



February 4, 2005

SENATE BILL No. 422

DIGEST OF SB 422 (Updated February 2, 2005 4:50 pm - DI 106)

Citations Affected: IC 31-19; IC 31-35; IC 35-46; noncode.

Synopsis: Adoption procedural requirements. Establishes requirements for prebirth waivers of paternity and waivers of notice of adoption, and specifies that a waiver is irrevocable. Prohibits a mother from executing a prebirth consent to adoption, and requires a father's prebirth consent to adoption to be in writing and notarized, and to contain an advisement that the waiver is irrevocable. Specifies that the burden of proof in certain adoption proceedings is by clear and convincing evidence. Provides that a child support arrearage owed to a child is not extinguished when the child is adopted. Permits the transfer of adoption records to the state registrar. Makes a name change requested in an out-of-state adoption petition effective in Indiana.

Effective: July 1, 2005.

Clark, Broden

January 13, 2005, read first time and referred to Committee on Judiciary.
February 3, 2005, amended, reported favorably — Do Pass.

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SB 422—LS 7860/DI 106+



February 4, 2005

First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

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SENATE BILL No. 422

A BILL FOR AN ACT to amend the Indiana Code concerning family law and juvenile law.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 31-19-4-8 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 8. (a) The notice
3 required by this chapter may be waived in writing before or after the
4 birth of a child.

5 (b) A waiver of notice under subsection (a) must:
6 (1) be in writing and signed in the presence of a notary public;
7 and
8 (2) acknowledge that:
9 (A) the waiver is irrevocable; **and**
10 (B) **the person signing the waiver will not receive notice of**
11 **the adoption proceedings.**

12 A person who waives notice of an adoption may not subsequently
13 challenge or contest an adoption of the child.

14 SECTION 2. IC 31-19-4-9 IS AMENDED TO READ AS
15 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 9. The notice required
16 by this chapter is not necessary:

17 (1) if actual notice has been given to a putative father under

SB 422—LS 7860/DI 106+



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IC 31-19-3; or

(2) if:

(A) a person has attempted to give notice to a putative father at a particular address under IC 31-19-3; and

(B) the putative father could not be located at that address; unless the putative father registers that address with the putative father registry under IC 31-19-5.

SECTION 3. IC 31-19-4.5-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 4. (a) The notice required by this chapter may be waived in writing before or after the birth of a child.

(b) A waiver of notice under subsection (a) must:

(1) be in writing and signed in the presence of a notary public; and

(2) acknowledge that:

(A) the waiver is irrevocable; and

(B) the person signing the waiver will not receive notice of the adoption proceedings.

A person who waives notice of an adoption may not challenge or contest an adoption of the child.

SECTION 4. IC 31-19-9-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2. **(a)** The consent to adoption may be executed at any time after the birth of the child either in the presence of:

(1) the court;

(2) a notary public or other person authorized to take acknowledgments; or

(3) an authorized agent of:

(A) the division of family and children;

(B) a county office of family and children; or

(C) a licensed child placing agency.

(b) The child's mother may not execute a consent to adoption before the birth of the child.

(c) The child's father may execute a consent to adoption before the birth of the child if the consent to adoption:

(1) is in writing;

(2) is signed by the child's father in the presence of a notary public; and

(3) contains an acknowledgment that:

(A) the consent to adoption is irrevocable; and

(B) the child's father will not receive notice of the adoption proceedings.

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1 **(d) A child's father who consents to the adoption of the child**
2 **under subsection (c) may not challenge or contest the child's**
3 **adoption.**

4 SECTION 5. IC 31-19-9-8 IS AMENDED TO READ AS
5 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 8. (a) Consent to
6 adoption, which may be required under section 1 of this chapter, is not
7 required from any of the following:

8 (1) A parent or parents if the child is adjudged to have been
9 abandoned or deserted for at least six (6) months immediately
10 preceding the date of the filing of the petition for adoption.

11 (2) A parent of a child in the custody of another person if for a
12 period of at least one (1) year the parent:

13 (A) fails without justifiable cause to communicate
14 significantly with the child when able to do so; or

15 (B) knowingly fails to provide for the care and support of the
16 child when able to do as required by law or judicial decree.

17 (3) The biological father of a child born out of wedlock whose
18 paternity has not been established:

19 (A) by a court proceeding other than the adoption proceeding;
20 or

21 (B) by executing a paternity affidavit under IC 16-37-2-2.1.
22 (4) The biological father of a child born out of wedlock who was
23 conceived as a result of:

24 (A) a rape for which the father was convicted under
25 IC 35-42-4-1;

26 (B) child molesting (IC 35-42-4-3);

27 (C) sexual misconduct with a minor (IC 35-42-4-9); or
28 (D) incest (IC 35-46-1-3).

29 (5) The putative father of a child born out of wedlock if the
30 putative father's consent to adoption is irrevocably implied under
31 section 15 of this chapter.

32 (6) The biological father of a child born out of wedlock if the:

33 (A) father's paternity is established after the filing of a petition
34 for adoption in a court proceeding or by executing a paternity
35 affidavit under IC 16-37-2-2.1; and

36 (B) father is required to but does not register with the putative
37 father registry established by IC 31-19-5 within the period
38 required by IC 31-19-5-12.

39 (7) A parent who has relinquished the parent's right to consent to
40 adoption as provided in this chapter.

41 (8) A parent after the parent-child relationship has been
42 terminated under IC 31-35 (or IC 31-6-5 before its repeal).

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1 (9) A parent judicially declared incompetent or mentally defective
 2 if the court dispenses with the parent's consent to adoption.
 3 (10) A legal guardian or lawful custodian of the person to be
 4 adopted who has failed to consent to the adoption for reasons
 5 found by the court not to be in the best interests of the child.
 6 (11) A parent if:
 7 (A) a petitioner for adoption proves by clear and convincing
 8 evidence that the parent is unfit to be a parent; and
 9 (B) the best interests of the child sought to be adopted would
 10 be served if the court dispensed with the parent's consent.
 11 **(12) A child's biological father who denies paternity of the**
 12 **child before or after the birth of the child if the denial of**
 13 **paternity:**
 14 (A) is in writing;
 15 (B) is signed by the child's father in the presence of a
 16 notary public; and
 17 (C) contains an acknowledgment that:
 18 (i) the denial of paternity is irrevocable; and
 19 (ii) the child's father will not receive notice of adoption
 20 proceedings.
 21 **A child's father who denies paternity of the child under this**
 22 **subsection may not challenge or contest the child's adoption.**
 23 (b) If a parent has made only token efforts to support or to
 24 communicate with the child the court may declare the child abandoned
 25 by the parent.
 26 SECTION 6. IC 31-19-10-0.5 IS ADDED TO THE INDIANA
 27 CODE AS A NEW SECTION TO READ AS FOLLOWS
 28 [EFFECTIVE JULY 1, 2005]: **Sec. 0.5. The party bearing the burden**
 29 **of proof in a proceeding under this chapter must prove the party's**
 30 **case by clear and convincing evidence.**
 31 SECTION 7. IC 31-19-12-5 IS ADDED TO THE INDIANA CODE
 32 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 33 1, 2005]: **Sec. 5. (a) As used in this section, "record" includes the**
 34 **following:**
 35 (1) A court document.
 36 (2) A medical record.
 37 (3) A social or medical history.
 38 (4) A photograph.
 39 (5) Correspondence being held for the benefit of:
 40 (A) a birth parent;
 41 (B) a person who was adopted;
 42 (C) an adoptive parent; or

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(D) a sibling of the person who was adopted.

(b) A child placing agency, governmental entity, or licensed attorney who arranges or facilitates an adoption may, after entry of the adoption decree, transfer an adoption record to the state registrar for inclusion in the adoption history program administered by the state registrar, or, after giving notice to the state registrar, to a transferee agency that assumes responsibility for the preservation of records maintained as part of the adoption history program.

(d) An attorney who complies with this section does not violate attorney-client privilege.

(e) A record maintained or transferred under this section is confidential.

SECTION 8. IC 31-19-15-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1. **(a)** Except as provided in section 2 of this chapter or IC 31-19-16, if the biological parents of an adopted person are alive, the biological parents are:

- (1) relieved of all legal duties and obligations to the adopted child; and
- (2) divested of all rights with respect to the child; after the adoption.

(b) The obligation to support the adopted person continues until the entry of the adoption decree. The entry of the adoption decree does not extinguish the obligation to pay past due child support owed to the adopted person before the entry of the adoption decree.

SECTION 9. IC 31-19-15-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2. **(a)** If the adoptive parent of a child is married to a biological parent of the child, the parent-child relationship of the biological parent is not affected by the adoption.

(b) If the adoptive parent of a child is married to a previous adoptive parent, the parent-child relationship of the previous adoptive parent is not affected by the adoption.

- ~~(b)~~ **(c)** After the adoption, the adoptive father or mother, or both:
 - (1) occupy the same position toward the child that the adoptive father or the adoptive mother, or both, would occupy if the adoptive father or adoptive mother, or both, were the biological father or mother; and
 - (2) are jointly and severally liable for the maintenance and education of the person.

SECTION 10. IC 31-19-18-5 IS AMENDED TO READ AS

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1 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 5. The state registrar:
 2 (1) may adopt rules under IC 4-22-2; and
 3 (2) shall prescribe forms necessary;
 4 to implement this chapter, **IC 31-19-12-5**, and IC 31-19-19 through
 5 IC 31-19-24.

6 SECTION 11. IC 31-19-28-1 IS AMENDED TO READ AS
 7 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1. Whenever a person
 8 is adopted outside Indiana, under the laws of the state, territory, or
 9 country where the adoption took place:

- 10 (1) the adoption decree:
 11 (A) when filed with the clerk of the court of any county in
 12 Indiana; and
 13 (B) when entered upon the order book of the court in open
 14 session;

15 has the same force and effect as if the adoption decree were made
 16 in accordance with this article; ~~and~~

- 17 (2) the adopted person:
 18 (A) has the same rights; and
 19 (B) is capable of taking by inheritance, upon the death of the
 20 adoptive parent, property located in Indiana;
 21 as though the person had been adopted according to the laws of
 22 Indiana; **and**

23 **(3) if a name other than a name in the adoption decree is**
 24 **requested, the adopted person shall take the name requested**
 25 **in a petition filed under this section.**

26 SECTION 12. IC 31-35-1-6 IS AMENDED TO READ AS
 27 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 6. (a) Except as
 28 provided in subsection (b), the parents must give their consent in open
 29 court unless the court makes findings of fact upon the record that:

- 30 (1) the parents gave their consent in writing before a person
 31 authorized by law to take acknowledgments;
 32 (2) the parents were ~~notified of their constitutional and other legal~~
 33 ~~rights and of the consequences of their actions under advised in~~
 34 **accordance with** section 12 of this chapter; and
 35 (3) the parents failed to appear.

36 (b) The consent of a parent to the termination of the parent-child
 37 relationship under this chapter is not required if:

- 38 (1) consent to the termination of the parent-child relationship is
 39 implied under section 4.5 of this chapter, if the parent is the
 40 putative father; ~~or~~
 41 (2) the parent's consent to the adoption of the child would not be
 42 required under:

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- 1 (A) IC 31-19-9-8;
- 2 ~~(A)~~ (B) IC 31-19-9-9; or
- 3 ~~(B)~~ (C) IC 31-19-9-10; or
- 4 **(3) the child's biological father denies paternity of the child**
- 5 **before or after the birth of the child if the denial of paternity:**
- 6 (A) is in writing;
- 7 (B) is signed by the child's father in the presence of a
- 8 notary public; and
- 9 (C) contains an acknowledgment that:
- 10 (i) the denial of paternity is irrevocable; and
- 11 (ii) the child's father will not receive notice of adoption
- 12 or termination of parent-child relationship proceedings.

13 **A child's father who denies paternity of the child under subdivision**
 14 **(3) may not challenge or contest the child's adoption or termination**
 15 **of the parent-child relationship.**

16 SECTION 13. IC 31-35-1-11 IS AMENDED TO READ AS
 17 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 11. (a) If the court
 18 makes findings of fact upon the record that:

- 19 (1) one (1) parent has made a valid consent to the termination of
- 20 the parent-child relationship;
- 21 (2) the other parent:
- 22 (A) is required under this chapter to consent to the termination
- 23 of the parent-child relationship;
- 24 (B) cannot be located, after a good faith effort has been made
- 25 to do so, or has been located but fails to appear at the
- 26 termination hearing; and
- 27 (C) has been served with notice of the hearing in the most
- 28 effective means under the circumstances; and
- 29 (3) the investigation that may be required by section 7 of this
- 30 chapter has been completed and entered on the record;

31 the court may enter a default judgment against the unavailable parent
 32 and terminate as to both parents.

33 **(b) A parent may waive the notice required by subsection**
 34 **(a)(2)(C) if the waiver:**

- 35 (1) is in writing;
- 36 (2) is signed by the parent in the presence of a notary public;
- 37 and
- 38 (3) contains an acknowledgment that:
- 39 (A) the waiver is irrevocable; and
- 40 (B) the parent will not receive notice of:
- 41 (i) adoption; or
- 42 (ii) termination of parent-child relationship;

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proceedings.

(c) A parent who waives notice under subsection (b) may not challenge or contest:

- (1) the termination of the parent-child relationship; or**
- (2) the child's adoption.**

SECTION 14. IC 35-46-1-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 9. (a) Except as provided in subsection (b), a person who, with respect to an adoption, transfers or receives any property in connection with the waiver of parental rights, the termination of parental rights, the consent to adoption, or the petition for adoption commits profiting from an adoption, a Class D felony.

(b) This section does not apply to the transfer or receipt of:

- (1) reasonable attorney's fees;
- (2) hospital and medical expenses concerning childbirth and pregnancy incurred by the adopted person's birth mother;
- (3) reasonable charges and fees levied by a child placing agency licensed under IC 12-17.4 or by a county office of family and children;
- (4) reasonable expenses for psychological counseling relating to adoption incurred by the adopted person's birth parents;
- (5) reasonable costs of housing, utilities, and phone service for the adopted person's birth mother during the second or third trimester of pregnancy and not more than six (6) weeks after childbirth;
- (6) reasonable costs of maternity clothing for the adopted person's birth mother;
- (7) reasonable travel expenses incurred by the adopted person's birth mother that relate to the pregnancy or adoption;
- (8) any additional itemized necessary living expenses for the adopted person's birth mother during the second or third trimester of pregnancy and not more than six (6) weeks after childbirth, not listed in subdivisions (5) through (7) in an amount not to exceed one thousand dollars (\$1,000); or
- (9) other charges and fees approved by the court supervising the adoption, including reimbursement of not more than actual wages lost as a result of the inability of the adopted person's birth mother to work at her regular, existing employment due to a medical condition, excluding a psychological condition, if:
 - (A) the attending physician of the adopted person's birth mother has ordered or recommended that the adopted person's birth mother discontinue her employment; and
 - (B) the medical condition and its direct relationship to the

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1 pregnancy of the adopted person's birth mother are
 2 documented by her attending physician.
 3 In determining the amount of reimbursable lost wages, if any, that are
 4 reasonably payable to the adopted person's birth mother under
 5 subdivision (9), the court shall offset against the reimbursable lost
 6 wages any amounts paid to the adopted person's birth mother under
 7 subdivisions (5) and (8) and any unemployment compensation received
 8 by or owed to the adopted person's birth mother.
 9 (c) Except as provided in this subsection, payments made under
 10 subsection (b)(5) through (b)(9) may not exceed three thousand dollars
 11 (\$3,000) and must be disclosed to the court supervising the adoption.
 12 The amounts paid under subsection (b)(5) through (b)(9) may exceed
 13 three thousand dollars (\$3,000) to the extent that a court in Indiana
 14 with jurisdiction over the child who is the subject of the adoption
 15 approves the expenses after determining that:
 16 (1) the expenses are not being offered as an inducement to
 17 proceed with an adoption; and
 18 (2) failure to make the payments may seriously jeopardize the
 19 health of either the child or the mother of the child and the direct
 20 relationship is documented by **a licensed social worker or the**
 21 **attending physician.**
 22 (d) An attorney or licensed child placing agency shall inform a birth
 23 mother of the penalties for committing adoption deception under
 24 section 9.5 of this chapter before the attorney or agency transfers a
 25 payment for adoption related expenses under subsection (b) in relation
 26 to the birth mother.
 27 (e) The limitations in this section apply regardless of the state or
 28 country in which the adoption is finalized.
 29 **SECTION 15. [EFFECTIVE JULY 1, 2005] IC 35-46-1-9, as**
 30 **amended by this act, applies only to crimes committed after June**
 31 **30, 2005.**

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SENATE MOTION

Madam President: I move that Senator Broden be added as second author of Senate Bill 422.

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COMMITTEE REPORT

Madam President: The Senate Committee on Judiciary, to which was referred Senate Bill No. 422, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, delete lines 1 through 17.

Page 2, delete lines 1 through 10.

Page 5, line 30, delete "shall maintain a".

Page 5, delete lines 31 through 38.

Page 5, line 39, delete "shall" and insert "**may, after entry of the adoption decree,**".

Page 5, line 39, delete "all" and insert "**an**".

Page 5, line 39, delete "records" and insert "**record**".

Page 6, line 9, delete "or previous adoptive".

Page 6, line 9, delete ":".

Page 6, reset in roman line 10.

Page 6, line 11, delete "biological or previous adoptive parents are".

Page 6, line 12, after "child" insert ";".

Page 6, line 12, after "child" reset in roman "and".

Page 6, line 12, delete "except as".

Page 6, delete line 13.

Page 6, line 14, delete "biological or previous adoptive parents are".

Page 6, line 15, delete "and".

Page 6, delete lines 16 through 17.

Page 6, line 19, delete "A support obligation owed by a biological or previous" and insert "**The obligation to support the adopted person continues until the entry of the adoption decree. The entry of the adoption decree does not extinguish the obligation to pay past due child support owed to the adopted person before the entry of the adoption decree.**".

Page 6, delete lines 20 through 21, begin a new paragraph and insert:

"SECTION 9. IC 31-19-15-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2. (a) If the adoptive parent of a child is married to a biological parent of the child, the parent-child relationship of the biological parent is not affected by the adoption.

(b) If the adoptive parent of a child is married to a previous adoptive parent, the parent-child relationship of the previous adoptive parent is not affected by the adoption.

~~(b)~~ (c) After the adoption, the adoptive father or mother, or both:

(1) occupy the same position toward the child that the adoptive

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father or the adoptive mother, or both, would occupy if the adoptive father or adoptive mother, or both, were the biological father or mother; and

(2) are jointly and severally liable for the maintenance and education of the person."

Page 8, delete lines 28 through 31.

Page 10, delete lines 13 through 42.

Page 11, delete lines 1 through 8.

Page 11, line 10, delete "and IC 35-46-1-9.6 and IC 35-46-1-9.7, both".

Page 11, line 11, delete "as added by this act, apply" and insert **"applies"**.

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 422 as introduced.)

BRAY, Chairperson

Committee Vote: Yeas 9, Nays 0.

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