

1973 Senate Bill 566

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CHAPTER 263, Laws of 1973

AN ACT to repeal 48.84 (1) (b); to renumber 48.84 (1) (c) and 48.91 (2); to amend 48.02 (11), 48.40 (1), 48.42 (1), 48.43 (1) (intro.), 48.84 (1) (a), (2) and (3), 48.85 (3), 48.89 (1) (a), 48.90 (1) (a), 52.28, 269.56 (5) and 296.36; and to create 48.025, 48.195, 48.42 (3), 48.425, 48.91 (2) and 269.56 (3m) of the statutes, relating to rights of natural fathers of children born out of wedlock.

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

SECTION 1. 48.02 (11) of the statutes is amended to read:

48.02 (11) "Parent means either a natural parent or a parent by adoption. If the child is born out of wedlock but not subsequently legitimated or adopted, "parent" means the natural mother and a person adjudged in a court proceeding to be the natural father.

SECTION 2. 48.025 of the statutes is created to read:

48.025 Declaration of paternal interest in matters affecting children. (1) Any person claiming to be the father of a child born out of wedlock and not subsequently legitimated or adopted may, in accordance with procedures under this section, file with the department a declaration of his interest in matters affecting such child.

(2) The declaration provided in sub. (1) may be filed at any time except after a termination of the natural father's rights under s. 48.425 or 48.43. The declaration shall be in writing, signed by the person filing the declaration and shall contain the person's name and address, the name and last-known address of the mother, the month and year of the birth or expected birth of the child and a statement that he has reason to believe that he may be the father of the child.

(3) A copy of a declaration filed with the department under sub. (1) shall be sent to the mother at her last-known address. Nonreceipt of such copy shall not affect the validity of the declaration. The mother may send a written response to the declaration to the department, and the written response shall be filed with the declaration. Failure

to send a written response shall not constitute an admission of the statements contained in the declaration.

(4) Filing a declaration under this section shall not extend parental rights to the person filing such declaration.

SECTION 3. 48.195 of the statutes is created to read:

48.195 Notice to interested parties. A person who has filed a declaration of interest under s. 48.025, a person who may be the natural father of the child and who is living in a familial relationship with the child or a person who has been adjudged in a court proceeding to be the natural father shall be entitled to notice of proceedings pursuant to a petition under s. 48.20 or 48.40, and shall be given consideration in any informal disposition under s. 48.19. After a termination of the natural father's rights under s. 48.425 or 48.43, the person shall no longer be entitled to notice of or consideration in such proceedings.

SECTION 4. 48.40 (1) of the statutes is amended to read:

48.40 (1) With the written consent of the parents to the termination of their parental rights, providing such consent may be withdrawn at any time prior to termination of their rights; or

SECTION 5. 48.42 (1) of the statutes is amended to read:

48.42 (1) The termination of parental rights under s. 48.40 shall be made only after a hearing before the court. The court shall have notice of the time, place and purpose of the hearing served on the parents personally at least 10 days prior to the date of the hearing; ~~or if.~~ If the court is satisfied that personal service, either within or outside the state, cannot be effected, then such notice may be given by registered mail sent at least 20 days before the date of the hearing to the last-known last-known address of the parent, if an address is known, and by publication thereof. If notice by registered mail is not likely to be effective, the court may order notice to be given by publication at least 20 days before the date of the hearing. If notice is given by publication, the name of the mother shall be included in such notice only if the court following a hearing on the need for inclusion of the mother's name determines in any termination proceeding that such inclusion is essential to give effective notice to the natural father. In determining whether such inclusion is essential, the court shall consider the mother's right to privacy. Publication shall be in a newspaper likely to give notice in the county of the last-known address of the parent, whether within or without the state, or if no address is known, in the county where the termination petition has been filed. Publication within the state shall be as a class 3 1 notice, under ch. 985. Publication outside the state shall be in a manner which the court finds to be comparable to a class 1 notice. A parent who consents to the termination of his parental rights under s. 48.40 (1) may waive in writing the notice required by this section; if the parent is a minor or incompetent his waiver shall be effective only if his guardian ad litem concurs in writing.

SECTION 6. 48.42 (3) of the statutes is created to read:

48.42 (3) In addition to the notice provided parents under sub. (1), in a proceeding under s. 48.40 to terminate the parental rights to a child born out of wedlock and not subsequently legitimated or adopted, the court shall provide notice, as if he were a parent, to those persons specified in s. 48.195 and to a person alleged to the court to be the natural father of the child. Constructive notice shall be given in all cases where no person has previously been adjudged to be the natural father and the court is unable to adjudge paternity. If notice is given by publication the name of the mother shall be included in such notice only if the court following a hearing on the

need for inclusion of the mother's name determines that such inclusion is essential to give effective notice to the natural father. In determining whether such inclusion is essential, the court shall consider the mother's right to privacy.

SECTION 7. 48.425 of the statutes is created to read:

48.425 Hearings and findings. (1) If no person has previously been adjudged to be the natural father of the child, the court shall make inquiry of the mother as to the identity of the natural father. The parental rights of a person who has been adjudged in a court proceeding to be the natural father of a child born out of wedlock and not subsequently legitimated or adopted shall be terminated only in accordance with s. 48.43.

(2) If a person who has filed a declaration under s. 48.025 or a person who alleges himself to be the natural father of the child appears at the hearing, the court shall determine whether he is the natural father by a clear and convincing preponderance of the evidence. Upon a finding that he is the natural father, he shall be adjudged a parent. His parental rights shall be terminated only in accordance with s. 48.43.

(2n) If paternity has been adjudged, the court may make and enforce such orders or provisions, in the best interests of the child, for the suitable care, custody, support and maintenance of the child as a court having jurisdiction over actions affecting marriage may make under ss. 247.23, 247.24 and 247.25 to 247.28, until parental rights of one or both of the parents of such child are terminated.

(3) If the court determines that it is unable to identify the natural father the court may, following the hearing, based on the best interests of the child, terminate any right or interest the natural father may have in the child only if at least 30 days have elapsed since the date of birth of the child.

(5) Termination of the natural father's rights under sub. (3) or s. 48.43 shall be required prior to the adoption of the child.

(6n) (a) The natural mother shall have legal custody of a child born out of wedlock and not subsequently legitimated or adopted, unless legal custody is transferred to another under s. 48.34, 48.345, 48.35 or 48.43 or the natural father is granted legal custody under par. (b) or sub. (2n).

(b) A natural parent whose parental rights have not been terminated may, at any time while he retains such status, petition the court for custody of the child. Notice of a hearing on the petition shall be served on all interested parties, and, after hearing, the court may grant such legal custody to the natural parent as a court having jurisdiction over actions affecting marriage may grant under s. 247.24. The court shall grant such custody in accordance with the standards under s. 247.24.

SECTION 8. 48.43 (1) (intro.) of the statutes is amended to read:

48.43 (1) (intro.) If, after a hearing, the court finds that one or more of the conditions set out in s. 48.40 exist, it may terminate parental rights. If the court terminates parental rights of both parents, ~~of the mother, if the child is illegitimate,~~ or of the only living parent, the court shall transfer guardianship and legal custody of the minor to:

SECTION 9. 48.84 (1) (a) of the statutes is amended to read:

48.84 (1) (a) ~~Both The parent or~~ parents, if living, ~~or the surviving parent, of a legitimate minor;~~ provided, that consent shall not be required from one whose parental rights have been legally terminated; or

SECTION 10. 48.84 (1) (b) of the statutes is repealed.

SECTION 11. 48.84 (1) (c) of the statutes is renumbered 48.84 (1) (b).

SECTION 12. 48.84 (2) and (3) of the statutes are amended to read:

48.84 (2) (a) The ~~consents~~ consent required by sub. (1) (a) ~~and (b)~~ shall be given in writing before a judge of any court of record, unless the court orders otherwise, after the judge has explained to the parent that such consent is irrevocable, except as provided in s. 48.86, and has examined the parent and is satisfied that the parent gives his consent voluntarily. In the case of a minor parent, his minority shall not be grounds for revoking consent, but a guardian ad litem shall be appointed for him and his consent shall be effective only when concurred in by the written consent of the guardian ad litem.

(b) The consent of the minor required by sub. (1) ~~(e)~~ (b) shall be given in writing before the county judge, unless the court orders otherwise.

(3) The consent of the father of a minor born out of wedlock and not subsequently legitimated or adopted shall ~~not~~ be necessary ~~even though the father has married the mother if, prior to the marriage, the mother's parental rights were legally terminated or she consented to the adoption of the minor in the manner provided in sub. (2) unless his rights have been legally terminated.~~

SECTION 13. 48.85 (3) of the statutes is amended to read:

48.85 (3) At the conclusion of the hearing, the court shall enter its order in accordance with s. 48.91 ~~(2)~~ (3).

SECTION 14. 48.89 (1) (a) of the statutes is amended to read:

48.89 (1) (a) A minor born out of wedlock and not subsequently legitimated or adopted;

SECTION 15. 48.90 (1) (a) of the statutes is amended to read:

48.90 (1) (a) One of the petitioners is related to the child by blood, excluding parents whose parental rights have been terminated, ~~an alleged or adjudged father of a child born out of wedlock~~ and persons whose relationship to the child is derived through such parents ~~or father~~; or

SECTION 16. 48.91 (2) of the statutes is renumbered 48.91 (3).

SECTION 17. 48.91 (2) of the statutes is created to read:

48.91 (2) In an adoption proceeding for a child born out of wedlock and not subsequently legitimated or adopted, the court shall establish whether the rights of any persons have been determined under s. 48.425 or by a similar procedure in another jurisdiction. If the court finds that no such determination has been made, the court shall proceed under s. 48.425 prior to any action on the petition for adoption.

SECTION 18. 52.28 of the statutes is amended to read:

52.28 Settlement agreements. A woman who has borne a child out of wedlock or who is pregnant with a child which is likely to be born, out of wedlock, may enter into an agreement with the person claimed by her to be the father of the child. Such agreement may be entered into at any time prior to final judgment, either before or after issuance of process, or at any time while said judgment is still in effect. No agreement shall be entered into before the birth of the child unless the court finds that there are special circumstances making it advisable to do so. The agreement shall include a determination of all facts and orders which s. 52.37 requires the court to

determine in its order for judgment, except that where the parties are unable to agree as to the paternity of the child, the alleged father may deny paternity in the agreement. By the terms of the agreement the defendant must submit personally to the jurisdiction of the court, and consent to entry of judgment in accordance with the terms of the agreement. If the alleged father denies paternity, the agreement must contain a waiver of notice and opportunity to appear at proceedings affecting the child, and a waiver of any rights to custody of the child under ch. 48. Upon motion of the district attorney, the judge of a court of record having power to enter final judgment in paternity proceedings, being satisfied with the terms of the agreement, shall order judgment in accordance therewith if paternity of the child is admitted. Where the paternity of the child is not admitted, after said agreement is approved by the court, it shall be filed but judgment shall not be rendered until there is a default of the payments agreed upon, when, upon motion of the district attorney, judgment shall be rendered and entered forthwith. All agreements referred to in ss. 52.21 to 52.45 shall be drawn by the district attorney. No other agreement or settlement of any paternity proceeding shall be valid. A copy of the agreement shall be filed with the department.

SECTION 19. 269.56 (3m) of the statutes is created to read:

269.56 (3m) PATERNITY. If the rights of the natural father have not been terminated, any person who claims to be the natural father of a child born out of wedlock and not subsequently legitimated or adopted may, within 5 years after the date of birth of the child, petition for a declaration of paternity. The court may determine by a clear and convincing preponderance of the evidence that the person is the natural father of the child. Any further determinations affecting the natural father's rights shall be in accordance with the standards of s. 48.425.

SECTION 20. 269.56 (5) of the statutes is amended to read:

269.56 (5) ENUMERATION NOT EXCLUSIVE. The enumeration in ~~subsections~~ subs. (2), (3), ~~(3m)~~ and (4) does not limit or restrict the exercise of the general powers conferred in ~~subsection~~ sub. (1) in any proceeding where declaratory relief is sought, in which a judgment or decree will terminate the controversy or remove an uncertainty.

SECTION 21. 296.36 of the statutes is amended to read:

296.36 Changing names, court procedure. Any resident of this state, whether a minor or of full age, may upon petition to the circuit court or county court of the county where he resides and upon filing a copy of the notice, with proof of the publication thereof, as required by s. 296.37, if no sufficient cause is shown to the contrary, have his name changed or established by order of the court. If the person whose name is to be changed is a minor under the age of 14 years, such petition may be made by: (a) Both parents, if living, or the survivor of them; (b) the guardian or person having legal custody of such minor if both parents are dead or if the parental rights have been terminated by judicial proceedings; (c) the mother, if the minor is illegitimate born out of wedlock and not subsequently legitimated or adopted, except that the father must also make the petition unless his rights have been legally terminated. Such order shall be entered at length upon the records of the court and a copy thereof, duly certified, shall be filed in the office of the register of deeds of such county, who shall make an entry thereof in a book to be kept by such register. The fee for filing and entering each such certified copy is \$1. If the person whose name is changed or established was born or married in this state, a copy of the record, duly certified, shall be sent by the clerk of court to the state registrar of vital statistics accompanied by the fee prescribed in s. 69.24, which fee the clerk of court shall charge to and collect from the petitioner. The state registrar shall then correct the birth

record, marriage record or both, and direct the register of deeds and local registrar to make similar corrections on their records. No person engaged in the practice of any profession for which a license is required by the state shall change his Christian or given name or his surname to any other Christian or given name or any other surname than that under which he was originally licensed in such profession in this or any other state, in any instance in which the state board or commission for the particular profession, after a hearing, finds that practicing under such changed name operates to unfairly compete with another practitioner or misleads the public as to identity or otherwise results in detriment to the profession or the public. This prohibition against a change of name by a person engaged in the practice of any profession does not apply to any person legally qualified to teach in the public schools in this state, nor to a change of name resulting from marriage or divorce, nor to members of any profession for which there exists no state board or commission authorized to issue licenses or pass upon the qualifications of applicants or hear complaints respecting conduct of members of such profession. Any change of name other than as authorized by law is void.
