

2007 SENATE BILL 464

February 8, 2008 – Introduced by Senators LASSA, OLSEN and DARLING, cosponsored by Representatives JESKEWITZ, GRIGSBY, NYGREN, ALBERS, MUSSER, STONE, HAHN, BERCEAU, OWENS, POCAN, SEIDEL, TOWNSEND and SINICKI. Referred to Committee on Tax Fairness and Family Prosperity.

1 **AN ACT** *to renumber and amend* 48.63 (3) and 48.833; *to amend* 48.75 (1g) (a)
2 4., 48.837 (1), 48.837 (1m), 48.837 (4) (d), 48.837 (6) (d), 48.837 (7), 48.84 (3),
3 48.913 (1) (k), 48.988 (8) (a), 632.896 (1) (c) 1. and 632.896 (1) (c) 2.; and *to*
4 **create** 48.422 (7) (br), 48.63 (3) (b), 48.833 (2), 48.837 (1r), 48.837 (4) (dm) and
5 48.837 (6) (br) of the statutes; **relating to:** placement of a child for adoption
6 with a nonrelative prior to termination of parental rights, payment for
7 preadoption preparation when a child is placed for adoption by a child welfare
8 agency, and the applicability of the Interstate Compact on the Placement of
9 Children.

Analysis by the Legislative Reference Bureau

Introduction

This bill permits a child to be placed for adoption prior to termination of parental rights (TPR), eliminates a requirement that the Department of Health and Family Services (DHFS) pay for preadoptive preparation when a child is placed for adoption by a child welfare agency and expands the applicability of the Interstate Compact on the Placement of Children (ICPC).

SENATE BILL 464***Adoptive placement prior to TPR***

Under current law, DHFS, a county department of human services or social services that is authorized to place children for adoption (county department), or a licensed child welfare agency may place a child for adoption in a licensed foster home without an order of the court assigned to exercise jurisdiction under the Children's Code (juvenile court) if DHFS, the county department, or the licensed 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 (agency adoption). Generally, DHFS, a county department, or a licensed child welfare agency is not named as a child's guardian until after a TPR is finalized.

Under current law, 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 the child and the proposed adoptive parent or parents of the child may petition the juvenile court for placement of the child for adoption in the home of the proposed adoptive parent or parents if the home is licensed as a foster home. Similarly, notwithstanding the ICPC, 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 the child and the proposed adoptive parent or parents of the child may petition the juvenile 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 (private adoption).

Currently, in the case of a private adoption, on the filing of a petition for adoptive placement and an accompanying petition for TPR, the juvenile court may, at the request of a petitioning parent or on its own motion after ordering the child taken into custody, order DHFS, or a county department to place the child, pending the hearing on the petition, in any home that is licensed as a foster home *except* the home of the proposed adoptive parents or a relative of the proposed adoptive parents. The child may not be placed with the proposed adoptive parent or parents until after the juvenile court holds hearings on the petitions for adoptive placement and TPR and approves the proposed adoptive placement and terminates parental rights.

This bill permits, in an agency adoption or a private adoption, DHFS, a county department, or a licensed child welfare agency, at the request of a parent having custody of a child and the proposed adoptive parent or parents of the child, or the juvenile court, on such a request or on its own motion, to place a child in the home of the proposed adoptive parent or parents prior to finalization of a TPR as follows:

1. In the case of a proposed adoptive parent or parents who reside in this state, if the home is licensed as a foster home.
2. In the case of a proposed adoptive parent or parents who reside outside this state, if the placement is made in compliance with the ICPC or other applicable laws regulating the interstate adoptive placement of children, 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

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and filed a report and recommendation concerning the home with DHFS, the county department, or the licensed child welfare agency.

The bill also requires DHFS, the county department, or the child welfare agency making the placement and the proposed adoptive parent or parents to 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, DHFS, the county department, or the 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, is financially responsible for those costs. In addition, the bill prohibits any person from coercing a birth parent or any alleged or presumed father, prior to TPR to the child, into refraining from exercising his or her right to withdraw consent to the transfer or surrender of the child or to TPR to the child, to have reasonable visitation or contact with the child, or to otherwise exercise his or her parental rights to the child. Upon a finding of such coercion, the juvenile court must dismiss the petitions for TPR and adoptive placement.

Payment for preadoptive preparation

Under current law, a proposed adoptive parent who has not previously adopted a child is required to obtain preadoption preparation on issues that may confront adoptive parents. The preparation must be provided by a licensed child welfare agency, a licensed private adoption agency, the State Adoption Information Exchange, the State Adoption Center, a state-funded foster care and adoption resource center, or a state-funded postadoption resource center. The proposed adoptive parents must pay for the training, except that DHFS must pay for the training if the child is placed for adoption by DHFS, a county department, or a child welfare agency. This bill requires DHFS to pay for the training only if the child is placed for adoption by DHFS or a county department. Therefore, under the bill, the proposed adoptive parents must pay for the training if the child is placed for adoption by a child welfare agency.

Applicability of ICPC

Under current law, the ICPC provides procedures for sending a child from this state to another state, placing a child from this state in an institution in another state, bringing a child from another state into this state, and placing a child from another state in an institution in this state. Currently, the ICPC does not apply to 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 nonagency guardian in the receiving state. This bill provides that the sending or bringing of a child into a receiving state by such a person is exempt from that compact only if the person is a person whose full legal right to plan for the child has been established by law 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.

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For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

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

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

2 48.422 (7) (br) Establish whether any person has coerced a birth parent or any
3 alleged or presumed father of the child in violation of s. 48.63 (3) (b) 5. Upon a finding
4 of coercion, the court shall dismiss the petition.

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

7 48.63 (3) (a) Subsection (1) does not apply to the placement of a child for
8 adoption. Adoptive placements may be made only as provided under par. (b) and ss.
9 48.833, 48.835, 48.837 and 48.839.

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

11 48.63 (3) (b) 1. At the request of a parent having custody of a child and the
12 proposed adoptive parent or parents of the child, the department, a county
13 department under s. 48.57 (1) (e) or (hm), or a child welfare agency licensed under
14 s. 48.60 may place the child in the home of the proposed adoptive parent or parents
15 prior to termination of parental rights to the child as provided in subd. 2. or 3.,
16 whichever is applicable, and subd. 4.

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

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

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

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

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

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1 48.75 **(1g)** (a) 4. The county of the public licensing agency issuing the license
2 has a population of 500,000 or more and the placement is for adoption under s. 48.833
3 (1), 48.835, or 48.837.

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

6 48.833 **(1)** PLACEMENT BY DEPARTMENT OR COUNTY DEPARTMENT. The department,
7 or a county department under s. 48.57 (1) (e) or (hm), ~~or a child welfare agency~~
8 ~~licensed under s. 48.60~~ may place a child for adoption in a licensed foster home or a
9 licensed treatment foster home without a court order under s. 48.63 (3) (b) or if the
10 ~~department, or county department, or child welfare agency~~ is the guardian of the
11 child or makes the placement at the request of another agency that is the guardian
12 of the child and if the proposed adoptive parents have completed the preadoption
13 preparation required under s. 48.84 (1) or the department, or county department, ~~or~~
14 ~~child welfare agency~~ determines that the proposed adoptive parents are not required
15 to complete that preparation. ,, When a child is placed under this section subsection
16 in a licensed foster home or a licensed treatment foster home for adoption, the
17 department, or county department, ~~or child welfare agency~~ making the placement
18 shall enter into a written agreement with the proposed adoptive parent, which shall
19 state the date on which the child is placed in the licensed foster home or licensed
20 treatment foster home for adoption by the proposed adoptive parent.

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

22 48.833 **(2)** PLACEMENT BY CHILD WELFARE AGENCY. A child welfare agency
23 licensed under s. 48.60 may place a child for adoption in a licensed foster home or a
24 licensed treatment foster home without a court order under s. 48.63 (3) (b) or if the
25 child welfare agency is the guardian of the child or makes the placement at the

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1 request of another agency that is the guardian of the child and if the proposed
2 adoptive parents have completed the preadoption preparation required under s.
3 48.84 (1) or the child welfare agency determines that the proposed adoptive parents
4 are not required to complete that preparation. When a child is placed under this
5 subsection in a licensed foster home or a licensed treatment foster home for adoption,
6 the child welfare agency making the placement shall enter into a written agreement
7 with the proposed adoptive parent, which shall state the date on which the child is
8 placed in the licensed foster home or licensed treatment foster home for adoption by
9 the proposed adoptive parent.

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

11 48.837 (1) IN-STATE ADOPTIVE PLACEMENT. When the proposed adoptive parent
12 or parents of a child reside in this state and are not relatives of the child, a parent
13 having custody of a child and the proposed adoptive parent or parents of the child
14 may petition the court for placement of the child for adoption in the home of a person
15 ~~who is not a relative of the child~~ the proposed adoptive parent or parents if the home
16 is licensed as a foster home or treatment foster home under s. 48.62.

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

18 48.837 (1m) OUT-OF-STATE ADOPTIVE PLACEMENT. ~~Notwithstanding s.~~ Subject to
19 ss. 48.98 and 48.988, when the proposed adoptive parent or parents of a child reside
20 outside this state and are not relatives of the child, a parent having custody of a child
21 and the proposed adoptive parent or parents of the child may petition the court for
22 placement of the child for adoption in the home of the proposed adoptive parent or
23 parents, if the home meets the criteria established by the laws of the other state for
24 a preadoptive placement of a child in the home of a nonrelative.

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

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

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

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

20 (d) Before a child may be placed under par. (a), the department, county
21 department, or child welfare agency making the placement and the proposed
22 adoptive parent or parents shall enter into a written agreement that specifies who
23 is financially responsible for the cost of providing care for the child prior to the
24 finalization of the adoption and for the cost of returning the child to the parent who
25 has custody of the child if the adoption is not finalized. Under the agreement, the

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1 department, county department, or child welfare agency or the proposed adoptive
2 parent or parents, but not the birth parent of the child or any alleged or presumed
3 father of the child, shall be financially responsible for those costs.

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

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

11 48.837 (4) (d) May, ~~at the request of a petitioning parent, or on its own motion~~
12 ~~after ordering the child taken into custody under s. 48.19 (1) (c), in the case of a child~~
13 who has not been placed under sub. (1r), order the department or a county
14 department under s. 48.57 (1) (e) or (hm), at the request of a petitioning parent or on
15 its own motion after ordering the child taken into custody under s. 48.19 (1) (c), to
16 place the child, pending the hearing on the petition, in any home in this state that
17 is licensed under s. 48.62 ~~except the home of the proposed adoptive parents or a~~
18 ~~relative of the proposed adoptive parents~~ or in any home outside this state if the
19 conditions under sub. (1r) (c) are met.

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

21 48.837 (4) (dm) May, in the case of a child who has been placed under sub. (1r),
22 order the child to be maintained in the placement pending the hearing on the petition
23 or order the department or a county department under s. 48.57 (1) (e) or (hm), at the
24 request of a petitioning parent or on its own motion after ordering the child taken
25 into custody under s. 48.19 (1) (c), to place the child, pending the hearing on the

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1 petition, in any home licensed under s. 48.62 except the home of the proposed
2 adoptive parents or a relative of the proposed adoptive parents.

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

4 48.837 (6) (br) At the hearing on the petition under sub. (2), the court shall
5 determine whether any person has coerced a birth parent or any alleged or presumed
6 father of the child in violation of sub. (1r) (e). Upon a finding of coercion, the court
7 shall dismiss the petitions under subs. (2) and (3).

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

9 48.837 (6) (d) If the proposed placement is approved, the court shall proceed
10 immediately to a hearing on the petition required under sub. (3). If the parental
11 rights of the parent are terminated, the court shall ~~order the child placed with the~~
12 ~~proposed adoptive parent or parents and~~ appoint as guardian of the child the
13 department, a county department under s. 48.57 (1) (e) or (hm), or a child welfare
14 agency licensed to accept guardianship under s. 48.61 (5). If the child has not been
15 placed with the proposed adoptive parent or parents under sub. (1r) or (4) (d), the
16 court shall order the child to be placed with the proposed adoptive parent or parents.
17 If the child has been placed with the proposed adoptive parent or parents under sub.
18 (1r) or (4) (d), the court shall order the child to be maintained in that placement.

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

20 48.837 (7) INVESTIGATION AND CARE COSTS. The proposed adoptive parents shall
21 pay the cost of any investigation ordered under sub. (4) (c), according to a fee schedule
22 established by the department based on ability to pay, and shall also, if the adoption
23 is completed, pay the cost of any care provided for the child under sub. (4) (d) or (dm).

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

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

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

7 48.913 (1) (k) If the adoption is completed, the cost of any care provided for the
8 child under s. 48.837 (4) (d) or (dm).

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

10 48.988 (8) (a) The sending or bringing of a child into a receiving state by the
11 child's parent, stepparent, grandparent, adult brother or sister, adult uncle or aunt,
12 or guardian and leaving the child with any such relative or non-agency guardian in
13 the receiving state if the person who sends, brings, or causes a child to be sent or
14 brought into a receiving state is a person whose full legal right to plan for the child
15 has been established by law at a time prior to initiation of the placement
16 arrangement and has not been voluntarily terminated or diminished or severed by
17 the action or order of any court.

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

19 632.896 (1) (c) 1. The department, a county department under s. 48.57 (1) (e)
20 or (hm), or a child welfare agency licensed under s. 48.60 places a child in the
21 insured's home for adoption and enters into an agreement under s. 48.63 (3) (b) 4. or
22 48.833 (1) or (2) with the insured.

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

