



2021 ASSEMBLY BILL 138

March 5, 2021 - Introduced by Representatives BRANDTJEN, DITTRICH, ARMSTRONG, MURPHY, ROZAR, SANFELIPPO, STEFFEN, THIESFELDT, TRANEL, WICHGERS and BALDEH, cosponsored by Senators JACQUE, DARLING, MARKLEIN and WANGGAARD. Referred to Committee on Children and Families.

- 1 **AN ACT to amend** 48.46 (2), 48.837 (5) and 48.91 (3); and **to create** 48.41 (2) (bm)
2 and 48.913 (1) (em) of the statutes; **relating to:** a disclaimer of parental rights
3 and payments allowed in connection with an adoption.

Analysis by the Legislative Reference Bureau

This bill provides a method by which a mother, father, or alleged or presumed father may disclaim his or her parental rights with respect to a child under the age of one who is not an Indian child in writing as an alternative to appearing in court to consent to the termination of his or her parental rights. The bill also allows payments to be made to a licensed out-of-state private child placing agency for services provided in connection with an adoption.

Disclaimer of parental rights

Subject to certain exceptions, current law generally requires a birth parent to appear in court to consent to the termination of his or her parental rights. This bill adds an exception that allows a mother, father, or alleged or presumed father to avoid appearing in court if he or she files with the court an affidavit disclaiming his or her parental rights with respect to a child under the age of one who he or she knows is not, or has no reason to know is, an Indian child. A minor may use such an affidavit of disclaimer only after the TPR petition has been filed, he or she has been offered legal counseling, and he or she has been appointed a guardian ad litem and only if the guardian ad litem approves the disclaimer. The affidavit must comply with certain requirements, including that it must be witnessed and notarized and must include a statement that the parent understands the effect of an order to terminate

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parental rights and that he or she voluntarily disclaims any rights that he or she may have to the child.

Under the bill, the affidavit containing a disclaimer of parental rights may be executed before the birth of the child by the father or alleged or presumed father but not the mother, may not be executed by either parent between the birth and 120 hours after the birth or on or after the child's first birthday, and may be executed by either parent 120 hours or more after the birth. If not revoked by the applicable time limit, the disclaimer is irrevocable unless obtained by fraud or duress. Under the bill, no action to invalidate a disclaimer, including an action based on fraud or duress, may be commenced more than three months after the affidavit was executed. If parental rights to a child are terminated based upon such a disclaimer of parental rights, the bill prohibits a court from entering an order granting adoption of the child until three months have passed since the affidavit was executed.

The bill requires the agency making the placement of the child for adoption, whether the agency is the Department of Children and Families, the county department of human services or social services, or a licensed child welfare agency, to offer both counseling and legal counseling to the person disclaiming his or her parental rights, at the agency's expense, prior to execution of the affidavit. The person must acknowledge in the affidavit that he or she has been offered these counseling and legal counseling sessions and whether or not he or she accepted them.

Payments relating to adoption

This bill allows payments to be made to an out-of-state private child placing agency that is licensed in the state in which it operates for services provided in connection with an adoption and, where applicable, in compliance with the federal Indian Child Welfare Act, as certified to DCF. The bill defines a private child placing agency as a private corporation, agency, foundation, institution, or charitable organization, or any private person or attorney, that facilitates, causes, or is involved in the placement of a child from one state to another state. Current law allows payments for such services only to a child welfare agency licensed in this state.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

- 1 **SECTION 1.** 48.41 (2) (bm) of the statutes is created to read:
- 2 48.41 **(2)** (bm) 1. Subject to subd. 1m., a mother, father, or presumed or alleged
- 3 father may consent to the termination of any parental rights that he or she may have
- 4 with respect to a child who is under one year of age and who he or she knows is not,
- 5 or has no reason to know is, an Indian child by the method provided in par. (a) or (b)

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1 or by filing with the court an affidavit of disclaimer of parental rights that is signed
2 by 2 witnesses and notarized and that meets the requirements under subds. 2. to 8.

3 1m. A minor may consent to the termination of any parental rights that he or
4 she may have with respect to a child by using an affidavit of disclaimer under subd.
5 1. only after the petition to terminate parental rights has been filed, the agency has
6 offered the minor legal counseling under subd. 11., and he or she has been appointed
7 a guardian ad litem and only if the guardian ad litem approves the disclaimer.

8 2. All of the following apply to the affidavit of disclaimer of parental rights
9 under subd. 1.:

10 a. The affidavit may not be executed after the birth of the child until 120 hours
11 after the birth of the child and may not be executed on or after the child's first
12 birthday. The father or presumed or alleged father may, but the mother may not,
13 execute the affidavit before the birth of the child.

14 b. If executed by the father or presumed or alleged father before the birth of the
15 child, the affidavit is revocable for any reason until 24 hours after execution or 120
16 hours after the birth of the child, whichever is later, as provided under subd. 9. If
17 executed by the mother, the affidavit is revocable for any reason until 24 hours after
18 execution, as provided in subd. 9.

19 c. The affidavit is irrevocable if not revoked for any reason by the mother,
20 father, or presumed or alleged father by the applicable time limit provided under
21 subd. 2. b., unless it was obtained by fraud or duress.

22 d. Except as provided in s. 48.028 (5) (b) and (c) and (6), no action to invalidate
23 the affidavit, including an action based on fraud or duress, may be commenced more
24 than 3 months after the date the affidavit was executed.

25 3. An affidavit under subd. 1. shall contain all of the following:

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1 a. The name, county of residence, and age of the parent whose parental rights
2 are being terminated.

3 b. The name, age, and birth date of the child, if born.

4 c. The names and addresses of the guardians of the person whose parental
5 rights are being terminated, if that person is a minor, and of the estate of the child,
6 if any.

7 d. A statement of whether the person whose parental rights are being
8 terminated is or is not presently obligated by court order to make payments for the
9 support of the child.

10 e. A full description and statement of value of all property the child owns or
11 possesses.

12 f. An allegation that termination of parental rights is in the best interest of the
13 child.

14 g. The name and county of residence of any other parent or presumed or alleged
15 father or a statement that the child has no other parent or presumed or alleged
16 father.

17 h. If applicable, a statement that the parental rights of the other parent or
18 presumed or alleged father have been terminated by death or court order.

19 i. A statement containing the information and understandings specified in
20 subd. 4.

21 j. A statement that the child is not an Indian child.

22 4. An affidavit under subd. 1. shall contain a statement in substantially the
23 following form:

24 “I have been informed of and understand all of the following:

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1 A. That a court order terminating parental rights will permanently end all
2 legal rights and duties that exist between me and the child, such as the duty to
3 support, the right to custody and visitation, and the right to inherit.

4 B. That there are parenting-related services that would be available to me if
5 I chose not to consent to the termination of my parental rights.

6 C. That this affidavit may not be executed less than 120 hours after the birth
7 of the child, on or after the child's first birthday, or by the child's mother before the
8 birth of the child.

9 D. That the child's father or presumed or alleged father has the right to revoke
10 an affidavit of disclaimer for any reason until 24 hours after execution or 120 hours
11 after the birth of the child, whichever is later, and the child's mother may revoke the
12 affidavit for any reason until 24 hours after execution.

13 E. That the affidavit is irrevocable if not revoked for any reason by the mother,
14 father, or presumed or alleged father by the applicable time limit under D., above,
15 unless it was obtained by fraud or duress.

16 F. That no action to invalidate the affidavit, including an action based on fraud
17 or duress, may be commenced more than 3 months after the date the affidavit was
18 executed.

19 G. Prior to executing this affidavit I have been offered counseling at the
20 expense of the agency that is placing the child for adoption. I have accepted/refused
21 (circle one) this counseling.

22 H. If I am younger than 18 years of age, prior to executing this affidavit I have
23 been offered legal counseling at the expense of the agency that is placing the child
24 for adoption. I have accepted/refused (circle one) this legal counseling.”

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1 5. An affidavit under subd. 1. shall contain a statement that the person whose
2 parental rights are being terminated voluntarily disclaims any rights that he or she
3 may have to the child, including the right to notice of proceedings under this chapter.

4 6. If a guardian has not been appointed under s. 48.977, an affidavit under
5 subd. 1. may contain the nomination of the department, a county department
6 authorized to accept guardianship under s. 48.57 (1) (e) or (hm), or a child welfare
7 agency licensed under s. 48.61 (5) to accept guardianship to serve as guardian of the
8 child and the nominated guardian's address.

9 6m. The person disclaiming his or her parental rights shall choose at least one
10 of the witnesses to the affidavit, and that witness shall certify that he or she was
11 chosen by that person. Each witness to the affidavit shall certify to all of the
12 following:

13 a. That he or she has no professional or fiduciary interest in the disclaimer or
14 the adoption of the child.

15 b. That he or she has knowledge of the relationship between the person
16 disclaiming his or her parental rights and the child.

17 c. That he or she has discussed the decision to execute the affidavit with the
18 person disclaiming his or her parental rights and that, to the best of the witness's
19 knowledge, the affidavit is being signed voluntarily.

20 d. That he or she is neutral.

21 7. A copy of the affidavit shall be provided to the person whose parental rights
22 are being terminated at the time he or she signs the affidavit.

23 8. The affidavit may not contain terms for post-termination contact between
24 the child and the person whose parental rights are to be terminated as a condition
25 of the disclaimer of parental rights.

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1 9. To revoke a disclaimer of parental rights in an affidavit under subd. 1., the
2 mother, father, or presumed or alleged father shall sign a statement revoking the
3 disclaimer of parental rights that is notarized. A copy of the revocation shall be filed
4 with the clerk of court. A revocation is not valid unless it is executed by the father
5 or presumed or alleged father before 24 hours after execution of the affidavit or 120
6 hours after the birth of the child, whichever is later, or executed by the mother before
7 24 hours after execution of the affidavit.

8 10. The agency that is making the placement of the child for adoption shall offer
9 counseling to a mother, father, or presumed or alleged father who intends to execute
10 an affidavit under this paragraph prior to executing the affidavit with a counselor
11 who is qualified to provide such counseling.

12 11. The agency that is making the placement of the child for adoption shall offer
13 to a mother, father, or presumed or alleged father who is a minor and who intends
14 to execute an affidavit under this subsection legal counseling with an attorney who
15 does not represent the agency or adoptive parents prior to executing the affidavit.

16 12. An affidavit of disclaimer of parental rights under subd. 1. is not effective
17 if it would violate s. 48.028 or if the agency that is making the placement of the child
18 for adoption has reason to know the child is an Indian child.

19 **SECTION 2.** 48.46 (2) of the statutes is amended to read:

20 48.46 (2) A parent who has consented to the termination of his or her parental
21 rights under s. 48.41 or who did not contest the petition initiating the proceeding in
22 which his or her parental rights were terminated may move the court for relief from
23 the judgment on any of the grounds specified in s. 806.07 (1) (a), (b), (c), (d) or (f). Any
24 such motion shall be filed within 30 days after the entry of the judgment or order
25 terminating parental rights, unless the parent files a timely notice of intent to

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1 pursue relief from the judgment under s. 808.04 (7m), in which case the motion shall
2 be filed within the time permitted by s. 809.107 (5). A motion under this subsection
3 does not affect the finality or suspend the operation of the judgment or order
4 terminating parental rights. A parent who has consented to the termination of his
5 or her parental rights to an Indian child under s. 48.41 (2) (e) may also move for relief
6 from the judgment under s. 48.028 (5) (c) or (6). A parent who has consented to the
7 termination of his or her parental rights to a child by filing an affidavit of disclaimer
8 of parental rights under s. 48.41 (2) (bm) may also bring an action to invalidate the
9 affidavit as provided under s. 48.41 (2) (bm) 2. d. Motions under this subsection or
10 s. 48.028 (5) (c) or (6) or 48.41 (2) (bm) 2. d. and appeals to the court of appeals shall
11 be the exclusive remedies for such a parent to obtain a new hearing in a termination
12 of parental rights proceeding.

13 **SECTION 3.** 48.837 (5) of the statutes is amended to read:

14 48.837 (5) ATTENDANCE AT HEARING. The child, if he or she is 12 years of age or
15 over, and each petitioner shall attend the hearing on the petition under sub. (2). The
16 child, if he or she is 12 years of age or over, and each parent having custody of the child
17 shall attend the hearing on the petition under sub. (3), except that a parent who has
18 consented to the termination of his or her parental rights in writing under s. 48.41
19 (2) (b), (bm), or (d) is not required to attend the hearing. If the parent who has custody
20 of the child consents and the court approves, the proposed adoptive parents may be
21 present at the hearing on the petition under sub. (3). The court may, for good cause,
22 waive the requirement that the child attend either of the hearings.

23 **SECTION 4.** 48.91 (3) of the statutes is amended to read:

24 48.91 (3) If Subject to this subsection, if after the hearing and a study of the
25 report required by s. 48.88 and the recommendation required by s. 48.841 or 48.89,

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1 the court is satisfied that the necessary consents or recommendations have been filed
2 and that the adoption is in the best interests of the child, the court shall make an
3 order granting the adoption. If parental rights to the child were terminated based
4 upon an affidavit under s. 48.41 (2) (bm), the court may not make an order granting
5 adoption until 3 months have passed since the date the affidavit was executed. In
6 determining whether the adoption is in the best interests of an Indian child, the court
7 shall comply with the order of placement preference under s. 48.028 (7) (a) or, if
8 applicable, s. 48.028 (7) (c), unless the court finds good cause, as described in s. 48.028
9 (7) (e), for departing from that order. The order may change the name of the minor
10 to that requested by petitioners.

11 **SECTION 5.** 48.913 (1) (em) of the statutes is created to read:

12 48.913 (1) (em) Services provided in connection with the adoption by a private
13 child placing agency, as defined in s. 48.99 (2) (p), that is licensed under the laws of
14 the state in which it operates, and, where applicable, in compliance with the federal
15 Indian Child Welfare Act, 25 USC 1901 to 1963, as certified to the department.

16 (END)