.

804 (e) If the secretary revokes or refuses to renew a license, the  
 805 licensee who had a license revoked or not renewed shall not be  
 806 eligible to apply for a license or for a certificate of registration to  
 807 maintain a family day care home under K.S.A. 65-518 and amend-  
 808 ments thereto for a period of one year subsequent to the date such  
 809 revocation or refusal to renew becomes final.

810 (f) Any applicant or licensee aggrieved by a final order of the  
 811 secretary of health and environment denying or revoking a license  
 812 under this act may appeal the order in accordance with the act for  
 813 judicial review and civil enforcement of agency actions.

814 Sec. 37. K.S.A. 38-113, 38-114, 38-124, 38-125, 38-126, 38-127,  
 815 38-128, 38-1206, 40-2-102, 59-2101, 59-2103, 59-2104, 59-2203, 59-  
 816 2277, 59-2279, 59-2280 and 65-509 and K.S.A. 1989 Supp. 38-1129,  
 817 59-2102, 59-2278, 59-2278a, 59-2278b, 59-2278c and 65-504 are  
 818 hereby repealed.

819 Sec. 38. This act shall take effect and be in force from and after  
 820 its publication in the statute book.