

MSK:jal;

10/16/2014

1       **AN ACT** *to repeal* 48.838 (3); *to renumber and amend* 48.839 (1) and 48.97; *to*  
2       *amend* 46.03 (18) (b), 46.10 (2), 48.36 (1) (a), 48.81 (6), 48.839 (2), 48.839 (3),  
3       48.839 (4) (intro.), (a) and (c), 49.32 (1) (b), 49.345 (2), 54.52 (1), 301.03 (18) (b),  
4       301.12 (2) and 632.896 (1) (c) 5.; and *to create* 48.839 (1d) and 48.97 (2) of the  
5       statutes; **relating to:** readoption of a child adopted by a resident of this state under  
6       an order of a court of a foreign jurisdiction.

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

**JOINT LEGISLATIVE COUNCIL PREFATORY NOTE:** This draft was prepared for the Joint Legislative Council's Study Committee on Adoption Disruption and Dissolution.

Under current law, if a child who is a citizen of another country has been adopted in that country before being brought to Wisconsin, the adoption is legally recognized under state law only if the Department of Children and Families (DCF) first approved the placement of the child with the adoptive parents. As is the case with domestic adoptions, a home study must be completed in order for DCF to approve the placement, but other aspects of state adoption procedures are not required. The parents then may, but are not required to, readopt the child under Wisconsin procedures. The child must be readopted, however, in order to obtain a birth certificate that is recognized by the state for purposes such as obtaining a driver's license.

This draft requires that, when a child who is a citizen of another country has been adopted in that country by a parent who is a Wisconsin resident, the child must be readopted in Wisconsin. The draft provides that the readoption must follow the same procedure provided under current law for the adoption of a child by a resident of this state who has been appointed as guardian of the child by a court of the child's home country.

Under this procedure, the parents must file a certified copy of the foreign court's judgment with DCF and must post a \$1,000 bond before bringing the child into the United States. DCF must then certify to U.S. Citizenship and Immigration Services in the Department of Homeland

Security that all preadoption requirements of Wisconsin have been met, including that the child has been freed for adoption by the foreign court, that DCF has received a copy of a home study recommending the adoptive parents, that the parents are receiving services from a licensed adoption agency, that the bond has been filed, and that the adoptive parents have received the required preadoptive training. After bringing the child into Wisconsin, the parents are then required to file a petition to readopt the child within 60 days after that arrival.

1           **SECTION 1.** 46.03 (18) (b) of the statutes is amended to read:

2           46.03 **(18)** (b) Except as provided in s. 46.10 (14) (b) and (c), any person receiving  
3 services provided or purchased under par. (a) or the spouse of the person and, in the case of  
4 a minor, the parents of the person, and, in the case of a foreign child described in s. 48.839 (1)  
5 (1m) who became dependent on public funds for his or her primary support before an order  
6 granting his or her adoption, the resident of this state appointed guardian or granted adoption  
7 of the child by a foreign court who brought the child into this state for the purpose of adoption,  
8 shall be liable for the services in the amount of the fee established under par. (a). If a minor  
9 receives services without consent of a parent or guardian under s. 51.47, the department shall  
10 base the fee solely on the minor's ability to pay.

**NOTE:** This SECTION adjusts a cross-reference to the intercountry adoption procedure that is revised and renumbered under this draft and amends the reference to include an adoption granted by a court of the child's home country.

11           **SECTION 2.** 46.10 (2) of the statutes is amended to read:

12           46.10 **(2)** Except as provided in subs. (2m) and (14) (b) and (c), any person, including  
13 but not limited to a person admitted, committed, protected, or placed under s. 975.01, 1977  
14 stats., s. 975.02, 1977 stats., s. 975.17, 1977 stats., s. 55.05 (5), 2003 stats., and 55.06, 2003  
15 stats., and ss. 51.10, 51.13, 51.15, 51.20, 51.35 (3), 51.37 (5), 51.45 (10), (11), (12) and (13),  
16 55.05, 55.055, 55.12, 55.13, 55.135, 971.14 (2) and (5), 971.17 (1), 975.06 and 980.06,  
17 receiving care, maintenance, services and supplies provided by any institution in this state

1 including University of Wisconsin Hospitals and Clinics, in which the state is chargeable with  
2 all or part of the person's care, maintenance, services and supplies, any person receiving care  
3 and services from a county department established under s. 51.42 or 51.437 or from a facility  
4 established under s. 49.73, and any person receiving treatment and services from a public or  
5 private agency under s. 980.06 (2) (c), 1997 stats., s. 980.08 (5), 2003 stats., or s. 971.17 (3)  
6 (d) or (4) (e) or 980.08 (4) (g) and the person's property and estate, including the homestead,  
7 and the spouse of the person, and the spouse's property and estate, including the homestead,  
8 and, in the case of a minor child, the parents of the person, and their property and estates,  
9 including their homestead, and, in the case of a foreign child described in s. 48.839 ~~(1)~~ (1m)  
10 who became dependent on public funds for his or her primary support before an order granting  
11 his or her adoption, the resident of this state appointed guardian or granted adoption of the  
12 child by a foreign court who brought the child into this state for the purpose of adoption, and  
13 his or her property and estate, including his or her homestead, shall be liable for the cost of  
14 the care, maintenance, services and supplies in accordance with the fee schedule established  
15 by the department under s. 46.03 (18). If a spouse, widow or minor, or an incapacitated person  
16 may be lawfully dependent upon the property for their support, the court shall release all or  
17 such part of the property and estate from the charges that may be necessary to provide for those  
18 persons. The department shall make every reasonable effort to notify the liable persons as  
19 soon as possible after the beginning of the maintenance, but the notice or the receipt thereof  
20 is not a condition of liability.

**NOTE:** This SECTION adjusts a cross-reference to the intercountry adoption procedure that is revised and renumbered under this draft and amends the reference to include an adoption granted by a court of the child's home country.

21 **SECTION 3.** 48.36 (1) (a) of the statutes is amended to read:

1           48.36 (1) (a) If legal custody is transferred from the parent or guardian or the court  
2 otherwise designates an alternative placement for the child by a disposition made under s.  
3 48.345 or by a change in placement under s. 48.357, the duty of the parent or guardian or, in  
4 the case of a transfer of guardianship and custody under s. 48.839 (4), the duty of the former  
5 guardian or parent to provide support shall continue even though the legal custodian or the  
6 placement designee may provide the support. A copy of the order transferring custody or  
7 designating alternative placement for the child shall be submitted to the agency or person  
8 receiving custody or placement and the agency or person may apply to the court for an order  
9 to compel the parent or guardian to provide the support. Support payments for residential  
10 services, when purchased or otherwise funded or provided by the department or a county  
11 department, shall be determined under s. 49.345 (14). Support payments for residential  
12 services, when purchased or otherwise funded by the department of health services or a county  
13 department under s. 51.42 or 51.437, shall be determined under s. 46.10 (14).

**NOTE:** This SECTION amends a cross-reference to the intercountry adoption procedure that is revised under this draft to include the permit in an adoption granted by a court of the child's home country.

14           **SECTION 4.** 48.81 (6) of the statutes is amended to read:

15           48.81 (6) The child is being readopted under s. 48.97 (2).

**NOTE:** This SECTION adjusts a cross-reference to the provision recognizing adoptions from other jurisdictions that is revised and renumbered under this draft.

16           **SECTION 5.** 48.838 (3) of the statutes is repealed.

**NOTE:** This SECTION removes the authority for DCF to charge a fee for approval of a placement under the procedure for statutory recognition of an adoption granted by a court of a foreign jurisdiction that is replaced in this draft by the requirement to readopt the child, for which the same fee is already allowed.

17           **SECTION 6.** 48.839 (1) of the statutes is renumbered 48.839 (1m) and amended to read:

1           48.839 **(1m)** BOND REQUIRED. (a) ~~Any~~ Before a resident of this state who has been  
2 appointed by a court as guardian or granted adoption of a child who is a citizen of a foreign  
3 jurisdiction ~~as guardian of a child who is a citizen~~ by a court of that jurisdiction, ~~before~~  
4 ~~bringing~~ may bring the child into this state for the purpose of adopting the child, the resident  
5 shall file with the department a \$1,000 noncancelable bond in favor of this state, furnished by  
6 a surety company licensed to do business in this state. The condition of the bond shall be that  
7 the child will not become dependent on public funds for his or her primary support before he  
8 or she is adopted.

9           (b) By filing the bond required under par. (a), the child's guardian or parent and the  
10 surety submit to the jurisdiction of the court in the county in which the guardian or parent  
11 resides for purposes of liability on the bond, and appoint the clerk of the court as their agent  
12 upon whom any papers affecting their bond liability may be served. Their liability on the bond  
13 may be enforced without the commencement of an independent action.

14           (c) If upon affidavit of the department it appears to the court that the condition of the  
15 bond has been violated, the court shall order the guardian or parent and the surety to show  
16 cause why judgment on the bond should not be entered for the department. If neither the  
17 guardian or parent nor the surety appear for the hearing on the order to show cause, or if the  
18 court concludes after the hearing that the condition of the bond has been violated, the court  
19 shall enter judgment on the bond for the department against the guardian or parent and the  
20 surety.

21           (d) If custody of the child is transferred under sub. (4) (b) to a county department or child  
22 welfare agency before the child is adopted, the department shall periodically bill the guardian  
23 or parent and the surety under s. 49.32 (1) (b) or 49.345 for the cost of care and maintenance  
24 of the child until the child is adopted or becomes age 18, whichever is earlier. The guardian

1 or parent and surety shall also be liable under the bond for costs incurred by the department  
2 in enforcing the bond against the guardian or parent and surety.

3 (e) This section does not preclude the department or any other agency given custody  
4 of a child under sub. (4) (b) from collecting under s. 49.32 (1) (b) or 49.345 from the former  
5 guardian or parent for costs in excess of the amount recovered under the bond incurred in  
6 enforcing the bond and providing care and maintenance for the child until he or she reaches  
7 age 18 or is adopted.

8 (f) The department may waive the bond requirement under ~~this subsection~~ par. (a).

**NOTE:** This SECTION and the following three SECTIONS incorporate  
readoption of a child by a resident of this state who has been granted an  
adoption in the child's home country into the procedure provided under  
current law for the adoption of a child by a resident of this state who has  
been appointed guardian of the child in the child's home country.

9 **SECTION 7.** 48.839 (1d) of the statutes is created to read:

10 48.839 (1d) DEFINITIONS. In this section:

11 (a) "Adoption" includes a readoption by a resident of this state who has been granted  
12 an adoption by a court of a foreign jurisdiction of a child who is a citizen of that jurisdiction.

13 (b) "Parent" means a resident of this state who has been granted an adoption by a court  
14 of a foreign jurisdiction of a child who is a citizen of that jurisdiction.

**NOTE:** This SECTION specifies that, for purposes of adopting a child who  
is a citizen of another country, the "adoption" procedure applies to  
"readoption" of a child who was adopted in the child's home country.

15 **SECTION 8.** 48.839 (2) of the statutes is amended to read:

16 48.839 (2) EVIDENCE OF AVAILABILITY FOR ADOPTION REQUIRED. (a) Any A resident of  
17 this state who has been appointed ~~by a court~~ as guardian or granted adoption of a child who  
18 is a citizen of a foreign jurisdiction ~~as guardian of a child who is a citizen~~ by a court of that  
19 jurisdiction and who intends to bring the child into this state for the purpose of adopting the

1 child shall file with the department a certified copy of the judgment or order of a court of the  
2 foreign jurisdiction or other instrument having the effect under the laws of the foreign  
3 jurisdiction of freeing the child for adoption. If the instrument is not a judgment or order of  
4 a court, the guardian or parent shall also file with the department a copy of the law under which  
5 the instrument was issued, unless the department waives this requirement. The guardian or  
6 parent shall also file English translations of the court judgment or order or other instrument  
7 and of the law. The department shall return the originals to the guardian or parent and keep  
8 on file a copy of each document.

9 (b) If the guardian or parent files a judgment or order of a court under par. (a), the  
10 department shall review the judgment or order. If the department determines that the judgment  
11 or order has the effect of freeing the child for adoption, if the department has been furnished  
12 with a copy of a home study recommending the guardian or parent as an adoptive parent, if  
13 a licensed child welfare agency has been identified to provide the services required under sub.  
14 (5), if the guardian or parent has filed the bond required under sub. ~~(1)~~ (1m), and if the guardian  
15 or parent has completed the preadoption preparation required under s. 48.84 (1) or the  
16 department has determined that the guardian or parent is not required to complete that  
17 preparation, the department shall certify to the U.S. citizenship and immigration and  
18 ~~naturalization service~~ services that all preadoptive requirements of this state that can be met  
19 before the child's arrival in the United States have been met.

20 (c) If the guardian or parent files an instrument other than a judgment or order of a court  
21 under par. (a), the department shall review the instrument. If the department determines that  
22 the instrument has the effect under the laws of the foreign jurisdiction of freeing the child for  
23 adoption, if the department has been furnished with a copy of a home study recommending  
24 the adoptive parents, if a licensed child welfare agency has been identified to provide the

1 services required under sub. (5), if the guardian or parent has filed the bond required under  
2 sub. (1) ~~(1m)~~, and if the guardian or parent has completed the preadoption preparation required  
3 under s. 48.84 (1) or the department has determined that the guardian or parent is not required  
4 to complete that preparation, the department shall certify to the U.S. citizenship and  
5 ~~immigration and naturalization service~~ services that all preadoptive requirements of this state  
6 that can be met prior to the child's arrival in the United States have been met.

7 **SECTION 9.** 48.839 (3) of the statutes is amended to read:

8 48.839 (3) PETITION FOR ADOPTION OR TERMINATION OF PARENTAL RIGHTS REQUIRED. (a)  
9 Within 60 days after the arrival of a child brought into this state from a foreign jurisdiction  
10 for the purpose of adoption, the individual who is the child's guardian or parent shall file a  
11 petition to adopt the child, a petition to terminate parental rights to the child, or both. If only  
12 a petition to terminate parental rights to the child is filed under this paragraph, the individual  
13 guardian or parent shall file a petition for adoption within 60 days of the order terminating  
14 parental rights. The individual guardian or parent shall file with the court the documents filed  
15 with the department under sub. (2) (a).

16 (b) Except as provided in par. (a) and sub. (4) (a), the termination of a parent's parental  
17 rights to a child who is a citizen of a foreign jurisdiction is not required prior to the child's  
18 adoption by his or her guardian or parent.

19 (c) If a petition for adoption is filed under par. (a), the individual guardian or parent  
20 filing the petition shall file a copy of the petition with the department at the time the petition  
21 is filed with the court. If the individual guardian or parent filed an instrument other than a court  
22 order or judgment under sub. (2) (a), the department may make a recommendation to the court  
23 as to whether the instrument filed has the effect under the laws of the foreign jurisdiction of  
24 freeing the child for adoption.



1 (d) If a petition for adoption is filed under par. (a) and the individual guardian or parent  
2 filing the petition filed an instrument other than a court order or judgment under sub. (2) (a),  
3 the court shall determine whether the instrument filed has the effect under the laws of the  
4 foreign jurisdiction of freeing the child for adoption. The court shall presume that the  
5 instrument has that effect unless there are substantial irregularities on the face of the document  
6 or unless the department shows good cause for believing that the instrument does not have that  
7 effect. If the court determines that the instrument does not have the effect of freeing the child  
8 for adoption, the court shall order the petitioner to file a petition to terminate parental rights  
9 under s. 48.42 within 10 days.

10 (e) If a petition for adoption is filed under par. (a) and the individual guardian or parent  
11 filing the petition filed a court order or judgment under sub. (2) (a), the court order or judgment  
12 shall be legally sufficient evidence that the child is free for adoption.

13 **SECTION 10.** 48.839 (4) (intro.), (a) and (c) of the statutes are amended to read:

14 48.839 (4) TRANSFER OF GUARDIANSHIP; FORFEITURE OF BOND. (intro.) If a guardian or  
15 parent does not file a petition as required under sub. (3) (a) or (d), or if the petition for adoption  
16 under sub. (3) is withdrawn or denied, the court:

17 (a) Shall transfer guardianship of the child to the department, to a county department  
18 under s. 48.57 (1) (e) or (hm) or to a child welfare agency under s. 48.61 (5) and order the  
19 guardian or parent to file a petition for termination of parental rights under s. 48.42 within 10  
20 days.

21 (c) Shall order the guardian or parent who filed the bond under sub. ~~(1)~~ (1m) (a) to show  
22 cause why the bond should not be forfeited.

23 **SECTION 11.** 48.97 of the statutes is renumbered 48.97 (1) and amended to read:

1           48.97 **Adoption orders of other jurisdictions.** ~~(1) OTHER STATE.~~ When the  
2 relationship of parent and child has been created by an order of adoption of a court of any other  
3 state ~~or nation~~, the rights and obligations of the parties as to matters within the jurisdiction of  
4 this state shall be determined by s. 48.92. ~~If the adoptive parents were residents of this state~~  
5 ~~at the time of the foreign adoption, the preceding sentence applies only if the department has~~  
6 ~~approved the placement. A child whose adoption would otherwise be valid under this section~~  
7 ~~may be readopted in accordance with this chapter.~~

**NOTE:** This SECTION repeals the statutory recognition of an adoption granted by a court of a foreign jurisdiction and the discretionary allowance for a parent to readopt a child who was adopted in that home country.

8           **SECTION 12.** 48.97 (2) of the statutes is created to read:

9           48.97 **(2) OTHER NATION.** When a relationship of parent and child has been created by  
10 an order of adoption of a court of any other nation, the parent shall readopt the child under s.  
11 48.839.

**NOTE:** This SECTION requires adoptive parents to readopt a child who was adopted in the child's home country, under the same procedure in current law for adoption by a resident of this state who was appointed as guardian of the child in the child's home country.

12           **SECTION 13.** 49.32 (1) (b) of the statutes is amended to read:

13           49.32 **(1) (b)** Except as provided in s. 49.345 (14) (b) and (c), any person receiving  
14 services provided or purchased under par. (a) or the spouse of the person and, in the case of  
15 a minor, the parents of the person, and, in the case of a foreign child described in s. 48.839 ~~(1)~~  
16 (1m) who became dependent on public funds for his or her primary support before an order  
17 granting his or her adoption, the resident of this state appointed guardian or granted adoption  
18 of the child by a foreign court who brought the child into this state for the purpose of adoption,  
19 shall be liable for the services in the amount of the fee established under par. (a).

**NOTE:** This SECTION adjusts a cross-reference to the intercountry adoption procedure that is revised and renumbered under this draft and amends the reference to include an adoption granted by a court of the child's home country.

1           **SECTION 14.** 49.345 (2) of the statutes is amended to read:

2           49.345 (2) Except as provided in sub. (14) (b) and (c), any person, including but not  
3 limited to a person placed under s. 48.345 (3) or 48.357 (1) or (2m), receiving care,  
4 maintenance, services, and supplies provided by any institution in this state, in which the state  
5 is chargeable with all or part of the person's care, maintenance, services, and supplies, and the  
6 person's property and estate, including the homestead, and the spouse of the person, and the  
7 spouse's property and estate, including the homestead, and, in the case of a minor child, the  
8 parents of the person, and their property and estates, including their homestead, and, in the case  
9 of a foreign child described in s. 48.839 (1) (1m) who became dependent on public funds for  
10 his or her primary support before an order granting his or her adoption, the resident of this state  
11 appointed guardian or granted adoption of the child by a foreign court who brought the child  
12 into this state for the purpose of adoption, and his or her property and estate, including his or  
13 her homestead, shall be liable for the cost of the care, maintenance, services, and supplies in  
14 accordance with the fee schedule established by the department under s. 49.32 (1). If a spouse,  
15 widow, or minor, or an incapacitated person may be lawfully dependent upon the property for  
16 his or her support, the court shall release all or such part of the property and estate from the  
17 charges that may be necessary to provide for the person. The department shall make every  
18 reasonable effort to notify the liable persons as soon as possible after the beginning of the  
19 maintenance, but the notice or the receipt thereof is not a condition of liability.

**NOTE:** This SECTION adjusts a cross-reference to the intercountry adoption procedure that is revised and renumbered under this draft and amends the reference to include an adoption granted by a court of the child's home country.

1           **SECTION 15.** 54.52 (1) of the statutes is amended to read:

2           54.52 (1) A person may at any time bring a petition for the appointment of a standby  
3 guardian of the person or estate of an individual who is determined under s. 54.10 to be  
4 incompetent, a minor, or a spendthrift, except that, as specified in s. ~~48.97~~ 48.978 a petition  
5 for the appointment of a standby guardian of the person or property or both of a minor to  
6 assume the duty and authority of guardianship on the incapacity, death, or debilitation and  
7 consent, of the minor's parent may be brought under s. 48.978.

**NOTE:** This SECTION fixes an incorrect cross-reference to the provision recognizing adoptions from other jurisdictions that is amended under this draft, which should, instead, cross-reference to the provision for appointment or designation of a standby guardian of a child.

8           **SECTION 16.** 301.03 (18) (b) of the statutes is amended to read:

9           301.03 (18) (b) Except as provided in s. 301.12 (14) (b) and (c), hold liable for the  
10 services provided or purchased under par. (a) in the amount of the fee established under par.  
11 (a) any person receiving those services or the spouse of the person and, in the case of a minor,  
12 the parents of the person, and, in the case of a foreign child described in s. 48.839 (1) (1m) who  
13 became dependent on public funds for his or her primary support before an order granting his  
14 or her adoption, the resident of this state appointed guardian or granted adoption of the child  
15 by a foreign court who brought the child into this state for the purpose of adoption.

**NOTE:** This SECTION adjusts a cross-reference to the intercountry adoption procedure that is revised and renumbered under this draft and amends the reference to include an adoption granted by a court of the child's home country.

16           **SECTION 17.** 301.12 (2) of the statutes is amended to read:

17           301.12 (2) Except as provided in subs. (2m) and (14) (b) and (c), any person, including  
18 a person placed under s. 938.183, 938.34 (4h) or (4m), or 938.357 (4) or (5) (e), receiving care,  
19 maintenance, services, and supplies provided by any institution in this state operated or

1 contracted for by the department, in which the state is chargeable with all or part of the person's  
2 care, maintenance, services, and supplies, and the person's property and estate, including the  
3 homestead, and the spouse of the person, and the spouse's property and estate, including the  
4 homestead, and, in the case of a minor child, the parents of the person, and their property and  
5 estates, including their homestead, and, in the case of a foreign child described in s. 48.839  
6 ~~(1)~~ (1m) who became dependent on public funds for his or her primary support before an order  
7 granting his or her adoption, the resident of this state appointed guardian or granted adoption  
8 of the child by a foreign court who brought the child into this state for the purpose of adoption,  
9 and his or her property and estate, including his or her homestead, shall be liable for the cost  
10 of the care, maintenance, services, and supplies in accordance with the fee schedule  
11 established by the department under s. 301.03 (18). If a spouse, widow, or minor, or an  
12 incapacitated person, may be lawfully dependent upon the property for his or her support, the  
13 court shall release all or such part of the property and estate from the charges that may be  
14 necessary to provide for that person. The department shall make every reasonable effort to  
15 notify the liable persons as soon as possible after the beginning of the maintenance, but the  
16 notice or the receipt of the notice is not a condition of liability.

**NOTE:** This SECTION adjusts a cross-reference to the intercountry adoption procedure that is revised and renumbered under this draft and amends the reference to include an adoption granted by a court of the child's home country.

17 **SECTION 18.** 632.896 (1) (c) 5. of the statutes is amended to read:

18 632.896 **(1)** (c) 5. A court of a foreign jurisdiction appoints the insured as guardian or  
19 grants adoption of a child who is a citizen of that jurisdiction, and the child arrives in the  
20 insured's home for the purpose of adoption by the insured under s. 48.839.

**NOTE:** This SECTION amends a cross-reference to the intercountry adoption procedure that is revised under this draft to include the parent in an adoption granted by a court of the child's home country.

1           **SECTION 19. Initial applicability.** This act first applies to a home study filed with the  
2 department of children and families under section 48.839 (2) (b) of the statutes on the effective  
3 date of this subsection.

**NOTE:** This SECTION specifies that if, on or after the effective date of this draft becoming law, a person files a home study with DCF, the readoption procedure provided under this draft applies to the adoption. This means that a person who has filed, before the effective date of this draft becoming law, for approval of the placement by DCF under the procedure for statutory recognition of an adoption granted by a court of a foreign jurisdiction, the person is not required to readopt the child as provided under the draft and the adoption granted by a court of a foreign jurisdiction is recognized in Wisconsin as under prior law.

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(END)