



2015 ASSEMBLY BILL 528

November 18, 2015 - Introduced by Representatives JACQUE, TITTL, BERNIER, HORLACHER, KAHL, KREMER, MURPHY, QUINN, ROHRKASTE, SARGENT and ZAMARRIPA, cosponsored by Senator LASEE. Referred to Committee on Family Law.

1 **AN ACT** *to amend* 48.42 (2) (a); and *to create* 48.41 (2) (bm) of the statutes;
2 **relating to:** the disclaimer of parental rights by a birth parent and his or her
3 appearance in court.

Analysis by the Legislative Reference Bureau

This bill makes certain changes relating to disclaimers of parental rights in cases in which a private child welfare agency negotiates or arranges for the placement of a child for adoption (private adoption).

Subject to certain exceptions, current law generally requires a birth parent to appear in court to consent to the termination of his or her parental rights. This bill adds an exception in the case of a private adoption that allows a birth parent to avoid appearing in court if he or she files with the court an affidavit disclaiming his or her parental rights. The affidavit must comply with certain requirements, including that it must be witnessed by two individuals and notarized and must include a statement that the parent understands the effect of an order to terminate parental rights and that he or she voluntarily disclaims any rights that he or she may have to the child.

Under the bill, the affidavit containing a disclaimer of parental rights may be executed by the child's father before the birth of the child. If executed prior to the child's birth, the father may revoke the disclaimer at any time before 72 hours after the birth of the child. The bill provides that the disclaimer is void if the affidavit is executed less than 72 hours after the birth of the child by either parent. If executed 72 hours or more after the birth of the child by either parent, or if not revoked before

ASSEMBLY BILL 528

72 hours after the birth of the child, the disclaimer is irrevocable unless obtained by fraud or duress. The disclaimer is not voidable because the parent who executed it was a minor. Under the bill, no action to void or revoke a disclaimer, including an action based on fraud or duress, may be commenced more than six months after the affidavit was executed.

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

1 **SECTION 1.** 48.41 (2) (bm) of the statutes is created to read:

2 48.41 **(2)** (bm) 1. If a child welfare agency licensed under s. 48.60 negotiates or
3 arranges for the placement of a child for adoption, the child's parent may consent to
4 the termination of any parental rights that he or she may have as provided in par.
5 (a) or (b) or by filing with the court an affidavit of disclaimer of parental rights that
6 is witnessed by 2 persons and notarized and that meets the requirements under
7 subds. 2. to 7.

8 2. All of the following apply to the disclaimer of parental rights in an affidavit
9 under subd. 1.:

10 a. The disclaimer is void if executed by either parent less than 72 hours after
11 the birth of the child or if executed by the mother before the birth of the child.

12 b. The disclaimer, if executed by the father before the birth of the child, is
13 revocable until 72 hours after the birth of the child, as provided under subd. 8.

14 c. The disclaimer is not voidable because the parent who executed it was a
15 minor.

16 d. The disclaimer is irrevocable if executed 72 hours or more after the birth of
17 the child or if not not revoked before 72 hours after the birth of the child, unless it
18 was obtained by fraud or duress. No action to void or revoke the disclaimer, including

ASSEMBLY BILL 528

1 an action based on fraud or duress, may be commenced more than 6 months after the
2 date the affidavit was executed.

3 3. An affidavit under subd. 1. is void unless it contains all of the following:

4 a. The name, county of residence, and age of the parent whose parental rights
5 are being terminated.

6 b. The name, age, and birth date of the child, if born.

7 c. The names and addresses of the guardians of the person and of the estate of
8 the child, if any.

9 d. A statement of whether the parent whose parental rights are being
10 terminated is or is not presently obligated by court order to make payments for the
11 support of the child.

12 e. A full description and statement of value of all property the child owns or
13 possesses.

14 f. An allegation that termination of parental rights is in the best interest of the
15 child.

16 g. The name and county of residence of the other parent, a statement that the
17 parental rights of the other parent have been terminated by death or court order, or
18 a statement that the child has no presumed father.

19 h. A statement containing the information and understandings specified in
20 subd. 4.

21 4. An affidavit under subd. 1. shall contain a statement that the parent whose
22 parental rights are being terminated has been informed of and understands all of the
23 following:

24 a. His or her parental rights and duties.

25 b. The effect of an order to terminate parental rights.

ASSEMBLY BILL 528**SECTION 1**

1 c. That he or she voluntarily disclaims any rights that he or she may have to
2 the child, including the right to notice of proceedings under this chapter.

3 d. That the disclaimer is void if the affidavit is executed less than 72 hours after
4 the birth of the child or if it is executed by the mother before the birth of the child.

5 e. That the father has the right to revoke a disclaimer in an affidavit executed
6 before the birth of the child until 72 hours after the birth of the child.

7 f. That a disclaimer is not voidable because the parent who executed the
8 affidavit was a minor.

9 g. That the disclaimer is irrevocable if the affidavit is executed 72 hours or more
10 after the birth of the child or if not not revoked before 72 hours after the birth of the
11 child, unless it was obtained by fraud or duress.

12 h. That no action to void or revoke the disclaimer, including an action based on
13 fraud or duress, may be commenced more than 6 months after the date the affidavit
14 was executed.

15 5. An affidavit under subd. 1. may contain any of the following:

16 a. A waiver of process in a petition for termination of parental rights or a
17 petition for termination of parental rights joined with a petition for adoption.

18 b. If a guardian has not been appointed under s. 48.977, the nomination of an
19 individual to serve as guardian of the child and the individual's address.

20 6. A copy of the affidavit shall be provided to the parent at the time the parent
21 signs the affidavit.

22 7. The affidavit may not contain terms for post-termination contact between
23 the child and the parent whose parental rights are to be terminated as a condition
24 of the disclaimer of parental rights.

