

State of Wisconsin



2013 Assembly Bill 581

Date of enactment: April 16, 2014
Date of publication*: April 17, 2014

2013 WISCONSIN ACT 314

AN ACT *to repeal* 48.825 (3) (e); *to amend* 48.028 (2) (e), 48.028 (3) (c) (intro.), 48.028 (3) (e), 48.028 (4) (a), 48.028 (7) (a) (intro.), 48.028 (7) (c), 48.028 (7) (e) 1. b., 48.028 (7) (e) 1. c., 48.028 (7) (f), 48.825 (1) (a), 48.825 (2) (a), 48.825 (2) (b), 48.825 (2) (c), 48.825 (3) (a), 48.979 (1) (a), 48.979 (1) (dm) and 48.979 (2); *to repeal and recreate* 48.028 (7) (title); and *to create* 48.028 (2) (d) 5., 48.825 (1) (c), 48.979 (1) (am), 48.979 (1m) and 948.25 of the statutes; **relating to:** advertising related to adoption or other permanent physical placements of a child, delegation of parental power regarding the care and custody of a child for more than one year, unauthorized interstate placements of children, requesting a study of adoption disruption and dissolution, and providing penalties.

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

SECTION 1d. 48.028 (2) (d) 5. of the statutes is created to read:

48.028 (2) (d) 5. A delegation of powers by a parent regarding the care and custody of an Indian child for longer than one year under s. 48.979.

SECTION 1f. 48.028 (2) (e) of the statutes is amended to read:

48.028 (2) (e) "Out-of-home care placement" means the removal of an Indian child from the home of his or her parent or Indian custodian for temporary placement in a foster home, group home, residential care center for children and youth, or shelter care facility, in the home of a relative other than a parent, or in the home of a guardian, from which placement the parent or Indian custodian cannot have the child returned upon demand. "Out-of-home care placement" does not include an adoptive placement, a preadoptive placement, a delegation of powers, as described in par. (d) 5., or holding an Indian child in custody under ss. 48.19 to 48.21.

SECTION 1h. 48.028 (3) (c) (intro.) of the statutes is amended to read:

48.028 (3) (c) *Transfer of proceedings to tribe.* (intro.) In any Indian child custody proceeding under this chapter involving an out-of-home placement of, or termination of parental rights to, or delegation of powers, as described in sub. (2) (d) 5., regarding, an Indian child who is not residing or domiciled within the reservation of the Indian child's tribe, the court assigned to exercise jurisdiction under this chapter shall, upon the petition of the Indian child's parent, Indian custodian, or tribe, transfer the proceeding to the jurisdiction of the tribe unless any of the following applies:

SECTION 1j. 48.028 (3) (e) of the statutes is amended to read:

48.028 (3) (e) *Intervention.* An Indian child's Indian custodian or tribe may intervene at any point in an Indian child custody proceeding under this chapter involving an out-of-home care placement of, or termination of parental rights to, or delegation of powers, as described in sub. (2) (d) 5., regarding, the Indian child.

SECTION 1m. 48.028 (4) (a) of the statutes is amended to read:

* Section 991.11, WISCONSIN STATUTES: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication."

48.028 (4) (a) *Notice.* In any involuntary proceeding involving the out-of-home care placement of or termination of parental rights to, or delegation of powers, as described in sub. (2) (d) 5., regarding a child whom the court knows or has reason to know is an Indian child, the party seeking the out-of-home care placement or termination of parental rights, or delegation of powers shall, for the first hearing of the proceeding, notify the Indian child's parent, Indian custodian, and tribe, by registered mail, return receipt requested, of the pending proceeding and of their right to intervene in the proceeding and shall file the return receipt with the court. Notice of subsequent hearings in a proceeding shall be in writing and may be given by mail, personal delivery, or facsimile transmission, but not by electronic mail. If the identity or location of the Indian child's parent, Indian custodian, or tribe cannot be determined, that notice shall be given to the U.S. secretary of the interior in like manner. The first hearing in the proceeding may not be held until at least 10 days after receipt of the notice by the parent, Indian custodian, and tribe or until at least 15 days after receipt of the notice by the U.S. secretary of the interior. On request of the parent, Indian custodian, or tribe, the court shall grant a continuance of up to 20 additional days to enable the requester to prepare for that hearing.

SECTION 1o. 48.028 (7) (title) of the statutes is repealed and recreated to read:

48.028 (7) (title) PLACEMENTS AND DELEGATIONS OF POWERS; PREFERENCES.

SECTION 1p. 48.028 (7) (a) (intro.) of the statutes is amended to read:

48.028 (7) (a) *Adoptive placement or delegation of powers; preferences.* (intro.) Subject to pars. (c) and (d), in placing an Indian child for adoption or in delegating powers, as described in sub. (2) (d) 5., regarding an Indian child, preference shall be given, in the absence of good cause, as described in par. (e), to the contrary, to a placement with or delegation to one of the following, in the order of preference listed:

SECTION 1r. 48.028 (7) (c) of the statutes is amended to read:

48.028 (7) (c) *Tribal or personal preferences.* In placing an Indian child under par. (a), (b), or (bm) or in delegating powers regarding an Indian child under par. (a), if the Indian child's tribe has established, by resolution, an order of preference that is different from the order specified in par. (a) or (b), the order of preference established by that tribe shall be followed, in the absence of good cause, as described in par. (e), to the contrary, so long as the placement or delegation under par. (a) is appropriate for the Indian child's special needs, if any, and the placement under par. (b) or (bm) is the least restrictive setting appropriate for the Indian child's needs as specified in par. (b). When appropriate, the preference of the Indian child or parent shall be considered, and, when a parent who has consented to the placement or del-

egation evidences a desire for anonymity, that desire shall be given weight, in determining the placement or delegation.

SECTION 1t. 48.028 (7) (e) 1. b. of the statutes is amended to read:

48.028 (7) (e) 1. b. Any extraordinary physical, mental, or emotional health needs of the Indian child requiring highly specialized treatment services as established by the testimony of an expert witness, including a qualified expert witness. The length of time that an Indian child has been in a placement or subject to a delegation of powers, as described in sub. (2) (d) 5., does not, in itself, constitute an extraordinary emotional health need.

SECTION 1u. 48.028 (7) (e) 1. c. of the statutes is amended to read:

48.028 (7) (e) 1. c. The unavailability of a suitable placement for the Indian child after diligent efforts have been made to place the Indian child in the order of preference under par. (a), (b), or (c) or the unavailability of a suitable agent to whom to delegate powers, as described in sub. (2) (d) 5., regarding the Indian child after diligent efforts have been made to delegate those powers in the order of preference under par. (a).

SECTION 1v. 48.028 (7) (f) of the statutes is amended to read:

48.028 (7) (f) *Report of placement placements and delegations of powers.* The department, a county department, or a child welfare agency shall maintain a record of each adoptive placement, out-of-home care placement, and preadoptive placement, and delegation of powers, as described in sub. (2) (d) 5., made of an Indian child, evidencing the efforts made to comply with the placement preference requirements specified in this subsection, and shall make that record available at any time on the request of the U.S. secretary of the interior or the Indian child's tribe.

SECTION 1x. 48.825 (1) (a) of the statutes is amended to read:

48.825 (1) (a) "Advertise" means to communicate by any public medium that originates within this state, including by newspaper, periodical, telephone book listing, outdoor advertising sign, radio, or television, or by any computerized communication system, including by electronic mail, Internet site, Internet account, or any similar medium of communication provided via the Internet.

SECTION 1y. 48.825 (1) (c) of the statutes is created to read:

48.825 (1) (c) "Internet account" means an account created within a bounded system established by an Internet-based service that requires a user to input or store access information in an electronic device in order to view, create, use, or edit the user's account information, profile, display, communications, or stored data.

SECTION 2. 48.825 (2) (a) of the statutes is amended to read:

48.825 (2) (a) Advertise for the purpose of finding a child to adopt or to otherwise take into permanent physical custody.

SECTION 3. 48.825 (2) (b) of the statutes is amended to read:

48.825 (2) (b) Advertise that the person will find an adoptive home or any other permanent physical placement for a child or arrange for or assist in the adoption ~~or~~ adoptive placement, or any other permanent physical placement of a child.

SECTION 4. 48.825 (2) (c) of the statutes is amended to read:

48.825 (2) (c) Advertise that the person will place a child for adoption or in any other permanent physical placement.

SECTION 5. 48.825 (3) (a) of the statutes is amended to read:

48.825 (3) (a) The department, a county department, or a child welfare agency licensed under s. 48.60 to place children for adoption, in licensed foster homes or group homes, or in the homes of guardians under s. 48.977 (2).

SECTION 6d. 48.825 (3) (e) of the statutes is repealed.

SECTION 7. 48.979 (1) (a) of the statutes is amended to read:

48.979 (1) (a) A parent who has legal custody of a child, by a power of attorney that is properly executed by all parents who have legal custody of the child, may delegate to an agent, ~~for a period not to exceed one year as provided in par. (am),~~ any of his or her powers regarding the care and custody of the child, except the power to consent to the marriage or adoption of the child, the performance or inducement of an abortion on or for the child, the termination of parental rights to the child, or the enlistment of the child in the U.S. armed forces. A delegation of powers under this paragraph does not deprive the parent of any of his or her powers regarding the care and custody of the child.

SECTION 8. 48.979 (1) (am) of the statutes is created to read:

48.979 (1) (am) A delegation of powers to an agent under par. (a) may remain in effect for no longer than one year, except that such a delegation may remain in effect for longer than one year if the delegation is to a relative of the child or the delegation is approved by the court as provided in sub. (1m).

SECTION 8g. 48.979 (1) (dm) of the statutes is amended to read:

48.979 (1) (dm) A delegation of powers under par. (a) regarding the care and custody of an Indian child for any length of time is subject to the requirements of s. 48.028 (5) (a). A delegation of powers under par. (a) regarding the care and custody of an Indian child for longer than one year is also subject to the requirements of s. 48.028 (3) (c), (4) (a), and (7) (a), (c), (e), and (f).

SECTION 9. 48.979 (1m) of the statutes is created to read:

48.979 (1m) (a) A parent who wishes a delegation of powers under sub. (1) (a) to an agent who is not a relative of the child to remain in effect for longer than one year, the agent to whom the parent wishes to delegate those powers, or an organization that is facilitating that delegation shall file a petition with the court requesting the court's approval of that delegation. The petition shall be entitled "In the interest of (child's name), a person under the age of 18." The petitioner shall attach a draft copy of the power of attorney delegating those powers to the petition and shall state in the petition all of the following:

1. The name, address, and date of birth of the child who is the subject of the delegation of powers.

2. The names and addresses of the parents of the child.

3. The name and address of the person nominated as agent and the relationship of the agent to the child.

4. Whether the parent wishes to delegate to the agent full parental power regarding the care and custody of the child or partial parental power regarding the care and custody of the child and, if the parent wishes to delegate partial parental power, the specific powers that the parent wishes to delegate and any limitations on those powers.

5. The proposed term of the delegation of powers, the reasons for the delegation of powers, and whether the parent proposes to provide any support to the agent during that term. If so, the petition shall indicate the amount of that support.

6. Facts and circumstances showing that the delegation of powers would be in the best interests of the child and that the person nominated as agent is fit, willing, and able to exercise those powers.

7. If the delegation of powers is being facilitated by an entity, as defined in s. 48.685 (1) (b), facts and circumstances showing that the entity has complied with sub. (1) (b) and is permitted under sub. (1) (b) to facilitate that delegation.

8. The information required under s. 822.29 (1) and whether the child is subject to the jurisdiction of the court under s. 48.13, 48.14, 938.12, 938.13, or 938.14.

9. Whether the proceedings are subject to the Uniform Child Custody Jurisdiction and Enforcement Act under ch. 822.

10. Whether the child may be subject to s. 48.028 or 938.028 or the federal Indian Child Welfare Act, 25 USC 1901 to 1963, and, if the child may be subject to those sections or that act, the names and addresses of the child's Indian custodian, if any, and Indian tribe, if known.

(b) Except as provided in par. (bm), the court shall hold a hearing on a petition filed under par. (a) within 45 days after the filing of the petition. The petitioner shall cause the petition and notice of the time and place of the hearing to be served at least 10 days before the time of the hearing on the child, if 12 years of age or over; the child's guardian ad litem and counsel, if any; the parents of the

child; the person nominated as agent; any guardian, legal custodian, and physical custodian of the child; any organization that is facilitating the delegation of power; and, if the child is an Indian child, the Indian child's Indian custodian, if any, and tribe, if known. The petition and notice shall be served in person or by 1st class mail. The petition and notice are considered to be served by proof of personal service, by proof that the petition and notice were mailed to the last-known address of the recipient, or, if the recipient is an adult, by the written admission of service of the person served.

(bm) If the petitioner knows or has reason to know that the child is an Indian child, service under par. (b) to the Indian child's parent, Indian custodian, and tribe shall be provided in the manner specified in s. 48.028 (4) (a). No hearing may be held under par. (c) until at least 10 days after receipt of service by the Indian child's parent, Indian custodian, and tribe or, if the identity or location of the Indian child's parent, Indian custodian, or tribe cannot be determined, until at least 15 days after receipt of service by the U.S. secretary of the interior. On request of the Indian child's parent, Indian custodian, or tribe, the court shall grant a continuance of up to 20 additional days to enable the requester to prepare for the hearing.

(c) At the hearing the court shall first determine whether any party wishes to contest the petition. If the petition is not contested, the court shall immediately proceed to a fact-finding and dispositional hearing, unless an adjournment is requested. If the petition is contested or if an adjournment is requested, the court shall set a date for a fact-finding and dispositional hearing that allows reasonable time for the parties to prepare but is no more than 30 days after the initial hearing. At the fact-finding and dispositional hearing, any party may present evidence and argument relating to the allegations in the petition.

(d) In determining the appropriate disposition of a petition filed under par. (a), the best interests of the child shall be the prevailing factor to be considered by the court. The court shall also consider whether the person nominated as agent would be fit, willing, and able to exercise the powers to be delegated, the reasons for the delegation of powers, the amount of support that the parent is willing and able to provide to the agent during the term of the delegation of powers, and, if the child is an Indian child, the order of placement preference under s. 48.028 (7) (a) or, if applicable, s. 48.028 (7) (c), unless the court finds good cause, as described in s. 48.028 (7) (e), for departing from that order.

(e) At the conclusion of the fact-finding and dispositional hearing, the court shall grant one of the following dispositions, unless the court adjourns the hearing under par. (f):

1. A disposition dismissing the petition if the court finds that the petitioner has not proved the allegations in the petition by clear and convincing evidence or deter-

mines that approval of the proposed delegation of powers is not in the best interests of the child.

2. A disposition approving the proposed delegation of powers, if the court finds that the petitioner has proved the allegations in the petition by clear and convincing evidence and determines that the proposed delegation of powers is in the best interests of the child. The disposition may also designate an amount of support to be paid by the child's parents to the agent. If the court approves the proposed delegation of powers, the parent and the person nominated as agent may execute a power of attorney delegating those powers as approved by the court.

(f) If at the conclusion of the fact-finding and dispositional hearing the court finds that the petitioner has proved the allegations in the petition by clear and convincing evidence, but that the person nominated as agent is not fit, willing, and able to serve as agent or that appointment of that person as agent would not be in the best interests of the child, the court may, in lieu of granting a disposition dismissing the petition under par. (e) 1., adjourn the hearing for not more than 30 days and request the petitioner or any other party to nominate a different person as agent.

(g) Any person who delegates his or her powers regarding the care and custody of a child to a person who is not a relative of the child for longer than one year without first obtaining the approval of the court as provided in this subsection is subject to a fine not to exceed \$10,000 or imprisonment not to exceed 9 months, or both.

SECTION 10. 48.979 (2) of the statutes is amended to read:

48.979 (2) A power of attorney complies with sub. (1) (a) if the power of attorney substantially conforms to the following form:

**POWER OF ATTORNEY
DELEGATING PARENTAL POWER**

AUTHORIZED BY s. 48.979, Wis. Stats.

NAME(S) OF CHILD(REN)

This power of attorney is for the purpose of providing for the care and custody of:

Name, address, and date of birth of child

Name, address, and date of birth of child

Name, address, and date of birth of child

DELEGATION OF POWER TO AGENT

I, (name and address of parent), state that I have legal custody of the child(ren) named above. (*Only a parent who has legal custody may use this form.*) A parent may not use this form to delegate parental powers regarding a child who is subject to the jurisdiction of the juvenile court under s. 48.13, 48.14, 938.12, 938.13, or 938.14, Wis. Stats.

I delegate my parental power to:

Name of agent

Agent's address

Agent's telephone number(s)

Agent's e-mail address
Relationship of agent to child(ren)
The parental power I am delegating is as follows:
FULL

(Check if you want to delegate full parental power regarding the care and custody of the child(ren) named above.)

... Full parental power regarding the care and custody of the child(ren) named above

PARTIAL

(Check each subject over which you want to delegate your parental power regarding the child(ren) named above.)

... The power to consent to all health care; or
... The power to consent to only the following health care:

... Ordinary or routine health care, excluding major surgical procedures, extraordinary procedures, and experimental treatment

- ... Emergency blood transfusion
- ... Dental care

... Disclosure of health information about the child(ren)

... The power to consent to educational and vocational services

... The power to consent to the employment of the child(ren)

... The power to consent to the disclosure of confidential information, other than health information, about the child(ren)

... The power to provide for the care and custody of the child(ren)

... The power to consent to the child(ren) obtaining a motor vehicle operator's license

... The power to travel with the child(ren) outside the state of Wisconsin

... The power to obtain substitute care, such as child care, for the child(ren)

... Other specifically delegated powers or limits on delegated powers (Fill in the following space or attach a separate sheet describing any other specific powers that you wish to delegate or any limits that you wish to place on the powers you are delegating.)

This delegation of parental powers does not deprive a custodial or noncustodial parent of any of his or her powers regarding the care and custody of the child, whether granted by court order or force of law.

THIS DOCUMENT MAY NOT BE USED TO DELEGATE THE POWER TO CONSENT TO THE MARRIAGE OR ADOPTION OF THE CHILD(REN), THE PERFORMANCE OR INDUCEMENT OF AN ABORTION ON OR FOR THE CHILD(REN), THE TERMINATION OF PARENTAL RIGHTS TO THE CHILD(REN), THE ENLISTMENT OF THE CHILD(REN) IN THE U.S. ARMED FORCES OR TO PLACE THE CHILD(REN) IN A FOSTER HOME,

GROUP HOME, OR INPATIENT TREATMENT FACILITY.

EFFECTIVE DATE AND TERM OF THIS DELEGATION

This Power of Attorney takes effect on and will remain in effect until If no termination date is given or if the termination date given is more than one year after the effective date of this Power of Attorney, this Power of Attorney will remain in effect for a period of one year after the effective date, but no longer. If the termination date given is more than one year after the effective date of this Power of Attorney, this Power of Attorney must be approved by the juvenile court. This Power of Attorney may be revoked in writing at any time by a parent who has legal custody of the child(ren) and such a revocation invalidates the delegation of parental powers made by this Power of Attorney, except with respect to acts already taken in reliance on this Power of Attorney.

SIGNATURE(S) OF PARENT(S)

Signature of parent Date

Parent's name printed

Parent's address

Parent's telephone number

Parent's e-mail address

Signature of parent Date

Parent's name printed

Parent's address

Parent's telephone number

Parent's e-mail address

WITNESSING OF SIGNATURE(S) (OPTIONAL)

State of

County of

This document was signed before me on (date) by (name(s) of parent(s)).

Signature of notary

My commission expires:

STATEMENT OF AGENT

I, (name and address of agent), understand that (name(s) of parent(s)) has (have) delegated to me the powers specified in this Power of Attorney regarding the care and custody of (name(s) of child(ren)). I further understand that this Power of Attorney may be revoked in writing at any time by a parent who has legal custody of (name(s) of child(ren)). I hereby declare that I have read this Power of Attorney, understand the powers delegated to me by this Power of Attorney, am fit, willing, and able to undertake those powers, and accept those powers.

Agent's signature

Date

APPENDIX

(Here the parent(s) may indicate where they may be located during the term of the Power of Attorney if different from the address(es) set forth above.)

... I can be located at:

Address(es)

Telephone number(s)

E-mail address(es)

.... Or, by contacting:

Name

Address

Telephone number

E-mail address

.... Or, I cannot be located

SECTION 11. 948.25 of the statutes is created to read:

948.25 Unauthorized interstate placements of children. (1) Any person who sends a child out of this state, brings a child into this state, or causes a child to be sent out of this state or brought into this state for the purpose of permanently transferring physical custody of the child to a person who is not a relative, as defined in s. 48.02 (15), of the child is guilty of a Class A misdemeanor.

(2) Subsection (1) does not apply to any of the following:

(a) A placement of a child that is authorized under s. 48.98, 48.988, or 48.99.

(b) A placement of a child that is approved by a court of competent jurisdiction of the sending state or receiving state.

SECTION 12. Nonstatutory provisions.

(1) STUDY OF ADOPTION DISRUPTION AND DISSOLUTION. The joint legislative council is requested to study adoption disruption and dissolution in this state. If the joint legislative council undertakes such a study, the joint legislative council shall do all of the following:

(a) Study the extent of adoption disruption and dissolution in this state and the efforts by the department of children and families, counties, and child welfare agencies to prevent such disruption and dissolution.

(b) Recommend legislation to accomplish all of the following:

1. Define adoption disruption and adoption dissolution.

2. Prevent adoption disruption and adoption dissolution in this state.

3. Require the department of children and families, county departments of human services or social services that are authorized to place children for adoption, and child welfare agencies that are licensed to place children for adoption to track and report on disrupted or dissolved adoptions.

(c) Consider legislative options to prepare prospective adoptive parents for adoption and to support adoptive parents after an adoption.

(d) Submit its findings, conclusions, and recommendations to the 2015 legislature when it commences.

SECTION 13. Initial applicability.

(1) ADVERTISING RELATED TO ADOPTION OR OTHER PERMANENT PHYSICAL PLACEMENTS OF A CHILD. The treatment of section 48.825 (1) (a) and (c), (2) (a), (b), and (c), and (3) (a) and (e) of the statutes first applies to advertising placed or posted on the effective date of this subsection.