



State of Wisconsin
2011 – 2012 LEGISLATURE



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**SENATE SUBSTITUTE AMENDMENT 1,
TO 2011 SENATE BILL 313**

February 8, 2012 – Offered by Senator LAZICH.

1 **AN ACT to amend** 48.195 (1), 48.195 (2) (a), 48.195 (2) (b), 48.195 (2) (d) 2., 48.195
2 (2) (d) 7., 48.195 (3) (a), 48.195 (4) (b), 48.355 (2d) (b) 5., 48.415 (1m), 69.14 (3)
3 (a) (intro.) and 69.14 (3) (c); and **to create** 48.195 (1m), 48.195 (2) (d) 1m., 48.195
4 (2) (e), 69.14 (1) (i), 69.14 (3) (bm) and 69.14 (3) (d) of the statutes; **relating to:**
5 relinquishing custody of a newborn child.

Analysis by the Legislative Reference Bureau

Under current law, a child whom a law enforcement officer, emergency medical technician, or hospital staff member reasonably believes to be 72 hours old or younger (newborn child) may be taken into custody under circumstances in which a parent of the newborn child relinquishes custody of the newborn child to the law enforcement officer, emergency medical technician, or hospital staff member and does not express an intent to return for the newborn child (commonly referred to as the “safe haven law”). A law enforcement officer, emergency medical technician, or hospital staff member who takes a newborn child into custody under the safe haven law must take any action necessary to protect the health and safety of the newborn child and, within 24 hours after taking the newborn child into custody must deliver the newborn child to the intake worker of the court assigned to exercise jurisdiction under the Children’s Code. A parent who relinquishes custody of a child under the

safe haven law and any person who assists in such a relinquishment have the right to remain anonymous.

This substitute amendment permits a parent to relinquish custody of a child *30 days* old or younger under the safe haven law. The substitute amendment also permits a health care clinic staff member to take a child into custody under that law. The substitute amendment also clarifies that medical records of a child who is relinquished may not be disclosed except under certain circumstances.

In addition, the substitute amendment prohibits an Indian child from being relinquished under the safe haven law before the child is 11 days old and requires a law enforcement officer, emergency medical technician, or hospital or health care clinic staff member who takes a child into custody under the safe haven law to make a reasonable effort to ascertain whether the child is an Indian child and to obtain any relevant information relating to the tribal affiliation of the child, unless the parent or child is admitted to the hospital or receives health care services from the health care clinic, in which case a hospital or health care clinic staff member *must* ascertain whether the child is an Indian child and *must* obtain any relevant information relating to the tribal affiliation of the child. If a parent who relinquishes custody of an Indian child or any person assisting in such a relinquishment provides any personally identifiable information to a person authorized to take the child into custody, that parent or other person is assumed to have waived his or her right to anonymity. If the intake worker to whom a child is delivered under the safe haven law knows or has reason to know that the child is an Indian child, the intake worker must notify the Indian child's tribe, and the Wisconsin and federal Indian child welfare acts apply to any child custody proceeding involving the Indian child.

Under current law, a hospital administrator or his or her designee, if a birth occurred at or on route to a hospital; a physician in the absence of a hospital administrator; or an individual who was in attendance at a birth or the mother or father must prepare and file a birth certificate within five days after the infant's birth. Also, any person who assumes custody of a live born infant with unknown parents (foundling) must file a birth certificate within five days after assuming custody. A birth certificate for a foundling is not required to contain the name of the mother or the father of the infant but is required to be marked foundling by the local registrar who accepts the foundling birth certificate for filing. Currently, if the birth certificate filed at the time of birth for a foundling is found or the foundling is adopted and the adoptive parents sign a birth record giving their names as the adoptive parents, the state registrar is required to impound the foundling birth certificate.

The substitute amendment clarifies that a person must file a foundling birth certificate for an infant who is relinquished under the safe haven law in addition to filing a foundling birth certificate for a live born infant of unknown parentage. The substitute amendment requires any person who is required to file a foundling birth certificate and either files or knows of the filing of a birth certificate at the time of birth to notify the state registrar that the birth certificate filed at the time of birth and the foundling birth certificate are for the same infant so the state registrar may impound a birth certificate. Under the substitute amendment, when a birth certificate filed at the time of birth is located for a foundling or if a person notifies

the state registrar of the birth certificate filed at the time of birth for a foundling, the state registrar must impound the birth certificate filed at the time of birth instead of the foundling birth certificate. The substitute amendment maintains the current requirement for the state registrar to impound the foundling birth certificate for foundlings who are adopted and for whom the adoptive parents sign a birth record giving their names as the adoptive parents. The substitute amendment also clarifies that the filing of a birth certificate at the time of birth does not affect a person's obligation to file a foundling birth certificate if that person assumes custody of a relinquished child. Similarly, the filing of a foundling birth certificate does not affect the obligation of a person who is required to file a birth certificate at the time of birth to file that birth certificate.

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

1 **SECTION 1.** 48.195 (1) of the statutes is amended to read:
2 48.195 (1) TAKING CHILD INTO CUSTODY. In addition to being taken into custody
3 under s. 48.19, a child whom a law enforcement officer, emergency medical
4 technician, or hospital or health care clinic staff member reasonably believes to be
5 ~~72 hours~~ 30 days old or younger may be taken into custody under circumstances in
6 which a parent of the child relinquishes custody of the child to the law enforcement
7 officer, emergency medical technician, or hospital or health care clinic staff member
8 and does not express an intent to return for the child. If a parent who wishes to
9 relinquish custody of his or her child under this subsection is unable to travel to a
10 sheriff's office, police station, fire station, hospital, health care clinic, or other place
11 where a law enforcement officer, emergency medical technician, or hospital or health
12 care clinic staff member is located, the parent may dial the telephone number "911"
13 or, in an area in which the telephone number "911" is not available, the number for
14 an emergency medical service provider, and the person receiving the call shall
15 dispatch a law enforcement officer or emergency medical technician to meet the
16 parent and take the child into custody. A law enforcement officer, emergency medical

1 technician, or hospital or health care clinic staff member who takes a child into
2 custody under this subsection shall take any action necessary to protect the health
3 and safety of the child, shall, within 24 hours after taking the child into custody,
4 deliver the child to the intake worker under s. 48.20, and shall, within 5 days after
5 taking the child into custody, file a birth certificate for the child under s. 69.14 (3).

6 **SECTION 2.** 48.195 (1m) of the statutes is created to read:

7 48.195 (1m) INDIAN CHILD. (a) Notwithstanding sub. (1), no parent may
8 relinquish custody of an Indian child who is under 11 days old. A law enforcement
9 officer, emergency medical technician, or hospital or health care clinic staff member
10 who takes a child into custody under sub. (1) shall make a reasonable effort to
11 ascertain whether the child is an Indian child and to obtain any relevant information
12 relating to the tribal affiliation of the child, except that if the parent or child is
13 admitted to the hospital or receives health care services from the health care clinic,
14 a hospital or health care clinic staff member shall ascertain whether the child is an
15 Indian child and shall obtain any relevant information relating to the tribal
16 affiliation of the child. Notwithstanding sub. (2) (a), any parent who relinquishes
17 custody of an Indian child under sub. (1) or any person assisting in such a
18 relinquishment who provides any personally identifiable information to a person
19 authorized to take a child into custody under sub. (1) shall be assumed to have waived
20 his or her right to anonymity under sub. (2) (a).

21 (b) If the intake worker to whom a child is delivered as provided in sub. (1)
22 knows or has reason to know that the child is an Indian child, the intake worker shall
23 notify the Indian child's tribe as provided in s. 48.028 (4) (a), and s. 48.028 and the
24 federal Indian Child Welfare Act, 25 USC 1901 to 1963, shall apply to any Indian
25 child custody proceeding involving the Indian child.

1 **SECTION 3.** 48.195 (2) (a) of the statutes is amended to read:

2 48.195 **(2)** (a) Except as provided in this paragraph, a parent who relinquishes
3 custody of a child under sub. (1) and any person who assists the parent in that
4 relinquishment have the right to remain anonymous. The exercise of that right shall
5 not affect the manner in which a law enforcement officer, emergency medical
6 technician, or hospital or health care clinic staff member performs his or her duties
7 under this section or, if applicable, maintains any medical record. No person may
8 induce or coerce or attempt to induce or coerce a parent or person assisting a parent
9 who wishes to remain anonymous into revealing his or her identity, unless the person
10 has reasonable cause to suspect that the child has been the victim of abuse or neglect
11 or that the person assisting the parent is coercing the parent into relinquishing
12 custody of the child.

13 **SECTION 4.** 48.195 (2) (b) of the statutes is amended to read:

14 48.195 **(2)** (b) A parent who relinquishes custody of a child under sub. (1) and
15 any person who assists the parent in that relinquishment may leave the presence of
16 the law enforcement officer, emergency medical technician, or hospital or health care
17 clinic staff member who took custody of the child at any time, and no person may
18 follow or pursue the parent or person assisting the parent, unless the person has
19 reasonable cause to suspect that the child has been the victim of abuse or neglect or
20 that the person assisting the parent has coerced the parent into relinquishing
21 custody of the child.

22 **SECTION 5.** 48.195 (2) (d) 1m. of the statutes is created to read:

23 48.195 **(2)** (d) 1m. A child welfare department or other appropriate agency of
24 an Indian tribe for the purpose of determining whether the child is a member of or

1 is eligible for membership in that Indian tribe and for the purpose of providing notice
2 to the Indian tribe under s. 48.028 (4) (a).

3 **SECTION 6.** 48.195 (2) (d) 2. of the statutes is amended to read:

4 48.195 (2) (d) 2. Appropriate staff of the department, a county department, or
5 a licensed child welfare agency, or a tribal child welfare department that is
6 authorized to provide or is providing services to the child.

7 **SECTION 7.** 48.195 (2) (d) 7. of the statutes is amended to read:

8 48.195 (2) (d) 7. A tribal court, or other adjudicative body authorized by an
9 Indian tribe to perform child welfare functions, that is authorized to exercise or is
10 exercising jurisdiction over proceedings relating to the child, an attorney who is
11 authorized to represent or is representing the interests of the Indian tribe in those
12 proceedings, or an attorney who is representing the interests of the child in those
13 proceedings.

14 **SECTION 8.** 48.195 (2) (e) of the statutes is created to read:

15 48.195 (2) (e) No medical records and papers retained by a hospital or health
16 care clinic pertaining to a child relinquished under this section may be disclosed
17 except under s. 48.432 or 48.93 (1g), (1r), or (1v), under circumstances described in
18 s. 146.82 (2) (a) 1., 2., or 3., or by order of the court for good cause shown.

19 **SECTION 9.** 48.195 (3) (a) of the statutes is amended to read:

20 48.195 (3) (a) Subject to par. (b), a law enforcement officer, emergency medical
21 technician, or hospital or health care clinic staff member who takes a child into
22 custody under sub. (1) shall make available to the parent who relinquishes custody
23 of the child the maternal and child health toll-free telephone number maintained by
24 the department under 42 USC 705 (a) (5) (E).

25 **SECTION 10.** 48.195 (4) (b) of the statutes is amended to read:

1 48.195 (4) (b) Any law enforcement officer, emergency medical technician, or
2 hospital or health care clinic staff member who takes a child into custody under sub.
3 (1) is immune from any civil liability to the child’s parents, or any criminal liability
4 for any good faith act or omission occurring solely in connection with the act of
5 receiving custody of the child from the child’s parents, but is not immune from any
6 civil or criminal liability for any act or omission occurring in subsequently providing
7 care for the child.

8 **SECTION 11.** 48.355 (2d) (b) 5. of the statutes is amended to read:

9 48.355 (2d) (b) 5. That the parent has been found under s. 48.13 (2m) to have
10 relinquished custody of the child under s. 48.195 (1) when the child was ~~72 hours~~ 30
11 days old or younger, as evidenced by a final order of a court of competent jurisdiction
12 making that finding.

13 **SECTION 12.** 48.415 (1m) of the statutes is amended to read:

14 48.415 (1m) RELINQUISHMENT. Relinquishment, which shall be established by
15 proving that a court of competent jurisdiction has found under s. 48.13 (2m) that the
16 parent has relinquished custody of the child under s. 48.195 (1) when the child was
17 ~~72 hours~~ 30 days old or younger.

18 **SECTION 13.** 69.14 (1) (i) of the statutes is created to read:

19 69.14 (1) (i) *Relinquished child.* The filing of a birth certificate under this
20 subsection does not affect the obligation of a person to file a birth certificate under
21 sub. (3) if the person assumes custody of a child relinquished under s. 48.195.

22 **SECTION 14.** 69.14 (3) (a) (intro.) of the statutes is amended to read:

23 69.14 (3) (a) (intro.) Any person who assumes custody of a live born infant of
24 unknown parentage or an infant relinquished under s. 48.195 shall file a birth

1 certificate for the infant within 5 days after assuming custody and shall file the birth
2 certificate with the following information:

3 **SECTION 15.** 69.14 (3) (bm) of the statutes is created to read:

4 69.14 (3) (bm) Notwithstanding s. 48.195 (2) (d), any person who is required
5 to file a birth certificate under this subsection and who is required to file a birth
6 certificate under sub. (1), or who knows of the existence of a birth certificate filed
7 under sub. (1), shall notify the state registrar that the registrant of the birth
8 certificate filed under sub. (1) and the registrant of the birth certificate filed under
9 this subsection are the same.

10 **SECTION 16.** 69.14 (3) (c) of the statutes is amended to read:

11 69.14 (3) (c) If at any time after a birth certificate is filed for a registrant under
12 this subsection a birth certificate filed for the registrant at the time of birth of the
13 registrant is found ~~or the registrant is adopted and the adoptive parents sign a birth~~
14 ~~record giving their names as the adoptive parents~~ or if the state registrar is notified
15 under par. (bm) of a birth certificate filed under sub. (1), the state registrar shall
16 impound the birth certificate filed under this subsection at the time of birth or under
17 sub. (1) and prohibit access except by court order or except by the state registrar for
18 processing purposes. If the registrant of a birth certificate filed under this subsection
19 is adopted and the adoptive parents sign a birth record giving their names as the
20 adoptive parents, the state registrar shall impound the birth certificate filed under
21 this subsection and prohibit access except by court order or except by the state
22 registrar for processing purposes.

23 **SECTION 17.** 69.14 (3) (d) of the statutes is created to read:

