

Amendment No. 2 to HB1263

Farmer  
Signature of Sponsor

**AMEND Senate Bill No. 1238\***

**House Bill No. 1263**

by deleting all language after the enacting clause and substituting:

SECTION 1. Tennessee Code Annotated, Title 36, Chapter 1, Part 1, is amended by adding the following new section:

**36-1-150. Alternative voluntary surrender of parental rights.**

(a) As used in this section:

(1) "Capacity" means the same as defined in § 31-4-106;

(2) "Notice" means a written notice of intent to execute an out of court surrender; and

(3) "Out-of-court surrender" means a surrender of parental rights that is voluntarily executed in writing and out of the presence of a judge.

(b)

(1) A surrender of parental rights executed within the geographic boundaries of this state must be executed in accordance with this section or § 36-1-111.

(2)

(A) If a birth parent wishes to surrender the birth parent's child for adoption by a prospective adoptive parent residing in another state, then the birth parent may execute the appropriate surrender, consent, or relinquishment documents required under that state's law in lieu of a surrender executed in accordance with § 36-1-111 or an out-of-court surrender pursuant to this section. The documents required by the other

state's law must be executed in the presence of a judge authorized to accept a surrender in this state, except that if the birth parent is incarcerated, then the documents may be executed in the presence of the warden or deputy warden of the penitentiary or a notary public.

(B) The presence of a judge authorized to accept a surrender in this state may be satisfied through a virtual video platform on which the judge is able to see and hear the birth parent execute the documents in real time pursuant to § 36-1-111. The administrative office of the courts shall create a form for a judge to acknowledge the judge's presence, either in person or through a virtual video platform, for the execution of the documents.

(3) This section provides the exclusive procedure for the voluntary surrender of parental rights in this state for a surrendering parent who does not wish to appear personally before a judge.

(4) This section only applies in cases where:

(A) The child being surrendered is six (6) months of age or less;

(B) The child being surrendered is not in the custody of the department; and

(C) The surrendering party is over eighteen (18) years of age at the time of surrender and represented by an attorney.

(5) This section does not apply if the surrendering parent has an intellectual or developmental disability, as defined in § 52-1-101, or lacks the mental capacity to execute a legal document.

(6) This section does not affect a father's waiver of parental rights under § 36-1-111.

(c)

(1) In lieu of an in-court surrender pursuant to § 36-1-111, a birth parent may execute a notice in accordance with this section. A petition for approval of a notice that complies with this subsection (c) may be filed by the attorney representing the birth parent or the attorney representing the accepting party.

(2) The notice must be signed by:

(A) The birth parent;

(B) The attorney representing the birth parent;

(C) The accepting party, which may be the prospective adoptive parent or a licensed child-placing agency; and

(D) An attorney representing the accepting party.

(3) The parties shall not execute a notice earlier than thirty (30) days before the birth of the child to be surrendered.

(4) The notice is not binding upon any party.

(5) The notice expires unless an out-of-court surrender is executed within the latter of:

(A) Thirty (30) days following the birth of the child to be surrendered; or

(B) Thirty (30) days following the approval of the notice by the court.

(6) If the party who executes the notice decides not to execute an out-of-court surrender or revokes an out-of-court surrender in accordance with this section, then the court must seal all records in the proceeding in accordance with § 36-1-126. The records in the proceeding must not be used as evidence in a custody or guardianship hearing.

(d)

(1) Upon execution of the notice by all required parties, the notice, a petition for approval of the notice, and a home study report must be filed with the clerk of the chancery or circuit court having jurisdiction under this chapter.

(2) The clerk shall assign a docket number, and the matter must be set before a judge of competent jurisdiction and heard within fourteen (14) days of the filing of the notice and petition.

(3) An attorney for either the birth parent or the prospective adoptive parent may request an emergency docket setting for the purpose of filing and judicial review of the notice.

(4) All court reports submitted under this subsection (d) are confidential and are not open to inspection by any person except by order of the court entered on the minute book. The court shall, however, disclose to the prospective adoptive parent any adverse court reports or information contained therein, but shall protect the identity of any person reporting child abuse or neglect in accordance with the law.

(5)

(A) A surrendering party shall complete a social and medical history form as promulgated by the department, or a substantially similar form, and attach the completed and executed form to the surrendering party's pre-surrender information form in accordance with § 36-1-111(b).

(B) The surrendering party's pre-surrender information form must be filed with the notice.

(6)

(A) The party accepting guardianship of the child being surrendered, if other than a licensed child-placing agency, shall complete the accepting party's pre-acceptance information form in accordance with § 36-1-111(b).

(B) The accepting party's pre-acceptance information form must be filed with the notice.

(e)

(1) At the hearing on the notice, the court shall review the executed notice, the court report based upon the home study, the surrendering party's pre-surrender information form, and the accepting party's pre-acceptance information form, as applicable, and determine whether the documents comply with this section.

(2) If the court determines that the requirements of subdivision (e)(1) have been satisfied, then the court may:

(A) Enter an order approving the notice; and

(B) Enter a provisional order of guardianship naming the accepting party as guardian of the child effective upon filing of the notice of surrender.

(3) An order approving the notice and a provisional order of guardianship expires if an out-of-court surrender is not executed within the latter of:

(A) Thirty (30) days following the birth of the child to be surrendered; or

(B) Thirty (30) days following the approval of the notice and provisional order of guardianship by the court.

(f)

(1) Following judicial approval of the notice, the birth parent may execute an out-of-court surrender form.

(2) In accordance with § 36-1-111(d)(3), an out-of-court surrender is not valid unless executed after the latter of:

(A) Discharge of the birth parent from a hospital or other birthing facility after the birth of the child; or

(B) Seventy-two (72) hours following the child's birth.

(3) The surrendering party's attorney shall:

(A) Advise the person surrendering the child of the right of revocation of the surrender, the time period for revocation, and the procedure for revocation in accordance with this section; and

(B) Provide the surrendering party with the revocation of out-of-court surrender form developed by the administrative office of the courts, which must include the date and time by which the revocation must be filed, and the address for the court in which the revocation must be filed.

(4) The execution of an out-of-court surrender must be witnessed and certified by:

(A) The attorney representing the surrendering party;

(B) An independent and disinterested adult witness of the surrendering party's choice who is not an ineligible witness under subdivision (f)(7); and

(C) A notary public who is not ineligible to serve as a notary public under subdivision (f)(7).

(5) The attorney, witness, and notary public must be three (3) different people.

(6) The surrendering party's attorney must not be the same attorney who is representing the prospective adoptive parents or the licensed child-placing agency.

(7) The following persons are not eligible to serve as the adult witness or the notary public:

(A) The prospective adoptive parent of the child being surrendered;

(B) An employee or representative of a licensed child-placing agency that has received compensation or anything of value related to the placement or adoption of the child being surrendered;

(C) A relative of the surrendering party within the third degree of consanguinity;

(D) A relative of the prospective adoptive parent within the third degree of consanguinity;

(E) The other legal parent of the child, or the surrendering party's spouse, at the time the out-of-court surrender is executed;

(F) The attorney representing the surrendering party or the other prospective adoptive family; or

(G) A paramour of the surrendering party.

(8) The attorney for the birth parent shall certify compliance with this subsection (f). Within three (3) days of the execution of the out-of-court surrender, the certification of compliance and executed out-of-court surrender must be filed with the court under the assigned docket number of the petition. The certification and executed out-of-court surrender may be filed by the attorney representing the surrendering party or the attorney representing the accepting party.

(9) The court shall issue an order of guardianship granting legal and physical custody to the accepting party, subject to further proceedings for finalization of the adoption under this chapter, immediately upon the filing of an out-of-court surrender executed by the birth parent pursuant to this subsection (f).

(10) At the time of execution of the out-of-court surrender:

(A) The birth parent must be provided with:

(i) A copy of the executed out-of-court surrender; and

(ii) A revocation of out-of-court surrender form which specifies the date and time by which the revocation must be executed; and

(B) The person, or the local representative of the licensed child-placing agency, to whom the child is surrendered must receive a copy of the executed out-of-court surrender.

(11) Within seven (7) days of the execution and filing of the out-of-court surrender, the attorney representing the party to whom the child is surrendered shall file a motion for full guardianship in the court where the original notice was approved.

(g)

(1) An out-of-court surrender must expressly state that it is revocable in accordance with the revocation procedures set forth in § 36-1-112, and must specify the date and time by which the revocation must be executed and the location where the revocation must be filed.

(2) For out-of-court surrenders:

(A) The revocation period begins upon execution of the out-of-court surrender; and

(B) The court may not reduce the three-day revocation period as otherwise allowed under § 36-1-112(g).

(3) An out-of-court surrender may be revoked by executing a revocation of out-of-court surrender form. An executed and notarized revocation of out-of-court surrender form must be hand-filed with the court in which the out-of-court surrender was filed, which must be identified in the out-of-court surrender document. The revocation of out-of-court surrender form must be hand-filed within the three-day timeframe pursuant to § 36-1-112(a)(1)(A).

(4) A revocation of out-of-court surrender may be filed:

(A) In person by the birth parent; or

(B) By the attorney for the birth parent.

(5) If the surrendering party under this section has misplaced or otherwise does not have a revocation of out-of-court surrender form, then the person may apply to a court that is qualified to receive a surrender in this state to execute a revocation before a judge of that court as provided in this chapter. The clerk of court shall accept this revocation and transfer it to the surrendering court.

(h)

(1) An out-of-court surrender executed in compliance with this section has the same force and effect as a surrender executed before the court under § 36-1-111.

(2) All revocation, rescission, and finality provisions of this chapter, including § 36-1-112, apply equally to out-of-court surrenders executed under this section.

(3) This section applies to any out-of-court surrender of parental rights executed in this state on or after January 1, 2027.

(i) Notwithstanding subdivision (c)(5):

(1) If a parent executes, and the court approves, a notice and the individual who executed the notice leaves the infant with the accepting party under subdivision (c)(2) or leaves the child with a facility identified under § 68-11-255 without exercising the out-of-court surrender within the thirty-day period and does not seek the return of the child to the parent's custody, then:

(A) Within seven (7) days of the expiration of the notice, the attorney representing the accepting party must file a motion for full guardianship of the child in the court where the original notice was approved; and

(B) The court must presume it was the will and intention of the parent who executed the notice that the child be placed with the accepting party for the purpose of adoption unless the court determines that such placement is not in the best interest of the child or the accepting party identified in the notice declines the placement;

(2) If a parent executes, and the court approves, a notice and the individual who executed the notice is unable to execute the out-of-court surrender due to the parent's death, then the attorney representing the accepting party must file a motion for full guardianship in the court where the original notice was approved within seven (7) days of the expiration of the notice, and the court must presume it was the will and intention of the parent who executed the notice that the child be placed with the accepting party for the purpose of adoption; and

(3) If a parent executes, and the court approves, a notice and the individual who executed the notice is unable to execute the out-of-court surrender due to the parent's incapacitation, then the court must set a hearing to determine the best interest of the child and must issue an order stating whether or not it is in the child's best interest to be placed with the accepting party for the purpose of adoption.

(j) The finalization of an adoption of a child surrendered under this section must be in accordance with this part.

(k) The administrative office of the courts shall develop and make available to the public on the administrative office of the courts' website, the following forms:

(1) A notice form, which must include an acknowledgment of rights and consequences consistent with § 36-1-111;

(2) An out-of-court surrender form; and

(3) A revocation of out-of-court surrender form.

SECTION 2. The heading in this act is for reference purposes only and does not constitute a part of the law enacted by this act. However, the Tennessee Code Commission is requested to include the heading in any compilation or publication containing this act.

SECTION 3. For the purpose of the development of forms, this act takes effect upon becoming a law, the public welfare requiring it. For all other purposes, this act takes effect January 1, 2027, the public welfare requiring it.