



1995 SENATE BILL 55

February 2, 1995 - Introduced by Senators ROSENZWEIG, RUDE, PLEWA, BUETTNER, BRESKE, DRZEWIECKI, ANDREA, DARLING, RISSER, FITZGERALD and BURKE, cosponsored by Representatives KLUSMAN, KRUG, JOHNSRUD, PLACHE, OURADA, ROBSON, DUFF, RILEY, WALKER, ZIEGELBAUER, BRANDEMUEHL, WILLIAMS, LAZICH, OTT, AINSWORTH, WASSERMAN, SILBAUGH, BOYLE, PORTER, MUSSER, F. LASEE, OWENS, SERATTI, HANDRICK, MURAT and LEHMAN. Referred to Committee on Judiciary.

- 1 **AN ACT to amend** 767.05 (5); and **to create** 767.245 (3), (4) and (5) and 767.45
2 (1) (k) of the statutes; **relating to:** granting visitation rights to grandparents
3 under certain circumstances and who may bring a paternity action.

Analysis by the Legislative Reference Bureau

Current law contains 3 different provisions related to visitation of a child for persons who are not the child's parent. In one, the court may grant visitation to a relative of a child who has been adopted by a stepparent or other relative if the relative petitioning for visitation has maintained a relationship similar to a parent-child relationship with the child within 2 years prior to the filing of the visitation petition. In another provision, the court may grant visitation to a grandparent of a child if one or both of the child's parents are deceased. In another provision, the court may grant visitation to a grandparent, greatgrandparent, stepparent or person who has maintained a relationship similar to a parent-child relationship with the child. The State supreme court has interpreted this provision to require that an underlying action affecting the family must have been filed first and that the child's family not be intact.

This bill authorizes the court to grant visitation to a grandparent of a child in an independent action that may be commenced without an existing underlying action affecting the family if the child is a nonmarital child and the child's parents have not subsequently married each other, paternity has been determined if the grandparent is a parent of the child's father, the child has not been adopted, the grandparent has maintained or attempted to maintain a relationship with the child, the grandparent will not act in a manner that is contrary to decisions made by the child's custodial parent related to the child's physical, emotional, educational or spiritual welfare and the visitation is in the child's best interest. If the person seeking visitation is other than a parent of the child's mother and paternity has not been determined, the court may determine paternity before addressing visitation if the person has filed a petition or motion to determine paternity in conjunction with

the petition for visitation. The bill grants standing to file a paternity petition or motion to a grandparent who in conjunction files a visitation petition, but only if the grandparent's child (the alleged father of the child) has filed a declaration of paternal interest with the department of health and social services, or a statement acknowledging paternity with the state registrar with respect to the child. Finally, the bill also allows for a person who interferes with visitation rights to be found in contempt of court, punishable by payment of a forfeiture or compensation to the person granted visitation rights.

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

1 **SECTION 1.** 767.05 (5) of the statutes is amended to read:

2 767.05 (5) TITLE OF ACTIONS. An action affecting the family under s. 767.02 (1)
3 (a) to (d) or (g) to (k) shall be entitled "In re the marriage of A.B. and C.D.", except
4 that an independent action for visitation under s.767.245 (3) shall be entitled "In re
5 visitation with A. B.". An action affecting the family under s. 767.02 (1) (f) or (m) shall
6 be entitled "In re the support of A.B.". A child custody action shall be entitled "In re
7 the custody of A.B.". In all other respects, the general provisions of chs. 801 and 802
8 respecting the content and form of the summons and pleadings shall apply.

9 **SECTION 2.** 767.245 (3), (4) and (5) of the statutes are created to read:

10 767.245 (3) The court may grant reasonable visitation rights, with respect to
11 a child, to a grandparent of the child in an independent action under this chapter
12 commenced by the filing of a petition by the grandparent if the child's parents have
13 notice of the hearing and the court determines all of the following:

14 (a) The child is a nonmarital child whose parents have not subsequently
15 married each other.

16 (b) Except as provided in sub. (4), the paternity of the child has been determined
17 under the laws of this state or another jurisdiction if the grandparent filing the
18 petition is a parent of the child's father.

1 (c) The child has not been adopted.

2 (d) The grandparent has maintained a relationship with the child or has
3 attempted to maintain a relationship with the child but has been prevented from
4 doing so by a parent who has legal custody of the child.

5 (e) The grandparent is not likely to act in a manner that is contrary to decisions
6 that are made by a parent who has legal custody of the child and that are related to
7 the child's physical, emotional, educational or spiritual welfare.

8 (f) The visitation is in the best interest of the child.

9 **(4)** If the paternity of the child has not yet been determined in an action under
10 sub. (3) that is commenced by a person other than a parent of the child's mother but
11 the person filing the petition under sub. (3) has, in conjunction with that petition,
12 filed a petition or motion under s. 767.45 (1) (k), the court shall make a determination
13 as to paternity before determining visitation rights under sub. (3).

14 **(5)** Any person who interferes with visitation rights granted under sub. (1) or
15 (3) may be proceeded against for contempt of court under ch. 785, except that a court
16 may impose only the remedial sanctions specified in s. 785.04 (1) (a) and (c) against
17 that person.

18 **SECTION 3.** 767.45 (1) (k) of the statutes is created to read:

19 767.45 **(1)** (k) In conjunction with the filing of a petition for visitation with
20 respect to the child under s. 767.245 (3), a parent of a person who has filed a
21 declaration of paternal interest under s. 48.025 or a statement acknowledging
22 paternity under s. 69.15 (3) (b) 3. with respect to the child.

23 **(END)**