

2001 ASSEMBLY BILL 222

March 20, 2001 – Introduced by Representatives FOTI, J. LEHMAN, McCORMICK, J. FITZGERALD, HUEBSCH, HUNDERTMARK, KRAWCZYK, KREUSER, D. MEYER, MONTGOMERY, OWENS, PETTIS, STONE, SYKORA, TOWNSEND, WADE and LA FAVE, cosponsored by Senators WIRCH, DARLING, ROESSLER, ROSENZWEIG and SCHULTZ. Referred to Committee on Children and Families.

1 **AN ACT** *to renumber and amend* 786.37; *to amend* 786.36 (1) (intro.), 786.36
2 (1) (b) and 786.36 (1) (c); and *to create* 786.36 (1m) and 786.37 (2) of the
3 statutes; **relating to:** changing the name of a minor.

Analysis by the Legislative Reference Bureau

Under current law, a resident of this state, in order to change his or her name, must petition the circuit court for an order changing that name. Currently, if the person whose name is to be changed is a minor under 14 years of age, both parents of the minor, if living, must file the petition. Currently, before applying to the court for a name change, the petitioner must publish a legal notice of the application once each week for three consecutive weeks in a newspaper that is likely to give notice to persons affected by the name change.

This bill permits one parent to petition for the name change of a minor under 14 years of age who has two living parents if the petitioning parent, in addition to filing proof of publication of the notice as required under current law, also files proof that the petitioning parent served a copy of the notice and petition on the nonpetitioning parent; or, if with reasonable diligence the nonpetitioning parent cannot be served, mailed a copy of the notice and petition to the last-known address of the nonpetitioning parent, if that address can be obtained with reasonable diligence; and, if the nonpetitioning parent cannot be found or provided with notice, files an affidavit showing that the petitioning parent has made a reasonable attempt to provide notice to the nonpetitioning parent, but with reasonable diligence the nonpetitioning parent cannot be found or provided with notice. The court may order

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the name change if the nonpetitioning parent does not appear at the hearing or otherwise answer the petition. If the nonpetitioning parent does appear at the hearing or answer the petition and shows that he or she has not abandoned the minor or failed to assume parental responsibility for the minor, the court may order the name change only if the nonpetitioning parent consents.

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

1 **SECTION 1.** 786.36 (1) (intro.) of the statutes is amended to read:

2 786.36 (1) (intro.) Any resident of this state, whether a minor or adult, may
3 upon petition to the circuit court of the county where he or she resides and upon filing
4 a copy of the notice, with proof of publication, as required by s. 786.37 (1), if no
5 sufficient cause is shown to the contrary, have his or her name changed or established
6 by order of the court. If Subject to sub. (1m), if the person whose name is to be
7 changed is a minor under the age of 14 years, the petition may be made by whichever
8 of the following is applicable:

9 **SECTION 2.** 786.36 (1) (b) of the statutes is amended to read:

10 786.36 (1) (b) The guardian or person having legal custody of the minor if both
11 parents are dead or if the parental rights of both parents have been terminated by
12 judicial proceedings.

13 **SECTION 3.** 786.36 (1) (c) of the statutes is amended to read:

14 786.36 (1) (c) The minor's mother, if the minor is a nonmarital child who is not
15 adopted or whose parents do not subsequently intermarry under s. 767.60, except
16 that, if the paternity of the minor has been established, the father must also make
17 the petition unless his rights have been legally terminated.

18 **SECTION 4.** 786.36 (1m) of the statutes is created to read:

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1 786.36 **(1m)** (a) Notwithstanding sub. (1) (a) and (c), the name of a minor under
2 14 years of age who has 2 living parents may be changed on the petition of one parent
3 if, in addition to filing a copy of the notice, with proof of publication, as required by
4 s. 786.37 (1), the petitioning parent files proof of personal service, substituted service
5 or mailing, as required by s. 786.37 (2), and, if the nonpetitioning parent cannot be
6 found or provided with notice, files an affidavit showing that the petitioning parent
7 has made a reasonable attempt to provide notice to the nonpetitioning parent, but
8 with reasonable diligence the nonpetitioning parent cannot be found or provided
9 with notice, and if the nonpetitioning parent does not appear at the hearing on the
10 petition or otherwise answer the petition.

11 (b) If the nonpetitioning parent appears at the hearing on the petition or
12 otherwise answers the petition and shows that he or she has not abandoned the
13 minor, as described in s. 48.415 (1) (a) 3., (b) and (c), or failed to assume parental
14 responsibility for the minor, as described in s. 48.415 (6), the court shall require the
15 consent of the nonpetitioning parent before changing the name of the minor.

16 **SECTION 5.** 786.37 of the statutes is renumbered 786.37 (1) and amended to
17 read:

18 786.37 **(1)** Before applying to petitioning the court for ~~changing or establishing~~
19 to change or establish a name, the ~~applicant~~ petitioner shall publish a class 3 notice
20 under ch. 985 stating the nature of the ~~application~~ petition and when and where the
21 ~~application~~ petition will be made heard.

22 **(3)** This section does not apply to the name change of a minor if the parental
23 rights to the minor of both parents have been terminated ~~and~~, guardianship and
24 legal custody of the minor have been transferred under subch. VIII of ch. 48, and the
25 minor has been placed in a permanent foster home or a permanent treatment foster

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1 home, where and the guardian and legal custodian of the minor have petitioned to
2 change the minor's name to the name or names of the minor's foster parents or
3 treatment foster parents.

4 **SECTION 6.** 786.37 (2) of the statutes is created to read:

5 786.37 (2) If the petition is for the change of name of a minor under 14 years
6 of age who has 2 living parents and if the petition is being made by one parent of the
7 minor, the petitioner shall, in addition to publishing the notice under sub. (1), serve
8 a copy of the notice and petition on the nonpetitioning parent in the same manner
9 as a summons is served under s. 801.11 (1) (a) or (b) or, if with reasonable diligence
10 the nonpetitioning parent cannot be served in that manner, mail a copy of the notice
11 and petition to the last-known address of the nonpetitioning parent at or
12 immediately prior to the time of the first publication under sub. (1), if that address
13 can be ascertained with reasonable diligence.

14 **SECTION 7. Initial applicability.**

15 (1) This act first applies to petitions for name changes that are filed on the
16 effective date of this subsection.

17 (END)