

# SENATE . . . . . No. 868

By Mr. White, a petition (accompanied by bill, Senate, No. 868) of W. Paul White and Mary C. Fitzpatrick, Chief Justice of the Probate and Family Court Department of the Trial Court, for legislation to require written notice to certain persons in adoption proceedings and relative to the rights of fathers of children born out of wedlock. The Judiciary.

---

## The Commonwealth of Massachusetts

---

In the Year One Thousand Nine Hundred and Ninety-Four

---

AN ACT REQUIRING WRITTEN CONSENT OF CERTAIN PERSONS IN ADOPTION PROCEEDINGS; RELATIVE TO NOTICE IN CERTAIN ADOPTION PROCEEDINGS; RIGHTS OF FATHERS OF CHILDREN BORN OUT OF WEDLOCK.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1 SECTION 1. Chapter 210, section 2 of the General Laws, as  
2 most recently amended by St. 1978, Chapter 552 section 33 is  
3 hereby amended by striking the first paragraph and inserting in  
4 place thereof the following new paragraph: —

5 A decree of adoption shall not be made, except as provided in  
6 this chapter, without the written consent of the child to be adopt-  
7 ed, if above the age of twelve; of the child's spouse, if any; of the  
8 lawful parents, who may be previous adoptive parents, or surviv-  
9 ing parent; of the mother if the child is born out of wedlock and  
10 not previously adopted; or of the father of the child born out of  
11 wedlock if said father has filed a parental responsibility claim  
12 under section four A of this chapter, has filed an action to estab-  
13 lish paternity under chapter 209C, has acknowledged paternity in  
14 a manner prescribed by said chapter 209C, has agreed to support  
15 the child through a written voluntary promise, has been identified  
16 as the child's father on the birth certificate with his consent and  
17 the consent of the mother, has lived openly with the child and the  
18 child's mother and who holds himself out to be the child's father,  
19 or has been identified as the father of the child by the mother  
20 of the child in a sworn written statement. A person whose consent

21 is hereby required shall not be prevented from being the  
22 adoptive parent.

1 SECTION 2. General Laws Chapter 210 section 4, as most  
2 recently amended by St. 1978, Chapter 552, section 57 is amended  
3 by striking the entire section and inserting in place thereof the fol-  
4 lowing new section: —

5 If the written consent required by section two is not submitted  
6 to the court with the petition, the court shall, except where the  
7 court under section three has determined that such consent and  
8 notice is not required, order notice by personal service upon the  
9 parties of an order of notice, in such form as shall be prescribed  
10 under section thirty of chapter two hundred and fifteen, or, if the  
11 parties are not found within this commonwealth, by publication of  
12 said order of notice once in each of three successive weeks in  
13 such newspaper as the court orders, the last publication to be  
14 seven days at least before the time appointed for the hearing, and  
15 the court may require additional notice and consent. This notice  
16 shall be required if the identity of the putative father of the child  
17 is known. But, if such child is of unknown parentage, and is a  
18 foundling, publication as herein set forth shall not be required; but  
19 notice of the petition shall be given to the department of social  
20 services.

1 SECTION 3. Chapter 210, section 4A of the General Laws, as  
2 most recently amended by St. 1978, Chapter 552, section 38 is  
3 hereby amended by striking the entire section and inserting in  
4 place thereof the following new section: —

5 Any person, prior to the surrender or termination of parental  
6 rights of the mother of a child under this chapter, may file a decla-  
7 ration with the department of social services seeking to assert the  
8 responsibilities of fatherhood except when a decree has been  
9 issued pursuant to section three dispensing with the need of con-  
10 sent of said father. Said responsibility claim shall be on a form  
11 prescribed for such purpose by the department. The department  
12 shall provide the person filing with evidence of the filing within  
13 five days and shall, at the same time, send notice of filing to the  
14 mother by registered mail at her address as stated on the parental  
15 responsibility claim or to such other address as the department

16 determines to be correct after making every reasonable effort to  
17 locate such mother. Such filing shall constitute an acknowledg-  
18 ment and admission of paternity.

19 Upon the request of any person or agency receiving a child for  
20 the purpose of adoption, the department shall examine all paternal  
21 responsibility claims filed with it and shall within five days pro-  
22 vide an affidavit to such person stating whether or not there has  
23 been a parental responsibility claim filed with respect to such  
24 child. If such a parental responsibility claim has been filed, the  
25 department shall notify the person claiming paternity, by regis-  
26 tered mail at the address stated on the parental responsibility  
27 claim, that the child is in the care of a licensed placement agency  
28 which is planning for the adoption of the child. A copy of the  
29 notice shall be sent to the person or agency requesting the affi-  
30 davit. The person claiming paternity may, within thirty days from  
31 the date of the mailing of said notice by the department, file a  
32 petition for adoption or custody of such child in the probate and  
33 family court in the county where the agency is located. Failure to  
34 file such a petition shall not preclude said person from contesting  
35 a proceeding brought under section three of this chapter to termi-  
36 nate parental rights. Should the person file the petition for adop-  
37 tion or custody, the court shall consider the case as expeditiously  
38 as possible, and shall, without regard to other potential adoptive  
39 parents, allow the petition of the person claiming paternity if it  
40 finds that such adoption or custody is in the child's best interest  
41 and if it finds that such person is the father of the child. The court,  
42 on its own motion, may order the production of any evidence to  
43 determine if the petitioner is the father of the child. Any such peti-  
44 tion shall be subject to clause (E) of section 2A. Any costs  
45 incurred for the temporary care of the child pending a hearing on  
46 the petition of the person claiming paternity shall be borne by said  
47 person.

48 No petition for adoption shall be allowed without proof of com-  
49 pliance with this section.

