

## CHAPTER 322.

## ADOPTION.

322.01	Petition for adoption; who may be adopted.	322.05	Order of adoption; change of name.
322.02	Investigation; probationary residence.	322.06	Records closed.
322.03	Adoption of child; notice of hearing.	322.07	Effect of adoptions.
322.04	Consent.	322.08	Subsequent adoption.
		322.09	Annulment of adoption; limitations.

**322.01 Petition for adoption; who may be adopted.** (1) Any adult inhabitant of this state may present a petition to the county court in the county of his residence for leave to adopt a child; or any nonresident of the state who is related to the child, may present a petition for leave to adopt a child in the county court for the county in which the child resides; but no such petition by a married person shall be granted unless the husband or wife shall join therein excepting that when such petitioner shall be married to the natural father or mother of such child then such joinder by such father or mother shall be deemed unnecessary.

(2) Any child may be adopted after arriving at the age of 21 years as well as before reaching that age. [1945 c. 253]

**Note:** Valid order of adoption might be entered upon petition of wife who is inhabitant of this state and natural parents of child to be adopted, where husband joins in such petition, although he is inhabitant of another state. (322.01, Stats. 1943) 32 Atty. Gen. 393. An adoption order entered by the court of a county other than that in which the prospective parents reside would probably be invalid and subject to attack in collateral proceedings at any time. (Stats. 1943) 33 Atty. Gen. 57.

**322.02 Investigation; probationary residence.** (1) Upon the filing of a petition for the adoption of any minor child the court shall cause an investigation to be made of the former environment and antecedents of the child for the purpose of ascertaining whether he is a proper subject for adoption and of the home of the petitioner to determine whether it is a suitable home for the child. Such investigation shall be made either by the licensed child welfare agency or county home for dependent children which placed the child in the home of the petitioner or by a probation officer or by some other suitable person designated by the court, or if the court shall so desire, by the state department of public welfare. The results of such investigation shall be embodied in a full report in writing which shall be submitted to the court at or prior to the hearing upon the petition and which shall be filed with the records of the proceedings and become a part thereof. The report shall contain a statement of facts found in the investigation, and shall show that the investigation included an actual inspection of the proposed home and that a careful personal inquiry was made as to the suitability of the proposed home. The report shall also include such additional facts or information as may be necessary to enable the state bureau of vital statistics to fill out a new birth certificate as authorized by section 69.33. Such inquiry shall be made of at least 2 responsible citizens residing in the same community as the petitioner, and of the pastor of the congregation or parish, if any, to which the petitioner may belong. In case the parental rights of the natural parents of such child shall have been terminated by a juvenile or other court of competent jurisdiction, the report shall contain a summary of such proceedings and shall note any irregularities therein.

(2) No petition for the adoption of any minor child shall be granted until the child shall have lived for 6 months in the home of the petitioner; provided, that this requirement may be dispensed with upon good cause shown in the discretion of the court when the court is satisfied that the home of the petitioner and the child are suited to each other. [1939 c. 524; 1943 c. 93; 1943 c. 275 s. 66; 1943 c. 503 s. 69]

**322.03 Adoption of child; notice of hearing.** (1) Upon the filing of a petition for adoption the court shall appoint a time and place for hearing such petition, which in the case of a minor child shall allow a reasonable time, but not exceeding 30 days, for the prior investigation provided for in section 322.02. Notice of the date of hearing shall be mailed to the person or agency making such investigation and proof thereof shall be filed. If the report of such investigation has not been completed or filed with the court or if the hearing on such petition is not had at the time appointed by the court, the hearing shall stand adjourned until the matter is heard. The court may upon its own motion or upon the petition of an interested person fix the time for such adjourned hearing and upon such

hearing may grant, dismiss or deny the petition for adoption or grant a further adjournment.

(2) The petitioner, and the child to be adopted if fourteen years of age or over, shall be required to attend the hearing in person, but a younger child shall not be required to attend, unless the court so orders.

(3) The court may, in its discretion, waive the appearance of the petitioner or the child to be adopted should either one or both of them be engaged in the military service of the United States or employed as a civilian in connection with the military efforts of the United States.

(4) (a) The court may, in other cases than those above enumerated, waive the appearance of the petitioner or child to be adopted should the court, in its discretion, consider the appearances to be inadvisable or a hardship result from said appearances.

(b) The consent of the child to be adopted or of any of the petitioners shall be in such manner as directed by the court.

(5) Such hearing may be held in chambers unless a person asserting an interest objects thereto. [1939 c. 524; 1941 c. 259; Supreme Court Order, effective July 1, 1945; 1945 c. 328]

**Comment of Advisory Committee: 322.03** It is entirely immaterial who mails it. This amendment was suggested by the fact that (1) covers the subject of notice of hearing a petition for adoption. The change of language is intended to shift the emphasis from who does the mailing to what is mailed. The important thing is that the notice be mailed. [Re Order effective July 1, 1945]

**322.04 Consent.** (1) Except as otherwise specified in this section, no adoption shall be permitted except with the written consent of the living parents of a child. In the case of a child fourteen years of age or over, the consent of such child also shall be required and must be given in writing in the presence of the court.

(2) If the parental rights of one parent have been legally terminated, the consent of the other, except the father of a child not born in lawful wedlock, shall be sufficient; but if the parental rights of both parents or the surviving parent or the mother of a child not born in lawful wedlock have been so terminated, their consent shall not be required but adoption shall be permitted only on consent of the state department of public welfare, or, if the permanent care, custody or guardianship of the child has been transferred by a juvenile or other court of competent jurisdiction to a licensed child welfare agency or county home for dependent children, then on consent of such agency or home.

(3) If such child has no living parent or if such parent be a nonresident and shall have executed a written release of the custody of such child which shall have been valid at the time of its execution in the state in which made, adoption shall be permitted on consent of the state department of public welfare or if the permanent care, custody or guardianship of such child has been transferred by a juvenile or other court of competent jurisdiction to a licensed child welfare agency or to a county home for dependent children, then on the consent of such agency or home. If such child is a nonresident the consent of the state department of public welfare is required.

(4) The consent of the father of a child not born in lawful wedlock shall not be required, but the consent of the department of public welfare and the mother shall be required in all such cases except as otherwise provided in subsection (2).

(5) In case the child to be adopted has arrived at the age of twenty-one years the consent of such child alone shall be necessary.

(6) In a case where the consent of a minor parent is required a guardian ad litem therefor shall be appointed and the consent of such minor parent shall be effective only if concurred in by the guardian ad litem. In a case where the consent of a parent is required who is on parole or leave of absence under section 51.13 and the 2 years therein provided not having expired after the granting of such parole or leave, a guardian ad litem shall be appointed and the consent of such parent shall be effective only if concurred in by the guardian ad litem.

(7) If the parents of a child to be adopted who is eighteen but less than twenty-one years of age shall have abandoned such child the court wherein the adoption proceedings are pending may terminate all rights of the parents with reference to such child, after notice and a hearing as provided in paragraph (a) of subsection (7) of section 48.07 for the termination of parental rights in the juvenile court. [1931 c. 352 s. 2; 1939 c. 524; 1943 c. 93; 1945 c. 196, 378]

**Note:** Under section 4021, Stats. 1917, providing that no petition for adoption made by a married person shall be granted unless the husband or wife of the petitioner shall join therein, the county court was without jurisdiction to consider a petition or to issue an order of adoption where the wife of the petitioner failed to join in the petition, although no reference was made in the petition or in the proceedings to the fact that the petitioner was married. Will of Bresnehan, 221 W 51, 266 NW 93.  
Consent to adoption must be obtained either from legal guardian of child or from

state board of control where mother of illegitimate minor is nonresident. 22 Atty. Gen. 882.

Written consent given in court to adoption of child by mother without her knowing who persons are that adopt child is legal and binding and satisfies requirements of statute. 23 Atty. Gen. 156.

Subsection (4) does not apply to child born in lawful wedlock even though husband of mother is not father of such child. 25 Atty. Gen. 597.

Minor over eighteen who has been abandoned by its parents may be adopted and parental rights may be terminated under (7) without necessity of committing such child to welfare bureau or state board of control. 26 Atty. Gen. 257.

Guardian ad litem provided for by (6) must be attorney. 26 Atty. Gen. 272.

Bigamous marriage does not constitute "lawful wedlock" and child born to such marriage cannot be adopted without consent of state board of control. 27 Atty. Gen. 369.

Consent of the department of public welfare is a condition precedent to a valid order of adoption of an infant orphan. If the permanent care and custody of such orphan has been transferred to a licensed child welfare agency or a county home for dependent children then the county court shall obtain consent of such agency or county home before making the order of adoption. 33 Atty. Gen. 13.

**322.05 Order of adoption; change of name.** If, after the hearing and the written consent of the persons whose consent to adoption is necessary, the court shall be satisfied that the facts stated in the petition are true, that the petitioners are of good moral character and of reputable standing in the community and of ability properly to maintain and educate the child sought to be adopted, that the best interests of such child would be promoted by adoption, that such child is suitable for adoption, and that all legal requirements relative to adoption have been complied with, then the court shall make an order that from and after the date thereof such child be deemed to all legal intents and purposes the child of the petitioners. In such order the name of the child may be changed to that of the parents by adoption. Such order shall set forth all jurisdictional facts. After entry of such order the clerk of the court shall promptly report to the state registrar of vital statistics full information as to the prior name, date and place of birth, and natural parents of the child and the name, address and occupation of the parents by adoption, the new name of the child, if any, and such other data as the state bureau of vital statistics requires, and the date of the order of adoption and the court issuing the same. [1931 c. 352 s. 2; 1939 c. 524]

**322.06 Records closed.** The files and records of the court in adoption proceedings shall not be open to inspection or copy by other persons than parties in interest and their attorneys and representatives of the state department of public welfare, except upon order of the court, expressly permitting inspection or copy. No person having charge of any birth or adoption records shall disclose the names of any adopted parents appearing in such records or furnish a certified copy of any such records to any person other than the adoptive parents, or the adoptive child or children if over the age of 21, except upon order of the county court of the county in which the adoption took place. [1935 c. 228; 1939 c. 524; 1943 c. 93]

**322.07 Effect of adoption.** An adopted person shall be deemed, for the purposes of inheritance and succession and for all other legal consequences and incidents of the natural relation of parents and children, the same to all intents and purposes as if the child had been born in lawful wedlock of such parents by adoption, and such child shall be capable of taking property expressly limited to the heirs of the body of such parents the same to all intents and purposes as if such child had been born in lawful wedlock of such parents by adoption. The adoptive parents of such child and their heirs and next of kin shall be deemed for the purposes of inheritance and succession by such parents, their heirs and next of kin, the same to all intents and purposes as if such child had been born in lawful wedlock of such parents by adoption, and they shall take in accordance with the general statutory provisions regulating inheritance and succession as between a parent and a child dying without issue; providing further, that if no heirs or next of kin are found in the line of the adoptive parents, the property of the deceased shall go to the natural parents, and, in case they have died, then in their line of descent. The natural parents of such child shall be deprived, by such order of adoption, of such legal rights, if any, of whatsoever nature which they may have respecting such child and its property. Such child shall be freed from all legal obligations of maintenance and obedience to such natural parents; provided, that where the adoptive parent of such child shall be married to one of the natural parents of such child then the relation of such child toward such natural parent so married to the adoptive parent shall be in no way altered by such adoption, and the natural rights and obligations of such natural and adoptive parent toward such child shall be the same as if such child were the natural child of both the natural parent and the adoptive parent. [1941 c. 259; 1945 c. 117]

**Note:** Legal adoption destroys parental relationship and creates a new relationship. Specific performance will not lie to compel the adoptive parents to comply with their contract to let the father visit the child, although the contract was made in considera-

tion of consent to adoption. The contract was invalid. *Stickles v. Reichardt*, 203 W 579, 234 NW 728.

The adoptive parents and their heirs, if any, as opposed to the natural parents and their heirs, are the heirs of an adopted child

dying without issue; if such child is not survived by adoptive parents or their heirs, then only will such child's property go to his natural parents and in their line of descent. Enactment of this section, albeit changing the line of descent of property of an adopted child from his natural parents and their heirs to his adopted parents and their heirs, was within the legislative power. An heir apparent or presumptive has no estate, legal or equitable, vested or contingent, in the property of the person whose appar-

ent heir he is. Estate of Hood, 206 W 227, 239 NW 443.

An adopted child does not lose his right to inherit from his natural parents. When doubt arises as to the meaning of a statute its legislative history may be considered. Estate of Sauer, 216 W 289, 257 NW 28.

Minor mother of child born out of wedlock may, with consent of her guardian ad litem, waive her parental rights to child. 26 Atty. Gen. 265.

**322.08 Subsequent adoption.** A subsequent adoption is authorized by this chapter and in such case the words father, mother or parent include father, mother or parent by adoption.

**322.09 Annulment of adoption; limitations.** (1) Failure to comply in adoption proceedings with the essential requirements of this chapter shall be ground for annulment of the order of adoption within two years after date of entry thereof. Except as provided in subsection (2), any order for adoption heretofore or hereafter made by a court of record of this state shall be valid and conclusive and binding on all persons whomsoever and in all proceedings whatsoever after two years from the date of entry thereof, and any person who participated in the proceedings or who makes claim to property rights by, through or under any person who so participated, shall be estopped from attacking the validity of such adoption proceedings after said two years; provided, however, that where the adoption proceedings were had within two years prior to July 1, 1929, the two-year limitation period above set forth shall be construed to mean within two years from July 1, 1929, and where the adoption proceedings were had more than two years prior to July 1, 1929, the two-year limitation period above set forth shall be construed to mean within two years from and after July 1, 1940.

(2) If a child who has been adopted develops insanity, feeble-mindedness, epilepsy or venereal disease before it is 14 years of age and from conditions existing prior to adoption, of which the parents by adoption had no knowledge or information, such parents may petition the county court of the county in which they reside, on or before the fifteenth birthday of such child, for the annulment of the adoption, and if the court shall find that the facts are as alleged it shall enter an order revoking such adoption and making the state department of public welfare the legal guardian of such child.

(3) The state department of public welfare shall be made a party to the proceedings in any action in which the validity of an adoption shall be an issue. Notice of action shall be served upon the state department of public welfare in the same manner as upon an adverse party. [1939 c. 524; 1943 c. 93]

**Note:** This section is ineffective to validate an order of adoption which in the first instance was void for lack of jurisdiction. The provision for a two-year period in which to attack orders of adoption entered within two years prior to July, 1929, is not a bar to the invalidation of an order of adoption on which the two-year period would have expired nine years before the enactment of the statute. Will of Bresnehan, 221 W 51, 265 NW 93.