

State of Misconsin 2001 - 2002 LEGISLATURE

LRB-4355/1 PJK:rs&jld:jf

2001 ASSEMBLY BILL 839

February 20, 2002 – Introduced by Representatives WASSERMAN, GUNDRUM, AINSWORTH, ALBERS, COLON, GRONEMUS, GROTHMAN, GUNDERSON, LA FAVE, MUSSER, STASKUNAS and STONE. Referred to Committee on Judiciary.

1 AN ACT *to amend* 767.458 (1m) and 767.463 of the statutes; **relating to:** 2 prohibiting the dismissal, in a child's best interest, of an action to rebut a 3 presumption of paternity.

Analysis by the Legislative Reference Bureau

Under current law, a man who is married to a woman when she has a child is presumed to be the father of the child. The man may bring an action to rebut that presumption. The presumption is rebutted if the results of genetic tests show that another man is not excluded as the father of the child and that the probability that the other man is the father is 99% or higher. Current law also provides that in a paternity action a judge or family court commissioner may refuse to order genetic tests and dismiss the action if, upon the motion of a party or guardian ad litem, the judge or family court commissioner determines that it is not in the child's best interest to determine whether a man is the child's father or that a man other than the mother's husband is the father.

This bill provides that, regardless of a child's best interest, a judge or family court commissioner may not refuse to order genetic tests and dismiss a paternity action if the man who is presumed to be the father of the child because he is the mother's husband desires to rebut the presumption that he is the father.

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

2001 - 2002 Legislature

ASSEMBLY BILL 839

1 **SECTION 1.** 767.458 (1m) of the statutes is amended to read: $\mathbf{2}$ 767.458 (1m) In an action to establish the paternity of a child who was born 3 to a woman while she was married, where a man other than the woman's husband 4 alleges that he, not the husband, is the child's father, a party may allege that a $\mathbf{5}$ judicial determination that a man other than the husband is the father is not in the 6 best interest of the child. If the court or court commissioner under s. 757.69 (3) (g) 7 determines that a judicial determination of whether a man other than the husband 8 is the father is not in the best interest of the child, no genetic tests may be ordered 9 and the action shall be dismissed. This subsection does not apply if the husband 10 desires to rebut the presumption under s. 891.41 (1) that he is the father of the child. 11 **SECTION 2.** 767.463 of the statutes is amended to read: 12767.463 Dismissal if adjudication not in child's best interest. Except as 13provided in s. 767.458 (1m), at any time in an action to establish the paternity of a 14child, upon the motion of a party or guardian ad litem, the court or court commissioner under s. 757.69 (3) (g) may, with respect to a man, refuse to order 1516 genetic tests, if genetic tests have not vet been taken, and dismiss the action if the court or court commissioner determines that a judicial determination of whether the 1718 man is the father of the child is not in the best interest of the child. This section does

- 19 not apply in an action in which a man who is presumed to be the father of the child
- 20 <u>under s. 891.41 (1) desires to rebut the presumption.</u>
- 21

(END)