

No. 143, S.]

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CHAPTER 306

AN ACT to repeal 48.84 (1) (c); to renumber 48.84 (1) (d); to amend 48.02 (9), 48.43 (1) (intro. par.), 48.64 (1), 48.66, 48.67 (1), 48.69, 48.84 (1) (b) and 48.95; to repeal and recreate 48.83, 48.85, 48.87, 48.88 (1) and (2) (b), 48.89 (3), 48.90 and 48.91 (2); and to create 48.43 (1) (am) and (4), 48.48 (10m), 48.57 (1) (hm) and (hn), 48.61 (6m), 48.70 (4), 48.82 (4), 48.841, 48.871 and 48.911 of the statutes, relating to procedure and requirements in the adoption of minors.

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

SECTION 1. 48.02 (9) of the statutes is amended to read:

48.02 (9) "Guardian" means guardian of the person and refers to the person having the right to make major decisions affecting a child including the right to consent to marriage, to enlistment in the armed forces, to major surgery and to adoption or to making recommendations as to adoption as hereinafter set forth in this chapter. The guardian has legal custody of the child unless legal custody is given by the court to another person. A person may be appointed guardian of a child or removed as such guardian only by court action under the provisions of the chapter under which such guardian was appointed. Where a guardian has been appointed and is acting as guardian for a child under this chapter, no guardian of the person of such child shall be appointed under ch. 319.

SECTION 2. 48.43 (1) (intro. par.) of the statutes is amended to read:

48.43 (1) (intro. par.) If, after a hearing, the court finds that one or more of the conditions set out in s. 48.40 exist, it may terminate parental rights. If the court terminates parental rights of both parents, of the mother, if the child * * * is illegitimate, or of the only living parent, the court shall transfer guardianship and legal custody of the minor to:

SECTION 3. 48.43 (1) (am) and (4) of the statutes are created to read:

48.43 (1) (am) A county department of public welfare or county children's board which has been licensed by the department; or

(4) Except as otherwise determined by the court, any guardian appointed under the provisions of this chapter shall file with the court a report in writing on the status of the child at the end of 6 months following the date of the order appointing such guardian and on each anniversary date of such order. A copy of each such report so filed shall be made available to the county court in which the petition for the adoption of the child is filed at the time of filing the petition.

SECTION 4. 48.48 (10m) of the statutes is created to read:

48.48 (10m) To enter into agreements with foster parents relative to the nonadoptive parent status of such foster parents in accordance with s. 48.82 (4);

SECTION 5. 48.57 (1) (hm) and (hn) of the statutes are created to read:

48.57 (1) (hm) If licensed by the department to do so, to accept guardianship of children when appointed by the juvenile court, and to place children under its guardianship for adoption;

(hn) To enter into agreements with foster parents relative to the nonadoptive parent status of such foster parents in accordance with s. 48.82 (4);

SECTION 6. 48.61 (6m) of the statutes is created to read:

48.61 (6m) To enter into agreements with foster parents relative to the nonadoptive parent status of such foster parents in accordance with s. 48.82 (4);

SECTION 7. 48.64 (1) of the statutes is amended to read:

48.64 (1) If the department, a county agency specified in s. 48.56, a juvenile court, or a child welfare agency authorized to do so places a child in a foster home, it shall enter into a written agreement with the head of such home, which agreement shall provide that the agency shall have access at all times to the child and the home, and that the child will be released to the agency whenever, in the opinion of the agency placing the child or the department, the best interests of the child require it. *Such agreement may also provide for the nonadoptive status of such foster parents in accordance with s. 48.82 (4).* If a child is removed from an adoptive placement, the foster parents shall have no claim against the placing agency for the expense of care, clothing or medical treatment.

SECTION 8. 48.66 of the statutes is amended to read:

48.66 The department shall license and supervise child welfare agencies, as required by s. 48.60, foster homes, as required by s. 48.62, * * * day care centers, as required by s. 48.65, *and may license and supervise county departments of public welfare or county children's boards for the purposes stated in s. 48.43 (1) (am)* in accordance with the procedures specified in ss. 48.67 to 48.74.

SECTION 9. 48.67 (1) of the statutes is amended to read:

48.67 RULES GOVERNING CHILD WELFARE AGENCIES, DAY CARE CENTERS, FOSTER HOMES, COUNTY DEPARTMENTS OF

PUBLIC WELFARE AND COUNTY CHILDREN'S BOARDS. (1) The department shall prescribe rules establishing minimum requirements for the issuance of licenses to and establishing standards for the operation of child welfare agencies, day care centers * * *, foster homes, and county departments of public welfare or county children's boards under s. 48.43 (1) (am). These rules shall be designed to protect and promote the health, safety and welfare of the children in the care of all licensees. The department shall consult with the industrial commission, the department of public instruction, and the state board of health before prescribing these rules.

SECTION 10. 48.69 of the statutes is amended to read:

48.69 A provisional license for a period of 6 months may be issued to any child welfare agency * * *, day care center, county department of public welfare or county children's board for the purposes of s. 48.43 (1) (am) whose services are needed, but which is temporarily unable to conform to all established minimum requirements. This provisional license may be renewed for 6-month periods up to 2 years.

SECTION 11. 48.70 (4) of the statutes is created to read:

48.70 (4) **SPECIAL PROVISIONS FOR COUNTY DEPARTMENTS OF PUBLIC WELFARE AND COUNTY CHILDREN'S BOARDS.** Licenses to county departments of public welfare or county children's boards issued under s. 48.43 (1) (am) shall specify whether it may accept guardianship of children and place such children for adoption.

SECTION 12. 48.82 (4) of the statutes is created to read:

48.82 (4) Although otherwise qualified, no foster parent who has entered into a written agreement with the placing agency waiving his right to petition for adoption of a child placed in such foster home by the agency shall be eligible to petition to adopt such child except with the express written consent of its guardian.

SECTION 13. 48.83 of the statutes is repealed and recreated to read:

48.83 **JURISDICTION AND VENUE.** (1) The county court of the county where the child is shall, upon the filing of a petition for adoption of such child, have exclusive jurisdiction over such child which jurisdiction shall continue until such petition is withdrawn, denied or granted. Venue shall be in the county where the child is at the time of the filing of the petition.

(2) If the adoption is denied, the jurisdiction over the child shall immediately revert to the court which appointed the guardian.

SECTION 14. 48.84 (1) (b) of the statutes is amended to read:

48.84 (1) (b) The mother alone, if the minor was born out of wedlock; provided that consent shall not be required from a mother whose parental rights have been legally terminated; * * * and

SECTION 15. 48.84 (1) (c) of the statutes is repealed.

SECTION 16. 48.84 (1) (d) of the statutes is renumbered 48.84 (1) (c).

SECTION 17. 48.841 of the statutes is created to read:

48.841 **PERSONS REQUIRED TO FILE RECOMMENDATION AS TO ADOPTION.** (1) No adoption of a minor may be ordered without the

written recommendation, favorable or unfavorable, of the guardian of the minor, if there is one, as set forth in s. 48.85.

(2) If the guardian refuses or neglects to file its recommendation within the time specified in s. 48.85, the court may proceed as though the guardian had filed a favorable recommendation.

SECTION 18. 48.85 of the statutes is repealed and recreated to read:

48.85 RECOMMENDATION OF GUARDIAN. (1) At least 10 days prior to the hearing, the guardian shall file its recommendation with the court.

(2) The guardian's recommendation shall be presumed to be in the best interests of the child unless the clear preponderance of the evidence is to the contrary. If the guardian's recommendation is in opposition to the granting of the petition, the court shall take testimony as to whether or not the proposed adoption is in the best interests of the child.

(3) At the conclusion of the hearing, the court shall enter its order in accordance with s. 48.91 (2).

SECTION 19. 48.87 of the statutes is repealed and recreated to read:

48.87 FILING OF CONSENTS. Written consents required by s. 48.84 shall be filed with the court at the time of the filing of the petition.

SECTION 20. 48.871 of the statutes is created to read:

48.871 FILING OF RECOMMENDATION BY GUARDIAN. In the case of a recommendation by a guardian, the guardian shall file with its recommendation satisfactory evidence of its authority to file such recommendation relative to the adoption of the minor. In the case where the parents' rights have been judicially terminated, this evidence shall be a certified copy of the order terminating their rights and appointing the guardian. In other cases of a guardian appointed by a court, this evidence shall be a certified copy of the order appointing it guardian. In the case of a guardian having the authority to consent or file its recommendation under an instrument other than a court order, valid under the laws of another state, that instrument shall serve as evidence of the authority to consent or file its recommendation.

SECTION 21. 48.88 (1) and (2) (b) of the statutes are repealed and recreated to read:

48.88 (1) Upon the filing of a petition, the court shall set a time and place for hearing the petition, allowing time for the investigation and report required by sub. (2), which must be received prior to the hearing. Notice of the hearing shall be mailed, not later than 3 days from the date of the order for hearing and investigation, to the guardian of the child, if any; to the agency making the investigation, and to the department when its recommendation is required by s. 48.89.

(2) (b) The investigation and report required by par. (a) is not necessary where the guardian of the child whose recommendation is required files a favorable recommendation and such guardian is either the department, a licensed child welfare agency or a county welfare department or county children's board authorized by s. 48.57 to accept guardianship of a child; but that agency shall file with the court a report on its investigation of the environment and antecedents of the person to be adopted and of the home of the petitioners.

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SECTION 22. 48.89 (3) of the statutes is repealed and recreated to read:

48.89 (3) The recommendation of the department shall not be required if the recommendation of that department, a licensed child welfare agency, a county welfare department, or a county children's board authorized by s. 48.57 to accept guardianship of a child is required by s. 48.841.

SECTION 23. 48.90 of the statutes is repealed and recreated to read:

48.90 PREADOPTIION RESIDENCE. (1) No petition for adoption may be filed unless the child has been in the home of the petitioners for 6 months, except where:

- (a) One of the petitioners is related to the child by blood; or
- (b) The petitioner is related to the child as a stepparent; or
- (c) The petition is accompanied by a written approval of the guardian.

(2) Where the placement of the child proposed to be adopted was in violation of s. 48.63 or 48.98, no petition shall be filed unless there is an affirmative showing that the petitioners have complied with the provisions of the section violated.

SECTION 24. 48.91 (2) of the statutes is repealed and recreated to read:

48.91 (2) If after the hearing and a study of the report required by s. 48.88 and the recommendation required by s. 48.89, the court is satisfied that the necessary consents or recommendations have been filed and that the adoption is in the best interests of the child, the court shall make an order granting the adoption. The order may change the name of the minor to that requested by petitioners.

SECTION 25. 48.911 of the statutes is created to read:

48.911 APPEAL IN ADOPTION PROCEEDINGS. Notwithstanding the provisions of chs. 274 and 324, any appeal from an order in an adoption proceedings is limited to 40 days from the date of the entry of the order.

SECTION 26. 48.95 of the statutes is amended to read:

48.95 If the petition is withdrawn or denied, the court shall order the case transferred to the juvenile court for appropriate action, except that if parental rights have been terminated and the guardian of the minor is the state department of public welfare, a licensed child welfare agency, * * * a county department of public welfare in counties having a population of 500,000 or more, *a county department of public welfare or a county children's board licensed for such purpose by the department*, the minor shall remain in the legal custody of that department or agency.

Approved August 14, 1959.