

State of Wisconsin



1997 Assembly Bill 600

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1997 WISCONSIN ACT 104

AN ACT to repeal 48.837 (1m) and 48.837 (2) (d); to renumber and amend 48.38 (4) (d); to consolidate, renumber and amend 48.837 (6) (b) (intro.), 1. and 2.; to amend 48.02 (15), 48.427 (6) (a), 48.46 (1), 48.64 (1m), 48.835 (2), 48.837 (4) (a), 48.90 (1) (a), 48.93 (1d), 48.988 (8) (a), 115.92 (1), 948.24 (1) (a) and 948.24 (1) (c); to repeal and recreate 48.81; and to create 48.38 (4) (d) 1., 2. and 3., 48.422 (7) (bm), 48.434, 48.46 (1m), 48.825, 48.913 and 115.355 of the statutes; relating to: the placement of a child with a relative for adoption and application of the interstate compact on the placement of children; the time by which a juvenile court must hold a hearing on a petition for adoptive placement of a child with a nonrelative and a petition to terminate parental rights that is filed with a petition for adoptive placement; removal of a child from a foster home, treatment foster home or group home for the purpose of placing the child by an agency for adoption; education about adoption and school age parents programs; who may be adopted; the filing of a petition for adoption by a relative of a child by adoption; including relatives by adoption in the definition of "relative" in the children's code; the documentation required in a permanency plan for preadoptive placement of a child in foster care or treatment foster care under a voluntary agreement; payments by an adoptive or proposed adoptive parent for the expenses of a birth parent or child; the release of identifying information by an agency that placed a child for adoption or that was appointed guardian of a child who was adopted; advertising related to adoption; the time by which a petition for a rehearing on the ground of new evidence must be filed in a juvenile court proceeding; and providing a penalty.

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

PREFATORY NOTE: This bill was prepared for the joint legislative council's special committee on adoption laws.

Payment of Birth Parents' Expenses by Proposed Adoptive Parents

1. *Payments by proposed adoptive parents which are allowed.* Current law contains the following provisions relating to payments made by adoptive or proposed adoptive parents to or on behalf of a birth parent or child:

a. Section 948.24, stats., which prohibits any person from taking any of the following actions:

(1) Placing or agreeing to place his or her child for adoption for anything exceeding the actual cost of the hospital and

medical expenses of the mother and the child incurred in connection with the child's birth and of the legal and other services rendered in connection with the adoption.

(2) Soliciting, negotiating or arranging the placement of a child for adoption for anything of value, except under s. 48.833, stats., relating to placement of children for adoption by the department of health and family services (DHFS), county departments of human services or social services (county departments) and licensed adoption agencies.

(3) Giving anything exceeding the actual cost of the hospital and medical expenses of the mother and the child incurred in connection with the child's birth and of the legal and other services rendered in connection with the adoption in order to receive a child for adoption.

The criminal prohibitions described above do not apply to adoptive placements under s. 48.839, stats., relating to foreign adoptions. Anyone who takes any of the prohibited

* Section 991.11, WISCONSIN STATUTES 1995-96: 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].

actions is guilty of a Class D felony, which is punishable by a fine not to exceed \$10,000 or imprisonment not to exceed 5 years, or both.

b. Section 48.837 (2) (d), stats., which provides that the petition for adoptive placement in an independent adoption by a nonrelative must include a report of all transfers of anything of value made or agreed to be made by the proposed adoptive parents or on their behalf in connection with the birth of the child, the placement of the child with the proposed adoptive parents, the medical or hospital care received by the child or by the child's mother in connection with the birth of the child and any other expenses, including the estimated legal expenses, of either the child's parent or the proposed adoptive parents.

c. Section 48.837 (7), stats., which provides that the proposed adoptive parents in an independent adoption by a nonrelative must pay the cost of any investigation of the proposed adoptive placement ordered by the juvenile court, according to a fee schedule established by DHFS based on ability to pay. That section also provides that if the adoption is completed, the proposed adoptive parents must pay the cost of any foster care provided for the child.

According to adoption practitioners, courts assigned to exercise jurisdiction under the children's code (juvenile courts) throughout the state differ in the types of payments which proposed adoptive parents are permitted to make on behalf of a birth parent.

The bill creates several new provisions regarding payments made by or on behalf of adoptive or proposed adoptive parents to or on behalf of a birth parent of the child, an alleged or presumed father of the child or the child, which are described below. These provisions do not apply to foreign adoptions or to the adoption of a child by a relative of the child. A criminal penalty, however, could apply in a relative adoption if it were shown that a person placed or agreed to place his or her child for adoption with a relative for anything other than the payments authorized or that a relative of a child gave anything other than the payments authorized in order to receive the child for adoption.

The bill permits the proposed adoptive parents of a child, or a person acting on behalf of the proposed adoptive parents, to pay the actual cost of any of the following:

- a. Pre-adoptive counseling for a birth parent of the child or an alleged or presumed father of the child.
- b. Post-adoptive counseling for a birth parent of the child or an alleged or presumed father of the child.
- c. Maternity clothes for the child's birth mother, not to exceed a reasonable amount.
- d. Local transportation expenses of a birth parent of the child that are related to the pregnancy or adoption.
- e. Services provided by a licensed child welfare agency in connection with the adoption.
- f. Medical and hospital care received by the child's birth mother in connection with the pregnancy or birth of the child.
- g. Medical and hospital care received by the child.
- h. Legal and other services received by a birth parent of the child, an alleged or presumed father of the child or the child in connection with the adoption.
- i. Living expenses of the child's birth mother, in an amount not to exceed \$1,000, if payment of the living expenses by the proposed adoptive parents or a person acting on their behalf is necessary to protect the health and welfare of the birth mother or the fetus.
- j. Any investigation of the proposed adoptive home ordered by the juvenile court, according to a fee schedule established by DHFS based on ability to pay.
- k. If the adoption is completed, the cost of any foster care provided for the child.
- L. Birthing classes.

m. A gift to the child's birth mother from the proposed adoptive parents, of no greater than \$50 in value.

2. *Payment of expenses when the birth parent is residing in another state.* The bill also permits, in addition to the permissible payments described above, the proposed adoptive parents of a child to pay an expense of a birth parent of the child or of an alleged or presumed father of the child if the birth parent or the alleged or presumed father was residing in another state when the payment was made and when the expense was incurred and if all of the following apply:

a. The child was placed for adoption in this state in accordance with the interstate compact on the placement of children (ICPC).

b. The state in which the birth parent or the alleged or presumed father was residing when the payment was made permits the payment of that expense by the proposed adoptive parents of the child.

c. The proposed adoptive parents provide all of the following to the juvenile court;

(1) A listing of the payments the proposed adoptive parents of the child or a person acting on their behalf have made or have agreed to make to or on behalf of the birth parent or the alleged or presumed father.

(2) A copy of the statutory provisions of the state in which the birth parent or the alleged or presumed father was residing when those payments were made that permit those payments to be made by the proposed adoptive parents of the child.

(3) A copy of all orders entered in the state in which the birth parent or the alleged or presumed father was residing when those payments were made that relate to the payment of expenses of the birth parent or the alleged or presumed father by the proposed adoptive parents or a person acting on their behalf.

The information listed above must be provided to the juvenile court as follows:

a. If the parental rights of either parent of the child are terminated in this state, the information must be provided at the hearing on the termination of parental rights (TPR) petition.

b. If the parental rights of both parents of the child are terminated in another state and the child is placed for adoption with a nonrelative in an independent adoptive placement, the information must be provided with the petition for adoptive placement.

c. If the parental rights of both parents of the child have been terminated in another state and the child is placed for adoption by an agency, the information must be provided with the petition for adoption.

3. *Methods by which payments may be made.* The bill requires a payment by or on behalf of a proposed adoptive parent to be made either directly to the provider of a good or service or to the birth parent of the child or an alleged or presumed father of the child as reimbursement of amounts previously paid by the birth parent or the alleged or presumed father if documentation is provided showing that the birth parent or the alleged or presumed father has made the previous payment.

4. *Payments by proposed adoptive parents which are prohibited.* The bill prohibits the proposed adoptive parents of a child or a person acting on their behalf from making any payments to or on behalf of a birth parent of the child, an alleged or presumed father of the child or the child other than those listed as allowed under items 2. and 3., above.

5. *Payments made after finalization of adoption.* The bill permits the proposed adoptive parents of a child or a person acting on their behalf to make any of the allowable payments

after finalization of the adoption (at which point the proposed adoptive parents become “adoptive parents”), if the payments are included in the report to the juvenile court described below or an amendment to the report which is filed with the juvenile court.

6. *Report regarding payments must be submitted to and reviewed by the juvenile court.* Under current law, a petition for independent adoptive placement with a nonrelative must include any agreement between the birth parent and the proposed adoptive parent that relates to the payment of any adoption-related expenses. The juvenile court must review the agreement to determine whether any conditions specified in the agreement are coercive to the birth parent. If the juvenile court finds coercion, the juvenile court must dismiss the petition or amend the agreement to delete any coercive conditions, if the parties agree to the amendment.

Also under current law, a petition for independent adoptive placement with a nonrelative must include a report of all transfers of value related to the adoption made or agreed to be made by the proposed adoptive parents or on their behalf. Current law, however, does not specifically require the juvenile court to review the report or to take any action if the juvenile court finds that improper payments have been or may be made.

Under current law, in an agency adoption, there is no requirement that any agreement or report regarding adoption-related payments be submitted to or reviewed by the juvenile court.

The bill does all of the following:

a. For an agency adoption, requires the submission of the same information regarding adoption-related payments and the same juvenile court review of that information that is required for an independent adoptive placement with a nonrelative. Specifically, the bill requires the juvenile court, at the hearing on a TPR petition which is not filed with a petition for independent adoptive placement with a nonrelative, to determine whether a proposed adoptive parent of a child who is not a relative of the child has been identified. If a proposed adoptive parent has been identified, the juvenile court must order the petitioner to submit a report of all adoption-related payments made by or on behalf of the proposed adoptive parents to or on behalf of the birth parent of the child, an alleged or presumed father of the child or the child. The juvenile court must review that report to determine if any payments or agreement to make payments are coercive to the birth parent or to an alleged or presumed father.

b. For agency adoptions and independent adoptions by a nonrelative, adds the following items to the list of information which must be included in the report of adoption-related payments made or agreed to be made by or on behalf of the proposed adoptive parents:

- (1) Payments to or on behalf of the child.
- (2) Payments to or on behalf of an alleged or presumed father of the child.
- (3) Payments made in connection with the pregnancy of the birth mother.

c. For agency adoptions and independent adoptions by a nonrelative, requires the juvenile court to determine whether any payments or agreement to make payments are impermissible, in addition to the current requirement to determine whether any payments or agreement to make payments are coercive to the birth parent.

d. For agency adoptions and independent adoptions by a nonrelative, if the juvenile court finds that impermissible payments have been made, authorizes the juvenile court to dismiss the TPR petition or petition for adoptive placement and refer the matter to the district attorney for prosecution under s. 948.24 (1), stats., which provides criminal penalties for

making or receiving impermissible payments related to adoption.

e. For agency adoptions and independent adoptions by a nonrelative, changes the grounds for finding coercion of the birth parent or of an alleged or presumed father of the child as follows:

Current law provides that “[m]aking the payment of the birth parent’s expenses that are permitted under s. 948.24 (1) (a) or (c) conditional in any part upon transfer or surrender of the child or the termination of parental rights or the finalization of the adoption creates a rebuttable presumption of coercion” (emphasis added).

The bill changes this provision to read as follows:

“Making any payment to or on behalf of the birth parent of the child, an alleged or presumed father of the child or the child conditional in any part upon transfer or surrender of the child or finalization of the adoption creates a rebuttable presumption of coercion” (emphasis added).

7. *Criminal penalties for unauthorized placement for adoption.* Current law sets forth criminal penalties which apply to a person who makes any payments that are not authorized under s. 948.24 (1) (c), stats., in order to receive a child for adoption or who places or agrees to place a child for adoption in exchange for any payments that are not authorized under s. 948.24 (1) (a), stats. Specifically, current law provides that whoever does any of the following is guilty of a Class D felony:

a. Places or agrees to place his or her child for adoption for anything exceeding the actual cost of the hospital and medical expenses of the mother and the child incurred in connection with the child’s birth, and of the legal and other services rendered in connection with the adoption [s. 948.24 (1) (a), stats.].

b. In order to receive a child for adoption, gives anything exceeding the actual cost of the hospital and medical expenses of the mother and the child incurred in connection with the child’s birth, and of the legal and other services rendered in connection with the adoption [s. 948.24 (1) (c), stats.].

The penalty for a Class D felony is a fine not to exceed \$10,000 or imprisonment not to exceed 5 years, or both.

The bill amends the criminal provisions to correspond to the changes the bill makes in the children’s code regarding payments related to adoption. Thus, under the bill, making or receiving any of the payments authorized by the bill is not grounds for criminal prosecution.

Under current law and the bill the criminal provisions do not apply to the adoption of a foreign child under s. 48.839, stats.

Release of Identifying Information by Agency to Adoptive Parents and Birth Parents

Under current law, all records and papers pertaining to an adoption proceeding must be kept in a locked file and may not be disclosed except by order of the court for good cause shown or under any of 6 exceptions set forth in the statutes. The 6 exceptions are as follows:

1. Section 48.93 (1g), stats., which requires a juvenile court, at the time the juvenile court enters an order granting an adoption, to provide the adoptive parents with a copy of the child’s medical records or other medical information pertaining to the child, after deleting the names and addresses of the child’s birth parents and the identity of any provider of health care to the child or the child’s birth parents.

2. Section 48.93 (1r), stats., which requires any agency that has placed a child for adoption, at the request of an adoptive parent or of the adoptee, after the adoptee has reached 18 years of age, to provide the requester with certain medical or genetic information and nonidentifying social history information.

3. Section 46.03 (29), stats., which authorizes DHFS to use in the media a picture or description of a child in the guardianship of DHFS for the purpose of finding adoptive parents for that child.

4. Section 48.432, stats., which authorizes the release of certain medical and genetic information to certain persons upon request.

5. Section 48.433, stats., which authorizes the release of certain identifying information about birth parents pursuant to the formal adoption search program administered by DHFS.

6. Section 48.57 (1) (j), stats., which authorizes county departments providing child welfare services to use in the media a picture or description of a child in its guardianship for the purpose of finding adoptive parents for that child.

After an adoption is finalized, subject to the exceptions discussed above, an agency may not release any identifying information about a birth parent or an adoptive parent. It sometimes happens that, after the finalization of an adoption in which the birth parents and adoptive parents did not reveal their identities to one another and chose to remain anonymous, the birth parents or adoptive parents decide that they would like to voluntarily disclose their identity. Typically, in that situation, the birth parent or adoptive parent will ask the agency to provide his or her name and address to the other party. Current law, however, prohibits an agency from releasing identifying information after an adoption is finalized. Therefore, agencies often find themselves in the role of acting as a conduit for information between birth parents and adoptive parents, a task for which agencies generally receive no compensation and a service which is not guaranteed to the parties. This bill is intended to address those situations by permitting an agency to release identifying information as discussed below.

This bill creates a new exception to the statutory prohibition against disclosing records and papers pertaining to an adoption proceeding. The bill requires an agency that has placed a child for adoption or that was appointed the guardian of a child who was adopted in an independent adoption to release information about the child's birth parents to the child's adoptive parents, and to release information about the child's adoptive parents to the child's birth parents, when authorized to do so, as described below.

Release of information to an adoptive parent; requirement for written authorization. The bill requires an agency to provide to an adoptive parent of a child, at the request of the adoptive parent, any available information about the identity and location of a birth parent of the child if the agency has on file the unrevoked written authorization of that birth parent to release that information to the adoptive parent.

The bill permits any birth parent whose child was adopted or placed for adoption in this state to grant written authorization to the agency that placed the child for adoption or that was appointed the guardian of the child in an independent adoption to release any available information about the birth parent's identity and location to an adoptive parent of the child.

Release of information to a birth parent; requirement for written authorization. Similarly, the bill requires an agency to provide to a birth parent of a child, at the request of the birth parent, any available information about the identity and location of an adoptive parent of the child if the agency has on file the unrevoked written authorization of that adoptive parent to release that information to the birth parent.

The bill permits any adoptive parent who has adopted a child in this state or who has adopted a child who was placed for adoption with the adoptive parent in this state to grant written authorization to the agency that placed the child for adop-

tion or that was appointed the guardian of the child in an independent adoption to release any available information about the adoptive parent's identity and location to a birth parent of the child.

Notarization required. The bill requires a written authorization for the release of identifying information by an agency to be notarized.

Revocation of authorization. The bill permits a birth parent or an adoptive parent to revoke a written authorization filed by the birth parent or adoptive parent at any time by notifying the agency in writing.

Adoptee must be less than 21 years old. The bill authorizes the release of information as described above only if the child who the agency placed for adoption, or was appointed the guardian of, is less than 21 years of age.

Immunity from liability. The bill provides that any person, including the state or any political subdivision of the state, who participates in good faith in any requirement created by the bill is immune from any liability, civil or criminal, that results from his or her actions. The bill further provides that in any proceeding, civil or criminal, the good faith of any person participating in the requirements of the bill must be presumed.

Reasonable fees may be assessed. The bill permits an agency to assess reasonable fees for responding to requests for information or requests by a birth parent or adoptive parent to file a written authorization.

Agency may not contact parties who have not filed an authorization. The bill prohibits agencies from contacting birth parents or adoptive parents for the purpose of determining whether they wish to file a written authorization authorizing the release of information about themselves. The bill, however, permits agencies to contact one time, by mail, the birth parents or adoptive parents of a child who was adopted before the bill becomes effective, to inform them of the new procedure for the release of identifying information created by the bill.

Information provided to birth parent when parental rights are terminated. Under current law, at the time a TPR order is entered, the juvenile court is required to inform each birth parent whose rights have been terminated of the provisions of the law governing the adoption search program administered by DHFS. The bill requires the juvenile court at that time to also inform the birth parents of the statutory provisions created by the bill relating to the release of identifying information to adoptive parents and birth parents.

Adoption search program unaffected. This bill does not affect the adoption search program under s. 48.433, stats., administered by DHFS.

Advertising Related To Adoption

Current law does not explicitly address advertising related to adoption. This bill prohibits certain advertising relating to adoption. Specifically, the bill prohibits any person except those listed below from doing any of the following:

1. Advertising for the purpose of finding a child to adopt.
2. Advertising that the person will find an adoptive home for a child or assist in the adoption or adoptive placement of a child.

3. Advertising that the person will place a child for adoption.

Under the bill, "advertise" means to communicate by any public medium that originates within this state, including by newspaper, periodical, telephone book listing, outdoor advertising sign, radio or television.

The prohibition does not apply to any of the following:

1. DHFS.
2. A county department.
3. A child welfare agency licensed under s. 48.60, stats., to place children for adoption.
4. An individual or agency providing adoption information exchange services under s. 48.55, stats.
5. An individual or agency providing adoption information under s. 48.551, stats.
6. An individual who has received a favorable home study in this state or in another jurisdiction.
7. An individual seeking to place his or her own child for adoption.

The bill provides that a person who violates the prohibitions on advertising created by the bill may be fined not more than \$10,000 or imprisoned for not more than 9 months or both. (This is equivalent to the current punishment for a Class A misdemeanor.)

The bill also provides that the prohibition on advertising does not prohibit an attorney licensed to practice in this state from advertising his or her availability to practice or to provide services relating to the adoption of children.

Informational Resources on Adoption Instruction

The bill requires the department of public instruction (DPI) annually and upon request to disseminate to appropriate public school staff information about materials and services available through the state adoption center under s. 48.551, stats., which may serve as resources for instruction on adoption for pupils in grades kindergarten through 12.

School Age Parents Programs

Under current law, any school board may establish and receive state aid for a program for school age parents who are residents of the school district. A "school age parent" is defined as any person under the age of 21 who is not a high school graduate and who is a parent, an expectant parent or a person who has been pregnant within the immediately preceding 120 days.

A school age parents program must be designed to provide services and instruction to meet the needs of school age parents, including education on the skills required of a parent, family planning and "information on adoption services" [s. 115.92 (1), stats.].

Section 115.92 (3), stats., directs the state superintendent of public instruction to establish criteria for the approval of school age parents programs for the purpose of determining which programs are eligible for state aid. Those criteria are set forth in ch. PI 19, Wis. adm. code. The only mention of adoption in those criteria is in s. PI 19.03 (6) (b), Wis. adm. code, which provides that the services provided by a school age parents program must include "[p]rovision of social services to facilitate accessibility to needed resources including information on adoption resources".

This bill amends current law regarding school age parents programs by requiring those programs to provide "instruction on adoption and adoption services" rather than "information on adoption services". In addition, the bill specifies that the instruction on adoption and adoption services must include all of the following:

1. Information on the options available and the procedures followed in independent and agency adoptions, including current practices regarding a birth parent's involvement in

the selection of an adoptive home and the sharing of information between birth parents and adoptive parents.

2. Information on the impact of adoption on birth parents and children who have been adopted.

3. An explanation that the adoption process may be initiated even after a child has been born and has left the hospital.

Who May Be Adopted

Current law provides that any minor who meets *all* of the following criteria may be adopted:

"(1) Except as provided under s. 48.839 (3) (b) [relating to certain cases involving the adoption of a child from a foreign country] or if an appointment of guardianship has been made under s. 48.831 [relating to appointment of a guardian for a child without a living parent for an adoptability finding], a minor whose parental rights have been terminated under subch. VIII [relating to TPR] or in another state or foreign jurisdiction.

(2) A minor who is present within this state at the time the petition for adoption is filed." [s. 48.81, stats.].

As interpreted by the Wisconsin Supreme Court in *In the Interest of Angel Lace M.*, 184 Wis. 2d 492, 516 N.W.2d 678 (1994), s. 48.81 (1), stats., means that, unless one of the 2 statutory exceptions applies, the parental rights of *both* parents must be terminated before a child is eligible for adoption. Moreover, the Wisconsin Supreme Court also has held that a 3rd exception applies although not explicitly stated in s. 48.81 (1), stats., namely, that in cases of stepparent adoption, only one parent's parental rights must have been terminated. [*Angel Lace* 184 Wis. 2d. at 509, n.8.]

Current s. 48.81, stats., does not explicitly provide that a child whose parents are deceased may be adopted, although current s. 48.81, stats., provides that a TPR is not required if a guardian is appointed under s. 48.831, stats., for an adoptability finding for a child who is without a living parent. (The appointment of a guardian under s. 48.831, stats., is not required for children without a living parent.)

Also, current s. 48.81, stats., does not explicitly provide that a child who has been adopted in another state or nation may be readopted in Wisconsin. Such a provision is included in current s. 48.97, stats.

This bill permits any child who is present in this state at the time the petition for adoption is filed to be adopted if *any* of the following criteria are met:

1. Both of the child's parents are deceased.
2. The parental rights of both of the child's parents with respect to the child have been terminated under subch. VIII of ch. 48, stats., or in another state or a foreign jurisdiction.
3. The parental rights of one of the child's parents with respect to the child have been terminated under subch. VIII of ch. 48, stats., or in another state or a foreign jurisdiction and the child's other parent is deceased.
4. The spouse of the child's parent (the child's stepparent) with whom the child and the child's parent reside files the adoption petition and either: (a) the child's other parent is deceased; or (b) the parental rights of the child's other parent with respect to the child have been terminated under subch. VIII of ch. 48, stats., or in another state or a foreign jurisdiction.

5. Section 48.839 (3) (b), stats., applies, which provides that in certain cases involving the adoption of a child from a foreign country, a TPR is not required, but proof must be available to show that the child has been freed for adoption.

6. The child is being readopted under s. 48.97, stats.

Time For Filing Petition For Rehearing

Current law provides as follows:

1. Current s. 48.46 (1), stats., permits, except as discussed in item 2., below, a child whose status is adjudicated

under ch. 48, stats., by the juvenile court or the parent, guardian or legal custodian of the child to petition the juvenile court for a rehearing on the ground that new evidence has been discovered affecting the advisability of the juvenile court's original adjudication. If there is a showing that such evidence exists, the juvenile court must order a new hearing. Such a petition must be filed *within one year* after the entering of the court's order.

2. Notwithstanding item 1., above, current s. 48.46 (2), stats., limits the remedies for relief from a TPR judgment or order when the aggrieved party is a *parent whose parental rights were terminated voluntarily or who did not contest the TPR petition*. In such cases, a motion for relief from the TPR judgment or order must be filed *within 30 days* after entry of the TPR judgment or order, *unless* the parent files a timely notice of intent to pursue relief from the TPR judgment or order within 30 days after the date of entry of the TPR judgment or order. In the latter case, the motion must be filed within 30 days after service of the transcript under s. 809.107 (4), stats. According to the judicial council note to the Supreme Court Order creating s. 48.46 (2), stats., the juvenile court must grant a rehearing under s. 48.46 (2), stats., upon a *prima facie* showing of one or more of the following grounds: mistake, inadvertence, surprise or excusable neglect; newly discovered evidence justifying a new trial under s. 805.15 (3), stats. (that is, evidence has come to the moving party's notice after trial, the moving party's failure to discover the evidence earlier did not arise from a lack of diligence in seeking to discover it, the evidence is material and not cumulative and the new evidence would probably change the result); fraud, misrepresentation or other misconduct of an adverse party; the TPR judgment or order is void; or the TPR judgment or order is based upon a prior judgment which has been reversed or otherwise vacated. A motion under s. 48.46 (2), stats., and an appeal to the court of appeals are the exclusive remedies for such a parent to obtain a new hearing in a TPR proceeding.

This bill amends s. 48.46 (1), stats., as discussed in item 1., above, to provide an exception to the requirement that a petition for rehearing under s. 48.46 (1), stats., must be filed within one year after the entering of the court's order. Under the bill, a petition for a rehearing with respect to a TPR order or an order adjudicating paternity under subch. VIII of ch. 48, stats., based on newly discovered evidence must be filed within one year after the date on which the order is entered, unless within that one-year period a juvenile court in this state or a court in another jurisdiction enters an order granting adoption of the child, in which case the petition for rehearing must be filed before the date on which a juvenile court in Wisconsin or in another jurisdiction enters the order granting adoption of the child or within 30 days after the date on which the TPR order or paternity order is entered, whichever is later. Thus, such a petition may be filed up to one year after the TPR order or paternity order is entered unless the child is adopted within the year after the TPR order or paternity order is entered. In that case, such a petition cannot be filed after the adoption order is entered, unless the adoption order is entered less than 30 days after the date on which the TPR order or paternity order is entered, in which case the petition may be filed within 30 days after the date on which the TPR order or paternity order is entered. This provision does not apply to a TPR order if the parent consented to the TPR or did not contest the TPR petition; in that case, s. 48.46 (2), stats., applies.

Placement With Relative For Adoption

Under current s. 48.835 (2), stats., a parent having custody of a child may place the child for adoption in the home of a *relative* without a court order. Current s. 48.835 (2) stats., however, does not specify who the person with whom the

child may be placed must be a relative of. Section 48.02 (15), stats., which defines "relative" for general purposes in ch. 48, stats., defines that term in terms of specific relationships, such as parent, grandparent, and so on, without specifying who the relationship is to. This bill specifies that the person with whom the child is placed under this provision must be a *relative of the child*.

Application of Interstate Compact on the Placement of Children

Current law provides that the ICPC does not apply to the sending or bringing of a child into a receiving state by a parent, stepparent, grandparent, adult brother or sister, adult uncle or aunt, or a guardian and leaving the child with any such relative or nonagency guardian in the receiving state. This bill specifies that 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 clarification is consistent with the ICPC.)

Time For Hearing on Termination of Parental Rights Petition Filed with Independent Adoptive Placement Petition

Under current law, if a petition for independent adoptive placement of a child with a person who is not a relative of the child (nonrelative) is filed under s. 48.837 (2), stats., a petition for TPR must be filed at the same time [s. 48.837 (3), stats.]. In such cases, juvenile court must *schedule* a hearing on both petitions *within 60 days* of the date of filing, except that the hearing may not be held before the birth of the child.

Under current law, if a TPR petition is filed in a case not involving an independent adoptive placement with a nonrelative, a juvenile court must *hold* a hearing on the TPR petition *within 30 days* after the petition is filed [s. 48.422 (1), stats.].

This bill provides that when a TPR petition is filed with a petition for independent adoptive placement of a child with a nonrelative under s. 48.837 (2), stats., a juvenile court must *hold*, rather than schedule, a hearing on both petitions *within 30 days* after the date of filing of the petitions, rather than within 60 days after that date, except that the hearing may not be held before the birth of the child.

Permanency Plan Documentation For Voluntary Pre-adoptive Placement

Under current law, for each child living in a foster home, treatment foster home, group home, child-caring institution (CCI), secure detention facility or shelter care facility, the agency that placed the child or arranged the placement or the agency assigned primary responsibility for providing services to a child found to be in need of protection or services must prepare a written permanency plan for the child if certain conditions exist. One of those conditions is that "the child was placed under a voluntary agreement between the agency and the child's parent under s. 48.63 (1)". Under s. 48.63 (1), stats., a child's parent or a child welfare agency licensed to place children may, pursuant to a written, voluntary agreement, place a child or negotiate or act as intermediary for the placement of a child in a foster home or treatment foster home. Thus, section 48.63 (1), stats., applies to the placement by an agency of a child in a foster home after the child is born, but before the child is placed for adoption.

Current law also provides that if a child who has been placed outside the home is living more than 60 miles from his or her home, the permanency plan must include documentation that placement within 60 miles of the child's home is either unavailable or inappropriate. According to staff at the division of children and family services in DHFS, this provision is based on Title IV-E of the federal Social Security Act, 42

USC 670 to 679a, which requires that each child placed in a licensed foster home or licensed treatment foster home have a case plan designed to achieve placement "in close proximity to the parent's home *consistent with the best interest and special needs of the child*" [42 USC 675 (5) (A) (emphasis added)].

This bill permits a permanency plan to include documentation that placement more than 60 miles from a child's home is in the child's best interests. The bill also provides that the placement of a child in a licensed foster home or licensed treatment foster home more than 60 miles from the child's home is presumed to be in the best interests of the child if documentation is provided showing all of the following:

1. That the placement is made pursuant to a voluntary agreement under s. 48.63 (1), stats.
2. That the voluntary agreement provides that the child may be placed more than 60 miles from the child's home.
3. That the placement is made to facilitate the anticipated adoptive placement of the child under s. 48.833, stats., which governs adoptive placement of children by DHFS, county departments and child welfare agencies, or s. 48.837, stats., which governs independent adoptive placements of children with nonrelatives.

Removal of Child For Adoptive Placement

Under current law, if a child has been in a foster home, treatment foster home or group home for *6 months or more*, the agency that placed the child (agency), that is, DHFS, department of corrections, a county department or a licensed child welfare agency authorized to place children in foster homes or treatment foster homes, must give the head of the home written notice of intent to remove the child, stating the reasons for the removal.

In such cases, current law provides that, unless the safety of the child requires it, a child may not be removed before the *later* of the following: (1) completion of the hearing under s. 48.64 (4) (a) or (c), stats., described below, if requested; or (2) 30 days after receipt of the notice of intent to remove.

Current s. 48.64 (4) (a), stats., provides, in pertinent part, that any decision or order issued by an agency that affects the head of a foster home, treatment foster home or group home or the children involved may be appealed to DHFS under fair hearing procedures. Thus, if the head of a foster home, treatment foster home or group home in which a child has been placed for 6 months or more requests such a hearing, then, assuming that safety considerations do not require immediate removal of the child under s. 48.19, stats., the child may not be removed until after completion of the administrative hearing or 30 days after the receipt of the notice of intent to remove, whichever is later.

Current s. 48.64 (4) (c), stats., provides, in pertinent part, that if an "interested party" files a petition with the circuit court for the county where a child is placed, the circuit court may call a hearing for the purpose of reviewing any decision or order of the supervising agency involving the placement and care of the child. The head of the foster home, treatment foster home or group home and the supervising agency must be present at such a hearing. If the child has been placed in a foster home, the foster parent may present relevant evidence at the hearing. If, after receiving a petition, a hearing is called by the court under s. 48.64 (4) (c), stats., and if the child has been in the foster home, treatment foster home or group home for 6 months or more, then, assuming safety considerations do not require immediate removal of the child under s. 48.19, stats., the child may not be removed until after completion of the court hearing or 30 days after the receipt of the notice of intent to remove, whichever is later.

This bill provides that if a child has been in a foster home, treatment foster home or group home for 6 months or more

and if the reason for removal is to place the child for adoption under s. 48.833, stats., described below, the provision in current law that, absent safety considerations requiring immediate removal, the child may not be removed before completion of the hearing under s. 48.64 (4) (a) or (c), stats., if requested, or 30 days after the receipt of the notice of intent to remove, whichever is later, *does not apply if written waivers of objection to the proposed removal are signed by all of the persons who have the right to request a hearing under s. 48.64 (4) (a) or (c), stats.* (Section 48.833, stats., provides that an agency that is the guardian of a child or that is making a placement at the request of another agency that is the guardian of a child may place the child for adoption with a proposed adoptive parent who is licensed as a foster parent or treatment foster parent.)

SECTION 1g. 48.02 (15) of the statutes is amended to read:

48.02 (15) "Relative" means a parent, grandparent, stepparent, brother, sister, first cousin, nephew, niece, uncle or aunt. This relationship ~~may be by consanguinity or direct affinity~~ shall be by blood, marriage or adoption.

SECTION 1m. 48.38 (4) (d) of the statutes is renumbered 48.38 (4) (d) (intro.) and amended to read:

48.38 (4) (d) (intro.) If the child is living more than 60 miles from his or her home, documentation that placement within 60 miles of the child's home is either unavailable or inappropriate- or documentation that placement more than 60 miles from the child's home is in the child's best interests. The placement of a child in a licensed foster home or a licensed treatment foster home more than 60 miles from the child's home is presumed to be in the best interests of the child if documentation is provided which shows all of the following:

SECTION 2. 48.38 (4) (d) 1., 2. and 3. of the statutes are created to read:

48.38 (4) (d) 1. That the placement is made pursuant to a voluntary agreement under s. 48.63 (1).

2. That the voluntary agreement provides that the child may be placed more than 60 miles from the child's home.

3. That the placement is made to facilitate the anticipated adoptive placement of the child under s. 48.833 or 48.837.

NOTE: Current law provides that if a child who has been placed outside the home is living more than 60 miles from his or her home, the permanency plan prepared for the child must include documentation that placement within 60 miles of the child's home is either unavailable or inappropriate.

SECTIONS 1 [1m] and 2 permit a permanency plan to include documentation that placement more than 60 miles from a child's home is in the child's best interests and provide that the placement of a child in a licensed foster home or licensed treatment foster home more than 60 miles from the child's home is presumed to be in the best interests of the child if documentation is provided showing all of the following:

1. That the placement is made pursuant to a voluntary agreement under s. 48.63 (1), stats.

2. That the voluntary agreement provides that the child may be placed more than 60 miles from the child's home.

3. That the placement is made to facilitate the anticipated adoptive placement of the child under s. 48.833, stats., which governs adoptive placement of children by DHFS, county departments and child welfare agencies, or s. 48.837, stats.,

which governs independent adoptive placements of children with nonrelatives.

SECTION 3. 48.422 (7) (bm) of the statutes is created to read:

48.422 (7) (bm) Establish whether a proposed adoptive parent of the child has been identified. If a proposed adoptive parent of the child has been identified and the proposed adoptive parent is not a relative of the child, the court shall order the petitioner to submit a report to the court containing the information specified in s. 48.913 (7). The court shall review the report to determine whether any payments or agreement to make payments set forth in the report are coercive to the birth parent of the child or to an alleged or presumed father of the child or are impermissible under s. 48.913 (4). Making any payment to or on behalf of the birth parent of the child, an alleged or presumed father of the child or the child conditional in any part upon transfer or surrender of the child or the termination of parental rights or the finalization of the adoption creates a rebuttable presumption of coercion. Upon a finding of coercion, the court shall dismiss the petition or amend the agreement to delete any coercive conditions, if the parties agree to the amendment. Upon a finding that payments which are impermissible under s. 48.913 (4) have been made, the court may dismiss the petition and may refer the matter to the district attorney for prosecution under s. 948.24 (1). This paragraph does not apply if the petition was filed with a petition for adoptive placement under s. 48.837 (2).

NOTE: This SECTION requires the juvenile court, at the hearing on a petition for TPR which is not filed with a petition for independent adoptive placement with a nonrelative, to determine whether a proposed adoptive parent of the child who is not a relative of the child has been identified. If the juvenile court so finds, the juvenile court must order the petitioner to submit a report regarding payments related to the adoption made by or on behalf of the proposed adoptive parents. The report requirements are set forth in detail in the NOTE following the SECTION creating s. 48.913, stats., below.

This SECTION requires the juvenile court to review the report and determine whether any payments or agreement to make payments are coercive to the birth parent or to an alleged or presumed father of the child. The SECTION provides that making any payment to or on behalf of the birth parent of the child, an alleged or presumed father of the child or the child conditional in any part upon transfer or surrender of the child or TPR or the finalization of the adoption creates a rebuttable presumption of coercion. The SECTION also provides that upon a finding of coercion, the juvenile court must either dismiss the petition for TPR or amend the agreement to delete any coercive conditions, if the parties agree to the amendment.

This SECTION also provides that, if the juvenile court finds that the proposed adoptive parent, or a person acting on behalf of the proposed adoptive parent, has made any payments in connection with the pregnancy, the birth of the child or the placement of the child with the proposed adoptive parents that are not permissible under the law, the juvenile court may dismiss the petition or refer the matter to the district attorney for prosecution under s. 948.24 (1), stats.

SECTION 4. 48.427 (6) (a) of the statutes is amended to read:

48.427 (6) (a) Inform each birth parent, as defined under s. 48.432 (1) (am), whose rights have been terminated of the provisions of ss. 48.432 ~~and~~ 48.433 ~~and~~ 48.434.

NOTE: Under current law, at the time a TPR order is entered, the juvenile court is required to inform each birth parent whose rights have been terminated of the provisions of the law governing the adoption search program administered by DHFS. This SECTION requires the juvenile court at that time to also inform the birth parents of the statutory provisions created by SECTION 5 of this bill.

SECTION 5. 48.434 of the statutes is created to read: **48.434 Release of identifying information by an agency when authorization is granted.** (1) DEFINITIONS. In this section:

(a) “Adoptive parent” means a person who has adopted a child in this state or who has adopted in another state a child who was placed for adoption with that person in this state.

(b) “Birth parent” has the meaning given under s. 48.432 (1) (am).

(2) Any birth parent of a child may file with the agency that placed the child for adoption under s. 48.833 or that was appointed the guardian of the child under s. 48.837 (6) (d) a written authorization for the agency to release any available information about the birth parent’s identity and location to one or both adoptive parents of the child.

(3) Any adoptive parent of a child may file with the agency that placed the child for adoption under s. 48.833 or that was appointed the guardian of the child under s. 48.837 (6) (d) a written authorization for the agency to release any available information about the adoptive parent’s identity and location to one or both birth parents of the child.

(4) A written authorization filed under sub. (2) or (3) may be revoked at any time by notifying the agency in writing.

(5) Upon the request of an adoptive parent of a child, the agency receiving the request shall provide to the adoptive parent any available information about the identity and location of a birth parent of the child if the agency has on file an unrevoked written authorization filed by that birth parent under sub. (2) authorizing the release of that information to the adoptive parent.

(6) Upon the request of a birth parent of a child, the agency receiving the request shall provide to the birth parent any available information about the identity and location of an adoptive parent of the child if the agency has on file an unrevoked written authorization filed by that adoptive parent under sub. (3) authorizing the release of that information to the birth parent.

(7) This section does not apply if the adopted child is 21 years of age or over.

(8) Any person, including this state or any political subdivision of this state, who participates in good faith in any requirement of this section shall have immunity from any liability, civil or criminal, that results from his or her actions. In any proceeding, civil or criminal, the good faith of any person participating in the requirements of this section shall be presumed.

(9) An agency may assess a reasonable fee for responding to a request for information or a request to file a written authorization under this section.

(10) No agency may contact any person for the purpose of determining whether the person wishes to authorize the agency to release information under this section. An agency may contact the birth parent or adoptive parent of a child who was adopted before the effective date of this subsection [revisor inserts date], one time, by mail, to inform them of the procedure by which identifying information may be released under this section.

(11) A written authorization filed with an agency under this section shall be notarized.

NOTE: Release of information to an adoptive parent; requirement for written authorization. This SECTION requires an agency to provide to an adoptive parent of a child, at the request of the adoptive parent, any available information about the identity and location of a birth parent of the child if the agency has on file the unrevoked written authorization of that birth parent to release that information to the adoptive parent.

This SECTION permits any birth parent whose child was adopted or placed for adoption in this state to grant written authorization to the agency that placed the child for adoption or that was appointed the guardian of the child in an independent adoption to release any available information about the birth parent's identity and location to an adoptive parent of the child.

Release of information to a birth parent; requirement for written authorization. Similarly, this SECTION requires an agency to provide to a birth parent of a child, at the request of the birth parent, any available information about the identity and location of an adoptive parent of the child if the agency has on file the unrevoked written authorization of that adoptive parent to release that information to the birth parent.

This SECTION permits any adoptive parent who has adopted a child in this state or who has adopted in another state a child who was placed for adoption with the adoptive parent in this state to grant written authorization to the agency that placed the child for adoption or that was appointed the guardian of the child in an independent adoption to release any available information about the adoptive parent's identity and location to a birth parent of the child.

Notarization required. This SECTION requires a written authorization for the release of identifying information by an agency to be notarized.

Revocation of authorization. This SECTION permits a birth parent or an adoptive parent to revoke a written authorization filed by the birth parent or adoptive parent at any time by notifying the agency in writing.

Adoptee must be less than 21 years old. This SECTION authorizes the release of information as described above only if the child who the agency placed for adoption, or was appointed the guardian of, is less than 21 years of age.

Immunity from liability. This SECTION provides that any person, including the state or any political subdivision of the

state, who participates in good faith in any requirement created by this SECTION is immune from any liability, civil or criminal, that results from his or her actions. This SECTION further provides that in any proceeding, civil or criminal, the good faith of any person participating in the requirements of this SECTION must be presumed.

Reasonable fees may be assessed. This SECTION permits an agency to assess reasonable fees for responding to requests for information or requests by a birth parent or adoptive parent to file a written authorization.

Agency may not contact parties who have not filed an authorization. This SECTION prohibits agencies from contacting birth parents or adoptive parents for the purpose of determining whether they wish to file a written authorization authorizing the release of information about themselves. This SECTION, however, permits agencies to contact one time, by mail, the birth parents or adoptive parents of a child who was adopted before this SECTION becomes effective, to inform them of the new procedure for the release of identifying information created by this SECTION.

SECTION 6. 48.46 (1) of the statutes is amended to read:

48.46 (1) Except as provided in ~~sub.~~ subs. (1m) and (2), the parent, guardian or legal custodian of the child or the child whose status is adjudicated by the court may at any time within one year after the entering of the court's order petition the court for a rehearing on the ground that new evidence has been discovered affecting the advisability of the court's original adjudication. Upon a showing that such evidence does exist, the court shall order a new hearing.

SECTION 7. 48.46 (1m) of the statutes is created to read:

48.46 (1m) Except as provided in sub. (2), the parent, guardian or legal custodian of the child or the child whose status is adjudicated by the court in an order entered under s. 48.43 or an order adjudicating paternity under subch. VIII may, within the time permitted under this subsection, petition the court for a rehearing on the ground that new evidence has been discovered affecting the advisability of the court's adjudication. Upon a showing that such evidence does exist, the court shall order a new hearing. A petition under this subsection shall be filed within one year after the date on which the order under s. 48.43 or order adjudicating paternity under subch. VIII is entered, unless within that one-year period a court in this state or in another jurisdiction enters an order granting adoption of the child, in which case a petition under this subsection shall be filed before the date on which the order granting adoption is entered or within 30 days after the date on which the order under s. 48.43 or order adjudicating paternity under subch. VIII is entered, whichever is later.

NOTE: SECTIONS 6 and 7 provide an exception to the requirement that a petition for rehearing under s. 48.46 (1), stats., must be filed within one year after the entering of the juvenile court's order. Under SECTION 7, a petition for rehearing with respect to a TPR order or an order adjudicating paternity under subch. VIII of ch. 48, stats., based on newly discovered evidence must be filed within one year after the date on

which the order is entered, unless within that one-year period a juvenile court in this state or a court in another jurisdiction enters an order granting adoption of the child, in which case the petition for rehearing must be filed before the date on which a juvenile court in Wisconsin or in another jurisdiction enters the order granting adoption of the child or within 30 days after the date on which the TPR order or paternity order is entered, whichever is later. Thus, such a petition may be filed up to one year after the TPR order or paternity order is entered unless the child is adopted within the year after the TPR order or paternity order is entered. In that case, such a petition cannot be filed after the adoption order is entered, unless the adoption order is entered less than 30 days after the date on which the TPR order or paternity order is entered, in which case the petition may be filed within 30 days after the date on which the TPR order or paternity order is entered. This provision does not apply to a TPR order if the parent consented to the TPR or did not contest the TPR petition; in that case, s. 48.46 (2), stats., applies.

SECTION 8. 48.64 (1m) of the statutes is amended to read:

48.64 (1m) FOSTER HOME, TREATMENT FOSTER HOME AND GROUP HOME AGREEMENTS. If an agency places a child in a foster home ~~or~~ treatment foster home or group home under a court order or voluntary agreement under s. 48.63, the agency shall enter into a written agreement with the head of the home. The 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. If a child has been in a foster home, treatment foster home or group home for 6 months or more, the agency shall give the head of the home written notice of intent to remove the child, stating the reasons for the removal. The child shall may not be removed before completion of the hearing under sub. (4) (a) or (c), if requested, or 30 days after the receipt of the notice, whichever is later, unless the safety of the child requires it or, in a case in which the reason for removal is to place the child for adoption under s. 48.833, unless all of the persons who have the right to request a hearing under sub. (4) (a) or (c) sign written waivers of objection to the proposed removal. If the safety of the child requires earlier removal, s. 48.19 shall apply. If an agency removes a child from an adoptive placement, the head of the home shall have no claim against the placing agency for the expense of care, clothing or medical treatment.

NOTE: This SECTION provides that if a child has been in a foster home, treatment foster home or group home for 6 months or more and if the reason for removal is to place the child for adoption under s. 48.833, stats., the provision in current law that, absent safety considerations requiring immediate removal, the child may not be removed before completion of the hearing under s. 48.64 (4) (a) or (c), stats., if requested, or 30 days after the receipt of the notice of intent to remove, whichever is later, *does not apply if written waivers of objection to the proposed removal are signed by all of the persons who have the right to request a hearing under s. 48.64 (4) (a) or (c), stats.* (Sections 48.64 (4) (a) and (c) and 48.833, stats., are discussed in the PREFATORY NOTE to the bill.)

SECTION 9. 48.81 of the statutes is repealed and recreated to read:

48.81 Who may be adopted. Any child who is present in this state at the time the petition for adoption is filed may be adopted if any of the following criteria are met:

- (1) Both of the child's parents are deceased.
- (2) The parental rights of both of the child's parents with respect to the child have been terminated under subch. VIII or in another state or a foreign jurisdiction.
- (3) The parental rights of one of the child's parents with respect to the child have been terminated under subch. VIII or in another state or a foreign jurisdiction and the child's other parent is deceased.
- (4) The person filing the petition for adoption is the spouse of the child's parent with whom the child and the child's parent reside and either of the following applies:
 - (a) The child's other parent is deceased.
 - (b) The parental rights of the child's other parent with respect to the child have been terminated under subch. VIII or in another state or a foreign jurisdiction.
- (5) Section 48.839 (3) (b) applies.
- (6) The child is being readopted under s. 48.97.

NOTE: This SECTION repeals and recreates the provision under current law that any minor who meets *all* of the following criteria may be adopted:

"(1) Except as provided under s. 48.839 (3) (b) [relating to certain cases involving the adoption of a child from a foreign country] or if an appointment of guardianship has been made under s. 48.831 [relating to appointment of a guardian for a child without a living parent for an adoptability finding], a minor whose parental rights have been terminated under subch. VIII [relating to TPR] or in another state or foreign jurisdiction.

(2) A minor who is present within this state at the time the petition for adoption is filed." [s. 48.81, stats.]

Comments regarding a decision of the Wisconsin Supreme Court interpreting s. 48.81, stats., and further comments on s. 48.81, stats., are included in the PREFATORY NOTE to the bill.

This SECTION permits any child who is present in this state at the time the petition for adoption is filed to be adopted if any of the following criteria are met:

- 1. Both of the child's parents are deceased.
- 2. The parental rights of both of the child's parents with respect to the child have been terminated under subch. VIII of ch. 48, stats., or in another state or a foreign jurisdiction.
- 3. The parental rights of one of the child's parents with respect to the child have been terminated under subch. VIII of ch. 48, stats., or in another state or a foreign jurisdiction and the child's other parent is deceased.
- 4. The spouse of the child's parent (the child's stepparent) with whom the child and the child's parent reside files the adoption petition and either: (a) the child's other parent is deceased; or (b) the parental rights of the child's other parent with respect to the child have been terminated under subch. VIII of ch. 48, stats., or in another state or a foreign jurisdiction.
- 5. Section 48.839 (3) (b), stats., applies, which provides that in certain cases involving the adoption of a child from a foreign country, a TPR is not required, but proof must be available to show that the child has been freed for adoption.
- 6. The child is being readopted under s. 48.97, stats.

SECTION 10. 48.825 of the statutes is created to read:

48.825 Advertising related to adoption. (1) In this section:

(a) "Advertise" means to communicate by any public medium that originates within this state, including by newspaper, periodical, telephone book listing, outdoor advertising sign, radio or television.

(b) "Another jurisdiction" means a state of the United States other than Wisconsin, the District of Columbia, the Commonwealth of Puerto Rico, any territory or insular possession subject to the jurisdiction of the United States or a federally recognized American Indian tribe or band.

(2) Except as provided in sub. (3), no person may do any of the following:

(a) Advertise for the purpose of finding a child to adopt.

(b) Advertise that the person will find an adoptive home for a child or arrange for or assist in the adoption or adoptive placement of a child.

(c) Advertise that the person will place a child for adoption.

(3) This section does not apply to any of the following:

(a) The department, a county department or a child welfare agency licensed under s. 48.60 to place children for adoption.

(b) An individual or agency providing adoption information exchange services under s. 48.55.

(c) An individual or agency providing adoption information under s. 48.551.

(d) An individual who has received a favorable recommendation regarding his or her fitness to be an adoptive parent in this state from the department, a county department or a child welfare agency licensed under s. 48.60 or in another jurisdiction from an entity authorized by that jurisdiction to conduct studies of potential adoptive homes.

(e) An individual seeking to place his or her child for adoption.

(4) Nothing in this section prohibits an attorney licensed to practice in this state from advertising his or her availability to practice or provide services relating to the adoption of children.

(5) Any person who violates sub. (2) may be fined not more than \$10,000 or imprisoned not more than 9 months or both.

NOTE: Current law does not explicitly address advertising related to adoption. This SECTION prohibits certain advertising relating to adoption. Specifically, this SECTION prohibits any person except those listed below from doing any of the following:

1. Advertising for the purpose of finding a child to adopt.
2. Advertising that the person will find an adoptive home for a child or assist in the adoption or adoptive placement of a child.
3. Advertising that the person will place a child for adoption.

Under this SECTION, "advertise" means to communicate by any public medium that originates within this state, includ-

ing by newspaper, periodical, telephone book listing, outdoor advertising sign, radio or television.

The prohibition does not apply to any of the following:

1. DHFS.
2. A county department.
3. A child welfare agency licensed under s. 48.60, stats., to place children for adoption.
4. An individual or agency providing adoption information exchange services under s. 48.55, stats.
5. An individual or agency providing adoption information under s. 48.551, stats.
6. An individual who has received a favorable home study in this state or in another jurisdiction.
7. An individual seeking to place his or her own child for adoption.

This SECTION provides that a person who violates the prohibitions on advertising created by this SECTION may be fined not more than \$10,000 or imprisoned for not more than 9 months or both. (This is equivalent to the current punishment for a Class A misdemeanor.)

This SECTION also provides that the prohibition on advertising does not prohibit an attorney licensed to practice in this state from advertising his or her availability to practice or to provide services relating to the adoption of children.

SECTION 11. 48.835 (2) of the statutes is amended to read:

48.835 (2) ADOPTIVE PLACEMENT. A parent having custody of a child may place the child for adoption in the home of a relative of the child without a court order.

NOTE: Under current s. 48.835 (2), stats., a parent having custody of a child may place the child for adoption in the home of a *relative* without a court order. Current s. 48.835 (2), stats., however, does not specify who the person with whom the child may be placed must be a relative of. Section 48.02 (15), stats., which defines "relative" for general purposes in ch. 48, stats., defines that term in terms of specific relationships, such as parent, grandparent, and so on, without specifying who the relationship is to. This SECTION specifies that the person with whom the child is placed under this provision must be a *relative of the child*.

SECTION 12. 48.837 (1m) of the statutes is repealed.

NOTE: This SECTION repeals the provision in current law which requires a petition for adoptive placement in an independent adoption by a nonrelative to include any agreement between the birth parent and adoptive parent that relates to certain payments. The repealed provision reads as follows:

"48.837 (1m) WRITTEN AGREEMENT. Any agreement between the birth parent and adoptive parent that relates to the payment of any expenses described in sub. (2) (d) shall be in writing, with the amount and purpose of the expenses enumerated, and made part of the petition filed under sub. (2)."

The repealed provision is replaced with s. 48.913 (6) and (7), stats., as created by this bill.

SECTION 13. 48.837 (2) (d) of the statutes is repealed.

NOTE: This SECTION repeals the provision in current law which requires a petition for adoptive placement in an independent adoption by a nonrelative to include a report of certain transfers of value made or agreed to be made by the proposed adoptive parents or on their behalf. The repealed provision reads as follows:

"48.837 (2) (d) A report of all transfers of anything of value made or agreed to be made by the proposed adoptive parents or on their behalf in connection with the birth of the child, the placement of the child with the proposed adoptive parents, the medical or hospital care received by the child or by the child's mother in connection with the birth of the child

and any other expenses, including the estimated legal expenses, of either the child's parent or the proposed adoptive parents. The report shall be itemized and shall show the services relating to the adoption or to the placement of the child for adoption which were received by the proposed adoptive parents, by either parent, by the child or by any other person to whom payment was made by or on behalf of the proposed adoptive parents. The report shall also include the dates of each payment, the names and addresses of each attorney, doctor, hospital, agency or other person or organization receiving any funds from the proposed adoptive parents in connection with the adoption or the placement of the child with them."

The repealed provision is replaced with s. 48.913 (6) and (7), stats., as created by this bill.

SECTION 14. 48.837 (4) (a) of the statutes is amended to read:

48.837 (4) (a) ~~Notwithstanding s. 48.422 (1), shall schedule~~ Shall hold a hearing within ~~60 days of 30 days~~ after the date of filing of the petitions, except that the hearing may not be held before the birth of the child.

NOTE: This SECTION provides that when a TPR petition is filed with a petition for independent adoptive placement of a child with a nonrelative, a juvenile court must *hold*, rather than schedule, a hearing on both petitions *within 30 days* after the date of filing of the petitions, rather than within 60 days after that date, except that the hearing may not be held before the birth of the child.

SECTION 15. 48.837 (6) (b) (intro.), 1. and 2. of the statutes are consolidated, renumbered 48.837 (6) (b) and amended to read:

48.837 (6) (b) At the beginning of the hearing held under sub. (2), the court shall review ~~any agreement that is attached to the petition in accordance with sub. (1m) the report that is submitted under s. 48.913 (6).~~ The court shall determine whether any payments or the conditions specified in the any agreement to make payments are coercive to the birth parent of the child or to an alleged or presumed father of the child or are impermissible under s. 48.913 (4). Making ~~the any~~ payment to or on behalf of the birth parent's expenses ~~that are permitted under s. 948.24 (1) (a) or (c) parent of the child, an alleged or presumed father of the child or the child~~ conditional in any part upon transfer or surrender of the child or the termination of parental rights or the finalization of the adoption creates a rebuttable presumption of coercion. Upon a finding of coercion, the court shall ~~do one of the following: 1. Dismiss dismiss~~ the petitions under subs. (2) and (3). ~~2. Amend or amend~~ the agreement under sub. (1m) to delete any coercive conditions, if the parties agree to the amendment. Upon a finding that payments which are impermissible under s. 48.913 (4) have been made, the court may dismiss the petition and may refer the matter to the district attorney for prosecution under s. 948.24 (1).

NOTE: This SECTION does all of the following:

1. Changes cross-references in current law to reflect changes made by the bill.

2. Provides that making any payments to or on behalf of the birth parent of the child, an alleged or presumed father of the child or the child conditional in any part upon the transfer or surrender of the child or the TPR or the finalization of the

adoption creates a rebuttable presumption of coercion. Current law applies the presumption only to the payment of the birth parent's expenses that are permitted under s. 948.24 (1) (a) or (c), stats.

3. Provides that if the juvenile court finds that the proposed adoptive parent, or a person acting on behalf of the proposed adoptive parent, has made any payments in connection with the pregnancy, the birth of the child or the placement of the child with the proposed adoptive parents that are not permissible under the law, the juvenile court may dismiss the petition or refer the matter to the district attorney for prosecution under s. 948.24 (1), stats.

SECTION 15m. 48.90 (1) (a) of the statutes is amended to read:

48.90 (1) (a) One of the petitioners is a relative of the child by blood or by adoption, excluding parents whose parental rights have been terminated and persons whose relationship to the child is derived through such parents.

SECTION 16. 48.913 of the statutes is created to read:

48.913 Payments by adoptive or proposed adoptive parents to a birth parent or child or on behalf of a birth parent or child. (1) PAYMENTS ALLOWED. The proposed adoptive parents of a child, or a person acting on behalf of the proposed adoptive parents, may pay the actual cost of any of the following:

(a) Preadoptive counseling for a birth parent of the child or an alleged or presumed father of the child.

(b) Post-adoptive counseling for a birth parent of the child or an alleged or presumed father of the child.

(c) Maternity clothes for the child's birth mother, not to exceed a reasonable amount.

(d) Local transportation expenses of a birth parent of the child that are related to the pregnancy or adoption.

(e) Services provided by a licensed child welfare agency in connection with the adoption.

(f) Medical and hospital care received by the child's birth mother in connection with the pregnancy or birth of the child. Medical and hospital care does not include lost wages or living expenses.

(g) Medical and hospital care received by the child.

(h) Legal and other services received by a birth parent of the child, an alleged or presumed father of the child or the child in connection with the adoption.

(i) Living expenses of the child's birth mother, in an amount not to exceed \$1,000, if payment of the expenses by the proposed adoptive parents or a person acting on their behalf is necessary to protect the health and welfare of the birth mother or the fetus.

(j) Any investigation ordered under s. 48.837 (4) (c), according to a fee schedule established by the department based on ability to pay.

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

(L) Birthing classes.

(m) A gift to the child's birth mother from the proposed adoptive parents, of no greater than \$50 in value.

(2) PAYMENT OF EXPENSES WHEN BIRTH PARENT IS RESIDING IN ANOTHER STATE. Notwithstanding sub. (1), the

proposed adoptive parents of a child or a person acting on behalf of the proposed adoptive parents of a child may pay for an expense of a birth parent of the child or an alleged or presumed father of the child if the birth parent or the alleged or presumed father was residing in another state when the payment was made and when the expense was incurred and if all of the following apply:

(a) The child was placed for adoption in this state in accordance with s. 48.988.

(b) The state in which the birth parent or the alleged or presumed father was residing when the payment was made permits the payment of that expense by the proposed adoptive parents of the child.

(c) A listing of all payments made under this subsection, a copy of the statutory provisions of the state in which the birth parent or the alleged or presumed father was residing when the payments were made that permit those payments to be made by the proposed adoptive parents of the child and a copy of all orders entered in the state in which the birth parent or the alleged or presumed father was residing when the payments were made that relate to the payment of expenses of the birth parent or the alleged or presumed father by the proposed adoptive parents of the child is submitted to the court as follows:

1. With the report under sub. (6), if the parental rights of either birth parent of the child are terminated in this state.

2. With a petition under s. 48.837 (2), if the parental rights of both birth parents of the child are terminated in another state and the child is placed for adoption under s. 48.837 (2).

3. With a petition under s. 48.90, if the parental rights of both parents of the child are terminated in another state and the child is placed for adoption under s. 48.833.

(3) METHOD OF PAYMENT. Any payment under sub. (1) or (2) shall be made directly to the provider of a good or service except that a payment under sub. (1) or (2) may be made to a birth parent of the child or to an alleged or presumed father of the child as reimbursement of an amount previously paid by the birth parent or by the alleged or presumed father if documentation is provided showing that the birth parent or alleged or presumed father has made the previous payment.

(4) OTHER PAYMENTS PROHIBITED. The proposed adoptive parents of a child or a person acting on behalf of the proposed adoptive parents may not make any payments to or on behalf of a birth parent of the child, an alleged or presumed father of the child or the child except as provided in subs. (1) and (2).

(5) PAYMENTS AFTER FINALIZATION OF ADOPTION. The adoptive parents of a child or a person acting on behalf of the proposed adoptive parents may make a payment that is authorized under subs. (1) and (2) after finalization of the adoption, if the payment is included in the report under sub. (6) or an amendment to that report filed with the court.

(6) REPORT TO THE COURT; WHEN REQUIRED. A report containing the information specified in sub. (7) shall be provided to the court at the time of the hearing on the petition for adoptive placement under s. 48.837 (2) or upon the order of the court under s. 48.422 (7) (bm).

(7) REPORT TO THE COURT; CONTENTS REQUIRED. The report required under sub. (6) shall include a list of all transfers of anything of value made or agreed to be made by the proposed adoptive parents or by a person acting on their behalf to a birth parent of the child, an alleged or presumed father of the child or the child, on behalf of a birth parent of the child, an alleged or presumed father of the child or the child, or to any other person in connection with the pregnancy, the birth of the child, the placement of the child with the proposed adoptive parents or the adoption of the child by the proposed adoptive parents. The report shall be itemized and shall show the goods or services for which payment was made or agreed to be made. The report shall include the dates of each payment, the names and addresses of each attorney, doctor, hospital, agency or other person or organization receiving any payment from the proposed adoptive parents or a person acting on behalf of the proposed adoptive parents in connection with the pregnancy, the birth of the child, the placement of the child with the proposed adoptive parents or the adoption of the child by the proposed adoptive parents.

(8) ADOPTION OF FOREIGN CHILDREN AND ADOPTION BY RELATIVES OF THE CHILD. This section does not apply to an adoptive or proposed adoptive parent of a child with whom the child has been placed under s. 48.839 or to an adoptive or proposed adoptive parent of a child who is a relative of the child.

NOTE: This SECTION creates several new provisions regarding payments by or on behalf of adoptive or proposed adoptive parents of a child to or on behalf of a birth parent of the child, an alleged or presumed father of the child or the child, which are described below. These provisions do not apply to foreign adoptions or to the adoption of a child by a relative of the child.

Payments by Proposed Adoptive Parents Which Are Allowed

This SECTION permits the proposed adoptive parents of a child, or a person acting on behalf of the proposed adoptive parents, to pay the actual cost of any of the following:

1. Preadoptive counseling for a birth parent of the child or an alleged or presumed father of the child.
2. Post-adoptive counseling for a birth parent of the child or an alleged or presumed father of the child.
3. Maternity clothes for the child's birth mother, not to exceed a reasonable amount.
4. Local transportation expenses of a birth parent of the child that are related to the pregnancy or adoption.
5. Services provided by a licensed child welfare agency in connection with the adoption.
6. Medical and hospital care received by the child's birth mother in connection with the pregnancy or birth of the child.
7. Medical and hospital care received by the child.
8. Legal and other services received by a birth parent of the child, an alleged or presumed father of the child or the child in connection with the adoption.

9. Living expenses of the child's birth mother, in an amount not to exceed \$1,000, if payment of the living expenses by the proposed adoptive parents or a person acting on their behalf is necessary to protect the health and welfare of the birth mother or the fetus.

10. Any investigation of the proposed adoptive home ordered by the court, according to a fee schedule established by DHFS based on ability to pay.

11. If the adoption is completed, the cost of any foster care provided for the child.

12. Birthing classes.

13. A gift to the child's birth mother from the proposed adoptive parents, of no greater than \$50 in value.

Payment of Expenses When the Birth Parent Is Residing in Another State

This SECTION also permits, even if payment for an expense is not permitted as discussed above, the proposed adoptive parents of a child to pay the expenses of a birth parent of the child or an alleged or presumed father of the child if the birth parent or the alleged or presumed father was residing in another state when the payment was made and when the expense was incurred and if all of the following apply:

1. The child was placed for adoption in this state in accordance with the ICPC.

2. The state in which the birth parent or the alleged or presumed father was residing when the payment was made permits the payment of that expense by the proposed adoptive parents of the child.

3. The proposed adoptive parents provide all of the following to the juvenile court:

a. A listing of the payments that the proposed adoptive parents of the child or a person acting on their behalf have made or have agreed to make to or on behalf of the birth parent of the child or an alleged or presumed father of the child.

b. A copy of the statutory provisions of the state in which the birth parent or the alleged or presumed father was residing when those payments were made that permit those payments to be made by the proposed adoptive parents of the child.

c. A copy of all orders entered in the state in which the birth parent or the alleged or presumed father was residing when those payments were made that relate to the payment of expenses of the birth parent or the alleged or presumed father by the proposed adoptive parents or by a person acting on their behalf.

The information listed above must be provided to the juvenile court as follows:

1. If the parental rights of either parent of the child are terminated in this state, the information must be provided at the hearing on the TPR petition.

2. If the parental rights of both parents of the child are terminated in another state and the child is placed for adoption with a nonrelative in an independent adoptive placement, the information must be provided with the petition for adoptive placement.

3. If the parental rights of both parents of the child have been terminated in another state and the child is placed for adoption in this state by an agency, the information must be provided with the petition for adoption.

Methods by Which Payments May Be Made

This SECTION requires a payment by or on behalf of a proposed adoptive parent to be made either directly to the provider of a good or service or to the birth parent of the child or an alleged or presumed father of the child as reimbursement of amounts previously paid by the birth parent or by the alleged or presumed father if documentation is provided showing that the birth parent or the alleged or presumed father has made the previous payment.

Payments by Proposed Adoptive Parents Which Are Prohibited

This SECTION prohibits the proposed adoptive parents of a child or a person acting on their behalf from making any payments to or on behalf of a birth parent of the child, an alleged or presumed father of the child or the child other than those listed as allowed above.

Payments Made After Finalization of Adoption

This SECTION permits the proposed adoptive parents of a child or a person acting on their behalf to make any of the allowable payments after finalization of the adoption (at which point the proposed adoptive parents become "adoptive parents"), if the payments are included in the report to the juvenile court described below or an amendment to the report which is filed with the juvenile court.

Report Regarding Payments Must Be Submitted to Juvenile Court

This SECTION requires a report regarding payments related to the adoption to be provided to the juvenile court: (1) at the time of the hearing on the TPR petition in an independent adoption by a nonrelative; or (2) at the time of the hearing on any other TPR petition if a proposed adoptive parent of the child who is not a relative of the child has been identified at the time of the hearing.

This SECTION requires the report to list all transfers of anything of value made or agreed to be made by the proposed adoptive parents or by a person acting on their behalf to or on behalf of a birth parent of the child, an alleged or presumed father of the child or the child or to any other person in connection with the pregnancy, the birth of the child, the placement of the child with the proposed adoptive parents or the adoption of the child by the proposed adoptive parents.

The report must be itemized and must show the goods or services for which payment was made or agreed to be made. The report must include the dates of each payment, the names and addresses of each attorney, doctor, hospital, agency or other person or organization receiving any payment from the proposed adoptive parents, or a person acting on behalf of the proposed adoptive parents, in connection with the pregnancy, the birth of the child, the placement of the child with the proposed adoptive parents or the adoption of the child by the proposed adoptive parents.

SECTION 17. 48.93 (1d) of the statutes is amended to read:

48.93 (1d) All records and papers pertaining to an adoption proceeding shall be kept in a separate locked file and may not be disclosed except under sub. (1g) or (1r), s. 46.03 (29), 48.432, 48.433 ~~or~~ 48.57 (1) (j) or 48.434, or by order of the court for good cause shown.

NOTE: This SECTION creates a new exception to the statutory prohibition against disclosing records and papers pertaining to an adoption proceeding. This SECTION permits an agency that has placed a child for adoption or that appointed the guardian of a child who was adopted in an independent adoption to release information about the child's birth parents to the child's adoptive parents, and to release information about the child's adoptive parents to the child's birth parents, when authorized to do so, as described in the NOTE following the creation of s. 48.434, stats., above.

SECTION 18. 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 a the child's parent, stepparent,

grandparent, adult brother or sister, adult uncle or aunt, or a guardian and leaving the child with any such relative or non-agency guardian in the receiving state.

NOTE: Current law provides that the ICPC does not apply to the sending or bringing of a child into a receiving state by a parent, stepparent, grandparent, adult brother or sister, adult uncle or aunt, or a guardian and leaving the child with any such relative or nonagency guardian in the receiving state. This SECTION specifies that 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.

SECTION 19. 115.355 of the statutes is created to read:

115.355 Assistance to schools for instruction on adoption. The department shall annually and upon request disseminate to appropriate public school staff information about materials and services available through the state adoption center under s. 48.551 which may serve as resources for instruction on adoption for pupils in grades kindergarten through 12.

NOTE: This SECTION requires DPI annually and upon request to disseminate to appropriate public school staff information about materials and services available through the state adoption center under s. 48.551, stats., which may serve as resources for instruction on adoption for pupils in grades kindergarten through 12.

SECTION 20. 115.92 (1) of the statutes is amended to read:

115.92 (1) Any school board may establish a program for school age parents who are residents of the school district. The program shall be designed to provide services and instruction to meet the needs of school age parents, including education on the skills required of a parent; family planning, including natural family planning; and ~~information~~ instruction on adoption ~~and adoption~~ services. The instruction provided on adoption and adoption services shall include instruction on the options available and the procedures followed in independent and agency adoptions, including current practices regarding a birth parent's involvement in the selection of an adoptive home and the sharing of information between birth parents and adoptive parents, instruction on the impact of adoption on birth parents and children who have been adopted and an explanation that the adoption process may be initiated even after a child has been born and has left the hospital. The program shall be coordinated with existing vocational and job training programs in the school district.

NOTE: This SECTION amends current law regarding school age parents programs by requiring those programs to provide "instruction on adoption and adoption services" rather than "information on adoption services". In addition, this SECTION specifies that the instruction on adoption and adoption services must include all of the following:

1. Information on the options available and the procedures followed in independent and agency adoptions, including current practices regarding a birth parent's involvement in the selection of an adoptive home and the sharing of information between birth parents and adoptive parents.

2. Information on the impact of adoption on birth parents and children who have been adopted.

3. An explanation that the adoption process may be initiated even after a child has been born and has left the hospital.

SECTION 21. 948.24 (1) (a) of the statutes is amended to read:

948.24 (1) (a) Places or agrees to place his or her child for adoption for anything exceeding the actual cost of the ~~hospital and medical expenses of the mother and the child incurred in connection with the child's birth, and of the legal and other services rendered in connection with the adoption~~ items listed in s. 48.913 (1) (a) to (m) and the payments authorized under s. 48.913 (2).

NOTE: Under current law, any person who places or agrees to place his or her child for adoption for anything other than the payments authorized under s. 948.24 (1) (a), stats., is guilty of a Class D felony, which is punishable by a fine not to exceed \$10,000 or imprisonment not to exceed 5 years, or both.

The bill amends this criminal provision to correspond to changes the bill makes in children's code regarding payments related to adoption. Thus, under the bill, receiving any payment authorized by the bill in the children's code is not grounds for criminal prosecution.

Specifically, current s. 948.24 (1) (a), stats., prohibits any person from placing or agreeing to place his or her child for adoption for anything exceeding "*the actual cost of the hospital and medical expenses of the mother and the child incurred in connection with the child's birth, and of the legal and other services rendered in connection with the adoption*".

The bill replaces the quoted language with the phrase "*the actual cost of the items listed in s. 48.913 (1) (a) to (m) and the payments authorized under s. 48.913 (2)*". Section 48.913 (1) and (2), stats., as created by the bill, authorizes proposed adoptive parents to make various payments to a birth parent of a child or to an alleged or presumed father of a child.

Under current law and the bill, these provisions do not apply to the adoption of a foreign child under s. 48.839, stats.

SECTION 22. 948.24 (1) (c) of the statutes is amended to read:

948.24 (1) (c) In order to receive a child for adoption, gives anything exceeding the actual cost of the ~~hospital and medical expenses of the mother and the child incurred in connection with the child's birth, and of the legal and other services-rendered in connection with the adoption~~ and the items listed in s. 48.913 (1) (a) to (m) and the payments authorized under s. 48.913 (2).

NOTE: Under current law, any person who makes payments other than the payments authorized under s. 948.24 (1) (c), stats., in order to receive a child for adoption, is guilty of a Class D felony, which is punishable by a fine not to exceed \$10,000 or imprisonment not to exceed 5 years, or both.

The bill amends this criminal provision to correspond to changes the bill makes in the children's code regarding payments related to adoption. Thus, under the bill, making any payment authorized by the bill in the children's code is not grounds for criminal prosecution.

Specifically, current s. 948.24 (1) (c), stats., prohibits any person, in order to receive a child for adoption, from giving anything exceeding "*the actual cost of the hospital and medical expenses of the mother and the child incurred in connection with the child's birth, and of the legal and other services rendered in connection with the adoption*".

The bill replaces the quoted language with the phrase “the actual cost of the legal and other services rendered in connection with the adoption *and the items listed in s. 48.913 (1) (a) to (m) and the payments authorized under s. 48.913 (2)*”. Section 48.913 (1) and (2), stats., as created by the bill, authorize proposed adoptive parents and adoptive parents to make various payments related to the birth and adoption of a child.

Under current law and the bill, these provisions do not apply to the adoption of a foreign child under s. 48.839, stats.

SECTION 23. Initial applicability.

(1) ADVERTISING RELATED TO ADOPTION. The treatment of section 48.825 of the statutes first applies to advertisements placed on the effective date of this subsection.

(2) TIME FOR HEARING ON TERMINATION OF PARENTAL RIGHTS PETITION FILED WITH INDEPENDENT ADOPTIVE PLACEMENT PETITION. The treatment of section 48.837 (4) (a) of the statutes first applies to petitions filed under section 48.837 (2) and (3) of the statutes on the effective date of this subsection.

(3) REMOVAL OF CHILD FOR ADOPTIVE PLACEMENT. The treatment of section 48.64 (1m) of the statutes first applies to the removal of a child from a foster home, treat-

ment foster home or group home on the effective date of this subsection.

(4) TIME FOR FILING PETITION FOR REHEARING. The treatment of section 48.46 (1) of the statutes first applies to orders entered on the effective date of this subsection.

(5) PAYMENT OF BIRTH PARENTS’ EXPENSES.

(a) The treatment of sections 48.913 and 948.24 (1) (a) and (c) of the statutes first applies to the payment of expenses which are incurred on the effective date of this subsection.

(b) The treatment of section 48.422 (7) (bm) of the statutes first applies to petitions for termination of parental rights filed on the effective date of this subsection.

(c) The treatment of section 48.837 (1m), (2) (d) and (6) (b) of the statutes first applies to petitions for adoptive placement under section 48.837 (2) of the statutes filed on the effective date of this subsection.

(5m) FILING OF ADOPTION PETITIONS. The treatment of section 48.90 (1) (a) of the statutes first applies to adoption petitions filed on the effective date of this subsection.
