

2007 Senate Bill 464

Date of enactment: **March 27, 2008**

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## 2007 WISCONSIN ACT 186

**AN ACT** to *renumber and amend* 48.63 (3) and 48.833; to *amend* 48.75 (1g) (a) 4., 48.837 (1), 48.837 (1m), 48.837 (4) (d), 48.837 (6) (d), 48.837 (7), 48.84 (3), 48.913 (1) (k), 48.988 (8) (a), 632.896 (1) (c) 1. and 632.896 (1) (c) 2.; and to *create* 48.422 (7) (br), 48.63 (3) (b), 48.833 (2), 48.837 (1r), 48.837 (4) (dm) and 48.837 (6) (br) of the statutes; **relating to:** placement of a child for adoption with a nonrelative prior to termination of parental rights, payment for preadoption preparation when a child is placed for adoption by a child welfare agency, and the applicability of the Interstate Compact on the Placement of Children.

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

**SECTION 1.** 48.422 (7) (br) of the statutes is created to read:

48.422 (7) (br) Establish whether any person has coerced a birth parent or any alleged or presumed father of the child in violation of s. 48.63 (3) (b) 5. Upon a finding of coercion, the court shall dismiss the petition.

**SECTION 2.** 48.63 (3) of the statutes is renumbered 48.63 (3) (a) and amended to read:

48.63 (3) (a) Subsection (1) does not apply to the placement of a child for adoption. Adoptive placements may be made only as provided under par. (b) and ss. 48.833, 48.835, 48.837 and 48.839.

**SECTION 3.** 48.63 (3) (b) of the statutes is created to read:

48.63 (3) (b) 1. At the request of a parent having custody of a child and the proposed adoptive parent or parents of the child, the department, a county department under s. 48.57 (1) (e) or (hm), or a child welfare agency licensed under s. 48.60 may place the child in the home of the proposed adoptive parent or parents prior to ter-

mination of parental rights to the child as provided in subd. 2. or 3., whichever is applicable, and subd. 4.

2. The department, a county department under s. 48.57 (1) (e) or (hm), or a child welfare agency licensed under s. 48.60 may place a child under subd. 1. in the home of a proposed adoptive parent or parents who reside in this state if that home is licensed as a foster home or treatment foster home under s. 48.62.

3. The department, a county department under s. 48.57 (1) (e) or (hm), or a child welfare agency licensed under s. 48.60 may place a child under subd. 1. in the home of a proposed adoptive parent or parents who reside outside this state if the placement is made in compliance with s. 48.98 or 48.988, whichever is applicable, if the home meets the criteria established by the laws of the state where the proposed adoptive parent or parents reside for a preadoptive placement of a child in the home of a nonrelative, and if an appropriate agency in that state has completed an investigation of the home and filed a report and recommendation concerning the home with the department, county department, or licensed child welfare agency.

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\* Section 991.11, WISCONSIN STATUTES 2005-06 : 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].

4. Before a child may be placed under subd. 1., the department, county department, or child welfare agency making the placement and the proposed adoptive parent or parents shall enter into a written agreement that specifies who is financially responsible for the cost of providing care for the child prior to the finalization of the adoption and for the cost of returning the child to the parent who has custody of the child if the adoption is not finalized. Under the agreement, the department, county department, or child welfare agency or the proposed adoptive parent or parents, but not the birth parent of the child or any alleged or presumed father of the child, shall be financially responsible for those costs.

5. Prior to termination of parental rights to the child, no person may coerce a birth parent of the child or any alleged or presumed father of the child into refraining from exercising his or her right to withdraw consent to the transfer or surrender of the child or to termination of his or her parental rights to the child, to have reasonable visitation or contact with the child, or to otherwise exercise his or her parental rights to the child.

**SECTION 4.** 48.75 (1g) (a) 4. of the statutes is amended to read:

48.75 (1g) (a) 4. The county of the public licensing agency issuing the license has a population of 500,000 or more and the placement is for adoption under s. 48.833 (1), 48.835, or 48.837.

**SECTION 5.** 48.833 of the statutes, as affected by 2005 Wisconsin Act 293, is renumbered 48.833 (1) and amended to read:

48.833 (1) PLACEMENT BY DEPARTMENT OR COUNTY DEPARTMENT. The department, or a county department under s. 48.57 (1) (e) or (hm), ~~or a child welfare agency licensed under s. 48.60~~ may place a child for adoption in a licensed foster home or a licensed treatment foster home without a court order under s. 48.63 (3) (b) or if the department, or county department, ~~or child welfare agency~~ is the guardian of the child or makes the placement at the request of another agency that is the guardian of the child and if the proposed adoptive parents have completed the preadoption preparation required under s. 48.84 (1) or the department, or county department, ~~or child welfare agency~~ determines that the proposed adoptive parents are not required to complete that preparation. <sup>↗</sup> When a child is placed under this ~~section~~ subsection in a licensed foster home or a licensed treatment foster home for adoption, the department, or county department, ~~or child welfare agency~~ making the placement shall enter into a written agreement with the proposed adoptive parent, which shall state the date on which the child is placed in the licensed foster home or licensed treatment foster home for adoption by the proposed adoptive parent.

**SECTION 6.** 48.833 (2) of the statutes is created to read:

48.833 (2) PLACEMENT BY CHILD WELFARE AGENCY. A child welfare agency licensed under s. 48.60 may place a child for adoption in a licensed foster home or a licensed treatment foster home without a court order under s. 48.63 (3) (b) or if the child welfare agency is the guardian of the child or makes the placement at the request of another agency that is the guardian of the child and if the proposed adoptive parents have completed the preadoption preparation required under s. 48.84 (1) or the child welfare agency determines that the proposed adoptive parents are not required to complete that preparation. When a child is placed under this subsection in a licensed foster home or a licensed treatment foster home for adoption, the child welfare agency making the placement shall enter into a written agreement with the proposed adoptive parent, which shall state the date on which the child is placed in the licensed foster home or licensed treatment foster home for adoption by the proposed adoptive parent.

**SECTION 7.** 48.837 (1) of the statutes is amended to read:

48.837 (1) IN-STATE ADOPTIVE PLACEMENT. When the proposed adoptive parent or parents of a child reside in this state and are not relatives of the child, a parent having custody of a child and the proposed adoptive parent or parents of the child may petition the court for placement of the child for adoption in the home of a ~~person who is not a relative of the child~~ the proposed adoptive parent or parents if the home is licensed as a foster home or treatment foster home under s. 48.62.

**SECTION 8.** 48.837 (1m) of the statutes is amended to read:

48.837 (1m) OUT-OF-STATE ADOPTIVE PLACEMENT. ~~Notwithstanding s. 48.98 and 48.988,~~ when the proposed adoptive parent or parents of a child reside outside this state and are not relatives of the child, a parent having custody of a child and the proposed adoptive parent or parents of the child may petition the court for placement of the child for adoption in the home of the proposed adoptive parent or parents, if the home meets the criteria established by the laws of the other state for a preadoptive placement of a child in the home of a nonrelative.

**SECTION 9.** 48.837 (1r) of the statutes is created to read:

48.837 (1r) PLACEMENT PRIOR TO PETITION. (a) At the request of a parent having custody of a child and the proposed adoptive parent or parents of the child, the department, a county department under s. 48.57 (1) (e) or (hm), or a child welfare agency licensed under s. 48.60 may place the child in the home of the proposed adoptive parent or parents prior to the filing of a petition under sub. (2) as provided in par. (b) or (c), whichever is applicable, and par. (d).

(b) The department, a county department under s. 48.57 (1) (e) or (hm), or a child welfare agency licensed under s. 48.60 may place a child under par. (a) in the home of a proposed adoptive parent or parents who reside in this state if that home is licensed as a foster home or treatment foster home under s. 48.62.

(c) The department, a county department under s. 48.57 (1) (e) or (hm), or a child welfare agency licensed under s. 48.60 may place a child under par. (a) in the home of a proposed adoptive parent or parents who reside outside this state if the placement is made in compliance with s. 48.98 or 48.988, whichever is applicable, if the home meets the criteria established by the laws of the state where the proposed adoptive parent or parents reside for a preadoptive placement of a child in the home of a nonrelative, and if an appropriate agency in that state has completed an investigation of the home and filed a report and recommendation concerning the home with the department, county department, or licensed child welfare agency.

(d) Before a child may be placed under par. (a), the department, county department, or child welfare agency making the placement and the proposed adoptive parent or parents shall enter into a written agreement that specifies who is financially responsible for the cost of providing care for the child prior to the finalization of the adoption and for the cost of returning the child to the parent who has custody of the child if the adoption is not finalized. Under the agreement, the department, county department, or child welfare agency or the proposed adoptive parent or parents, but not the birth parent of the child or any alleged or presumed father of the child, shall be financially responsible for those costs.

(e) Prior to termination of parental rights to the child, no person may coerce a birth parent of the child or any alleged or presumed father of the child into refraining from exercising his or her right to withdraw consent to the transfer or surrender of the child or to termination of his or her parental rights to the child, to have reasonable visitation or contact with the child, or to otherwise exercise his or her parental rights to the child.

**SECTION 10.** 48.837 (4) (d) of the statutes is amended to read:

48.837 (4) (d) May, ~~at the request of a petitioning parent, or on its own motion after ordering the child taken into custody under s. 48.19 (1) (c), in the case of a child who has not been placed under sub. (1r),~~ order the department or a county department under s. 48.57 (1) (e) or (hm), ~~at the request of a petitioning parent or on its own motion after ordering the child taken into custody under s. 48.19 (1) (c),~~ to place the child, pending the hearing on the petition, in any home in this state that is licensed under s. 48.62 except the home of the proposed adoptive parents or a relative of the proposed adoptive parents or in any home outside this state if the conditions under sub. (1r) (c) are met.

**SECTION 11.** 48.837 (4) (dm) of the statutes is created to read:

48.837 (4) (dm) May, in the case of a child who has been placed under sub. (1r), order the child to be maintained in the placement pending the hearing on the petition or order the department or a county department under s. 48.57 (1) (e) or (hm), at the request of a petitioning parent or on its own motion after ordering the child taken into custody under s. 48.19 (1) (c), to place the child, pending the hearing on the petition, in any home licensed under s. 48.62 except the home of the proposed adoptive parents or a relative of the proposed adoptive parents.

**SECTION 12.** 48.837 (6) (br) of the statutes is created to read:

48.837 (6) (br) At the hearing on the petition under sub. (2), the court shall determine whether any person has coerced a birth parent or any alleged or presumed father of the child in violation of sub. (1r) (e). Upon a finding of coercion, the court shall dismiss the petitions under subs. (2) and (3).

**SECTION 13.** 48.837 (6) (d) of the statutes is amended to read:

48.837 (6) (d) If the proposed placement is approved, the court shall proceed immediately to a hearing on the petition required under sub. (3). If the parental rights of the parent are terminated, the court shall ~~order the child placed with the proposed adoptive parent or parents and~~ appoint as guardian of the child the department, a county department under s. 48.57 (1) (e) or (hm), or a child welfare agency licensed to accept guardianship under s. 48.61 (5). If the child has not been placed with the proposed adoptive parent or parents under sub. (1r) or (4) (d), the court shall order the child to be placed with the proposed adoptive parent or parents. If the child has been placed with the proposed adoptive parent or parents under sub. (1r) or (4) (d), the court shall order the child to be maintained in that placement.

**SECTION 14.** 48.837 (7) of the statutes is amended to read:

48.837 (7) INVESTIGATION AND CARE COSTS. The proposed adoptive parents shall pay the cost of any investigation ordered under sub. (4) (c), according to a fee schedule established by the department based on ability to pay, and shall also, if the adoption is completed, pay the cost of any care provided for the child under sub. (4) (d) or (dm).

**SECTION 15.** 48.84 (3) of the statutes, as created by 2005 Wisconsin Act 293, is amended to read:

48.84 (3) A proposed adoptive parent who petitions to adopt a child under s. 48.837 or 48.839 or with whom a child is placed under s. 48.833 (2) shall pay the costs of the preadoption preparation required under sub. (1). The department shall pay the costs of the preadoption preparation required under sub. (1) for a proposed adoptive parent with whom a child is placed under s. 48.833 (1).

**SECTION 16.** 48.913 (1) (k) of the statutes is amended to read:

48.913 (1) (k) If the adoption is completed, the cost of any care provided for the child under s. 48.837 (4) (d) or (dm).

**SECTION 17.** 48.988 (8) (a) of the statutes is amended to read:

48.988 (8) (a) The sending or bringing of a child into a receiving state by the child's parent, stepparent, grandparent, adult brother or sister, adult uncle or aunt, or guardian and leaving the child with any such relative or non-agency guardian in the receiving state if the person who sends, brings, or causes a child to be sent or brought into a receiving state is a person whose full legal right to plan for the child has been established by law at a time prior to initiation of the placement arrangement and has not been voluntarily terminated or diminished or severed by the action or order of any court.

**SECTION 18.** 632.896 (1) (c) 1. of the statutes is amended to read:

632.896 (1) (c) 1. The department, a county department under s. 48.57 (1) (e) or (hm), or a child welfare agency licensed under s. 48.60 places a child in the insured's home for adoption and enters into an agreement

under s. 48.63 (3) (b) 4. or 48.833 (1) or (2) with the insured.

**SECTION 19.** 632.896 (1) (c) 2. of the statutes is amended to read:

632.896 (1) (c) 2. ~~A~~ The department, a county department under s. 48.57 (1) (e) or (hm), or a child welfare agency under s. 48.837 (1r) places, or a court under s. 48.837 (4) (d) or (6) (b) orders, a child placed in the insured's home for adoption.

**SECTION 20. Initial applicability.**

(1) PAYMENT FOR PREADOPTON PREPARATION. The treatment of sections 48.75 (1g) (c) 4. and 48.84 (3) of the statutes, the renumbering and amendment of section 48.833 of the statutes, and the creation of section 48.833 (2) of the statutes first apply to preadoption preparation under section 48.84 (1) of the statutes provided on the effective date of this subsection.

(2) SENDING, BRINGING, OR PLACEMENT OF CHILD. The treatment of sections 48.837 (1m) and 49.988 (8) (a) of the statutes first applies to a child who is sent, brought, or caused to be sent or brought into a receiving state, as defined in section 48.988 (2) (c) of the statutes, or who is placed for adoption outside this state, on the effective date of this subsection.