

State of Wisconsin



1995 Senate Bill 55

Date of enactment: **November 16, 1995**

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1995 WISCONSIN ACT 68

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

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

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

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

SECTION 2. 767.245 (1) of the statutes is amended to read:

767.245 (1) ~~Upon~~ Except as provided in sub. (2m), upon petition by a grandparent, greatgrandparent, step-parent or person who has maintained a relationship similar to a parent-child relationship with the child, the court may grant reasonable visitation rights to that person if the parents have notice of the hearing and if the court determines that visitation is in the best interest of the child.

SECTION 3. 767.245 (2m) of the statutes is created to read:

767.245 (2m) Subsection (3), rather than sub. (1), applies to a grandparent requesting visitation rights under this section if sub. (3) (a) to (c) applies to the child.

SECTION 4. 767.245 (3), (3c, (3m), (4) and (5) of the statutes are created to read:

767.245 (3) The court may grant reasonable visitation rights, with respect to a child, to a grandparent of the child if the child's parents have notice of the hearing and the court determines all of the following:

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

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

(c) The child has not been adopted.

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

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

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

* Section 991.11, WISCONSIN STATUTES 1993-94: 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 as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

(3c) A grandparent requesting visitation under sub. (3) may file a petition to commence an independent action for visitation under this chapter or may file a petition for visitation in an underlying action affecting the family under this chapter that affects the child.

(3m) (a) A pretrial hearing shall be held before the court in an action under sub. (3). At the pretrial hearing the parties may present and cross-examine witnesses and present other evidence relevant to the determination of visitation rights. A record or minutes of the proceeding shall be kept.

(b) On the basis of the information produced at the pretrial hearing, the court shall evaluate the probability of granting visitation rights to a grandparent in a trial and shall so advise the parties. On the basis of the evaluation, the court may make an appropriate recommendation for settlement to the parties.

(c) If a party or the guardian ad litem refuses to accept a recommendation under this subsection, the action shall be set for trial.

(d) The informal hearing under this subsection may be terminated and the action set for trial if the court finds

it unlikely that all parties will accept a recommendation under this subsection.

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

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

SECTION 5. 767.45 (1) (k) of the statutes is created to read:

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