# 2021 ASSEMBLY BILL 1085

March 7, 2022 – Introduced by Representatives Subeck, Sinicki, Andraca, Baldeh, Cabrera, Hesselbein and Stubbs, cosponsored by Senator Roys. Referred to Committee on Family Law.

***AUTHORS SUBJECT TO CHANGE***

1    An Act *to amend* 48.43 (2) (intro.), 48.43 (6) (c), 48.92 (1) and (2), 48.94 (2)

2    (intro.), 854.20 (1) (a) and 854.20 (2) (am) (intro.); and *to create* 48.46 (4), 69.15

3    (2) (d) 4. and 854.20 (3) of the statutes; **relating to:** rescission of adoption by

4    a stepparent and restoration of parental rights.

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### *Analysis by the Legislative Reference Bureau*

This bill establishes a process for an adult adoptee who was adopted by a stepparent and who had a parent whose rights were terminated to file a petition to rescind the adoption by the stepparent and restore the parental rights of the parent whose rights were terminated. Under the bill, the adult adoptee and the adult adoptee's parent whose rights were terminated may file the petition, but if the parent whose rights were terminated is deceased, the adult adoptee may file the petition without the terminated parent. The bill provides that a court must conduct a hearing regarding a rescission petition after notice is served on the interested parties. The court may order an investigation and extrinsic evidence may be used to construe the intent of the parent whose rights were terminated if that parent is deceased.

The bill provides that if the court finds it to be in the best interests of the persons involved, the court may enter an order of rescission of the adoption that restores the parental rights of the parent whose rights were terminated. If the petition is granted, the court must, if requested by the adoptee, provide a copy of the order to the state bureau of vital records, along with any other data necessary for the state registrar to prepare a new birth record based on the information on the adoptee's original birth record.

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In general, under the bill, if a court issues an order of rescission of adoption by a stepparent and restoration of parental rights, the adoptee ceases to be treated as a child of the stepparent and the stepparent ceases to be treated as a parent of the child for inheritance purposes, except that no right, title, or interest vesting before entry of the order of rescission may be divested by the order. Under the bill, once such an order has been issued, the previously terminated parent-child relationship is fully restored for purposes of transfers at death except, again, a right, title, or interest vesting before entry of the order of rescission may not be divested by the order. The bill also provides, however, that if the order is issued after the death of the parent whose rights were previously terminated, the restoration of parent-child inheritance rights does not apply.

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

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

2    48.43 **(2)** (intro.) An order terminating parental rights permanently severs all

3    legal rights and duties between the parent whose parental rights are terminated and

4    the child and between the child and all persons whose relationship to the child is

5    derived through that parent, except as provided under s. 48.46 (4) and as follows:

6    SECTION 2. 48.43 (6) (c) of the statutes is amended to read:

7    48.43 **(6)** (c) Except as provided in s. 48.028 (5) (c) and (6) or 48.46 (4), in no

8    event may any person, for any reason, collaterally attack a judgment terminating

9    parental rights more than one year after the date on which the period for filing an

10   appeal from the judgment has expired, or more than one year after the date on which

11   all appeals from the judgment, if any were filed, have been decided, whichever is

12   later.

13   SECTION 3. 48.46 (4) of the statutes is created to read:

14   48.46 **(4)** (a) Notwithstanding subs. (1) to (3), an adult adoptee who was

15   adopted by a stepparent and the adult adoptee's parent whose parental rights have

16   been terminated may file a petition to rescind the adoption and reinstate parental

1      rights. If an adult adoptee's parent whose rights have been terminated is deceased,

2      the adult adoptee who was adopted by a stepparent may file a petition individually

3      under this section. The petition in either case shall be filed with the court of the

4      county in which the adoption by the stepparent was granted. This section applies

5      to an adult adoptee who was adopted by a stepparent regardless of whether the

6      adoptee was a minor at the time of adoption.

7      (b) The rescission petition shall contain the following information:

8      1. The present name of the petitioner or petitioners, the name of the adoptee

9      at the time of birth and immediately after an adoption if different from the adoptee's

10     present name, the name of the parent at the time of termination of parental rights,

11     the date and place of the adoptee's birth, and the present place of residence of each

12     petitioner.

13     2. The name, date, place of birth, and address of the parent whose rights were

14     not terminated and whose spouse adopted the adoptee, if known.

15     3. The name of the stepparent at the time of the order of adoption, including

16     any previous names used by the stepparent if applicable and, if known, the

17     stepparent's date and place of birth.

18     (c) Before the hearing on the petition by the court under par. (d), the petitioner

19     or petitioners shall file with the court a copy of the the adult adoptee's new birth

20     record if a new record was created at the time of adoption.

21     (d) Upon receipt of a petition under this subsection, the court shall conduct a

22     hearing after notice is served by the petitioner or petitioners on the interested

23     parties. Extrinsic evidence may be used to construe the intent of the parent whose

24     rights were terminated if that parent is deceased. The court may order an

25     investigation by an employee or agent of the court. If the court determines that it

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1    is in the best interests of the persons involved, the court may enter an order of

2    rescission of the adoption that restores the parental rights of the parent whose rights

3    were terminated. The rescission of an adoption shall be effective from the date of the

4    order of rescission.

5    (e) After entry of an order granting a petition under this subsection, the clerk

6    of the court shall promptly provide a copy to each petitioner, and if requested by the

7    adult adoptee, provide a copy to the state bureau of vital records and furnish any

8    additional data needed for the state registrar to issue a new birth record restoring

9    the information from an adoptee's original birth record as set forth under s. 69.15 (2)

10    (d) 4.

11    **SECTION 4.** 48.92 (1) and (2) of the statutes are amended to read:

12    48.92 **(1)** ~~After~~ Except as otherwise provided under ss. 48.46 (4) and 854.20 (3),

13    after the order of adoption is entered the relation of parent and child and all the

14    rights, duties and other legal consequences of the natural relation of child and parent

15    thereafter exists between the adopted person and the adoptive parents.

16    **(2)** ~~After~~ Except as otherwise provided under ss. 48.46 (4) and 854.20 (3), after

17    the order of adoption is entered the relationship of parent and child between the

18    adopted person and the adopted person's birth parents and the relationship between

19    the adopted person and all persons whose relationship to the adopted person is

20    derived through those birth parents shall be completely altered and all the rights,

21    duties, and other legal consequences of those relationships shall cease to exist,

22    unless the birth parent is the spouse of the adoptive parent, in which case those

23    relationships shall be completely altered and those rights, duties, and other legal

24    consequences shall cease to exist only with respect to the birth parent who is not the

25    spouse of the adoptive parent and all persons whose relationship to the adopted

1    person is derived through that birth parent.  Notwithstanding the extinction of all

2    parental rights under this subsection, a court may order reasonable visitation under

3    s. 48.925.

4          SECTION 5.  48.94 (2) (intro.) of the statutes is amended to read:

5          48.94 **(2)** (intro.)  If the court issues an order under s. 69.15 (2) (d) to restore the

6    information from an adoptee's original birth record, the state registrar shall issue a

7    new birth certificate containing the information from the adoptee's original birth

8    record, except for the adoptee's given name at birth, if different.  The restoration of

9    any birth parent's name on the adoptee's birth record does not <u>in and of itself</u> do any

10   of the following:

11         SECTION 6.  69.15 (2) (d) 4. of the statutes is created to read:

12         69.15 **(2)** (d) 4.  Regardless of whether the subject had the opportunity under

13   par. (a), at the time of the adoption, to request that no new birth record be prepared,

14   as set forth under subd. 1. c., a court may order the state registrar to prepare for the

15   subject of a birth record a new birth record based on the information on the subject's

16   original birth record as provided under this paragraph if the subject is an adult

17   adoptee who was adopted by a stepparent and a court has ordered rescission of the

18   adoption by the stepparent and restoration of parental rights under s. 48.46 (4) or

19   a similar law of another state, Canada, or any federally recognized Indian tribe,

20   band, or nation.

21         SECTION 7.  854.20 (1) (a) of the statutes is amended to read:

22         854.20 **(1)** (a)  Subject to par. (b) and ~~sub.~~ <u>subs. (3) and</u> (5), a legally adopted

23   person is treated as a birth child of the person's adoptive parents and the adoptive

24   parents are treated as the birth parents of the adopted person for purposes of

25   transfers at death to, through, and from the adopted person and for purposes of any

1    statute or other rule conferring rights upon children, issue, or relatives in connection

2    with the law of intestate succession or governing instruments.

3    SECTION 8. 854.20 (2) (am) (intro.) of the statutes is amended to read:

4    854.20 **(2)** (am) (intro.) Subject to ~~sub.~~ subs. (3) and (5), a legally adopted person

5    ceases to be treated as a child of the person's birth parents and the birth parents cease

6    to be treated as the parents of the child for the purposes specified in sub. (1) (a),

7    except:

8    SECTION 9. 854.20 (3) of the statutes is created to read:

9    854.20 **(3)** RESCISSION OF STEPPARENT ADOPTION AND RESTORATION OF PARENTAL

10    RIGHTS. (a) Subject to sub. (5), if a court issues an order of rescission of adoption by

11    a stepparent and restoration of parental rights under s. 48.46 (4), the adopted person

12    ceases to be treated as a child of the stepparent and the stepparent ceases to be

13    treated as a parent of the child for the purposes specified in sub. (1) (a), except that

14    no right, title, or interest vesting before entry of the order of rescission may be

15    divested by that order.

16    (b) Subject to sub. (5) and except as provided under par. (c), if a court issues an

17    order of rescission of an adoption by a stepparent and restoration of parental rights

18    under s. 48.46 (4), the adult adoptee is treated as a birth child of the parent whose

19    parental rights have been restored and the birth parent is treated as the birth parent

20    of the adult adoptee for purposes of transfers at death to, through, and from the adult

21    adoptee and for purposes of any statute or other rule conferring rights upon children,

22    issue, or relatives in connection with the law of intestate succession or governing

23    instruments, except that a right, title, or interest vesting before entry of the order

24    of rescission shall not be divested by that order.

1    (c) Paragraph (b) does not apply if the order of rescission of an adoption by a

2    stepparent and restoration of parental rights under s. 49.46 (4) was issued after the

3    death of the parent whose rights were restored by the order.

4                                              **(END)**