2021 ASSEMBLY BILL 629

October 21, 2021 – Introduced by Representatives DITTRICH, DOYLE, GUNDRUM, MURSAU, TUSLER, SNYDER and THIESFELDT. Referred to Committee on Family Law.

AUTHORS SUBJECT TO CHANGE

1 AN ACT *to amend* 48.426 (3) (c) and 48.92 (2); and *to create* 48.425 (1) (h), 48.43

2 (2) (c) and 48.905 of the statutes; **relating to:** postadoption contact

3 agreements.

Analysis by the Legislative Reference Bureau

This bill allows a proposed adoptive parent and a birth parent or other relative with whom a child has a substantial relationship to enter into an agreement for postadoption contact and allows a court to approve such an agreement.

Under current law, there is no mechanism to formalize or enforce an agreement entered into between a birth parent or other relative and a proposed adoptive parent for postadoption contact, commonly known as an "open adoption." Under current law, a termination of parental rights order and an adoption permanently severs the child's legal relationship with the birth parent and other relatives and creates the legal relationship of parent and child between the child and the adoptive parent. However, the Wisconsin Supreme Court has stated that in a proceeding for the termination of parental rights, when considering the impact on the child of severing the legal relationship between a parent or other relatives, a court may, in its discretion, afford due weight to an adoptive parent's stated intent to permit continued visitation between the child and the parent or other relatives, while bearing in mind that such a promise is legally unenforceable after the termination of parental rights and adoption. *State v. Margaret H.*, 2000 WI 42, ¶¶ 29–30.

Under the bill, a proposed adoptive parent and a birth parent or other relative with whom the child has a substantial relationship may enter into an agreement for

postadoption contact privileges. Under the bill, a court is required to consider the terms of any such agreement when considering the impact on the child of severing the child's relationship with the parent or other relative. Under the bill, a postadoption contact agreement may control the types and frequency of contact that the parties agree to. A court in an action to terminate parental rights may approve a postadoption contact agreement if the agreement meets certain requirements, as specified under the bill. The bill also specifies how an agreement may be modified, terminated, or enforced.

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

1   SECTION 1. 48.425 (1) (h) of the statutes is created to read:

2   48.425 **(1)** (h) A statement as to whether a postadoption contact agreement has

3   been entered into under s. 48.905. If such an agreement has been entered into, the

4   agency or tribal child welfare department shall attach a copy of the agreement to the

5   report.

6   SECTION 2. 48.426 (3) (c) of the statutes is amended to read:

7   48.426 **(3)** (c) Whether the child has substantial relationships with the parent

8   or other family members, and whether it would be harmful to the child to sever ~~these~~

9   those relationships. In determining whether it would be harmful to the child to sever

10   those relationships, the court shall consider the terms of any postadoption contact

11   agreement that has been entered into under s. 48.905.

12   SECTION 3. 48.43 (2) (c) of the statutes is created to read:

13   48.43 **(2)** (c) A court may approve a postadoption contact agreement entered

14   into under s. 48.905.

15   SECTION 4. 48.905 of the statutes is created to read:

16   **48.905 Postadoption contact agreement. (1)** PARTIES. A proposed adoptive

17   parent may enter into a postadoption contact agreement with a parent of the child

1   who is the subject of the adoption or with another relative with whom the child has

2   a substantial relationship.

3   **(2)** T ERMS. A postadoption contact agreement shall contain all of the following

4   provisions:

5   (a) An acknowledgment by the parent or relative that failure to comply with

6   the terms of the agreement is not grounds to revoke the termination of the parent's

7   rights or the adoption. An acknowledgment under this paragraph is not required if

8   s. 48.028 and the federal Indian Child Welfare Act, 25 USC 1901 to 1963, apply to

9   the proceeding.

10   (b) A statement by each party to the agreement that the agreement was entered

11   into voluntarily, that the terms of the agreement are understood, that no promises

12   or threats were made to coerce a party to enter into the agreement, and that no

13   representations have been relied upon other than those contained in the agreement.

14   (c) An acknowledgment that if a dispute arises about fulfillment of the terms

15   of the agreement, the parties shall participate, or attempt to participate, in good

16   faith, in mediation or an alternative dispute resolution process, with the mediator

17   or arbitrator to be selected by mutual agreement of the parties or, if the parties

18   cannot agree, the court.

19   (d) A description of the postadoption contact and frequency of contact agreed

20   to by the proposed adoptive parent. Contact may include any of the following:

21   1. Sharing of information about the child between the adoptive parent and

22   parent or relative.

23   2. Sharing of the parent's or relative's medical history.

24   3. Written, oral, or electronic communication between the child and parent or

25   relative.

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1   4. Visitation by the parent or relative with the child under specified conditions

2   or conditions that may be set by the proposed adoptive parent at the time of

3   visitation.

4   **(3)** APPROVAL. In a proceeding to terminate parental rights or a proceeding to

5   grant an adoption, a court may approve a postadoption contact agreement if it finds

6   all of the following:

7   (a) The agreement contains all of the provisions specified in sub. (2), and the

8   court is satisfied that the proposed adoptive parent and the parent or relative

9   understand those provisions.

10   (b) The agreement is signed by the proposed adoptive parent and parent or

11   relative.

12   (c) An agency having guardianship, legal custody, or supervision of the child,

13   the child's guardian ad litem, and, in the case of an Indian child, the Indian child's

14   tribe, have submitted favorable recommendations for approval of the postadoption

15   contact agreement.

16   (d) The court determines that the parent or relative will not undermine the

17   proposed adoptive parent's relationship with the child.

18   (e) The court determines that the parent or relative will not act in a manner

19   that is contrary to the proposed adoptive parent's parenting decisions that are

20   related to the child's physical, emotional, educational, or spiritual welfare.

21   (f) The court determines by clear and convincing evidence that approval of the

22   agreement is in the best interests of the child. In considering the best interests of the

23   child under this section, the court shall consider all of the following:

24   1. Whether the child has a substantial relationship with the parent or relative,

25   and whether it would be harmful to the child not to preserve that relationship.

1　　　　2. The needs of the child and how those needs would be affected by postadoption

2　　contact with the parent or relative as provided under the agreement.

3　　　　3. The wishes of the child, which may be communicated by the child, or through

4　　the child's guardian ad litem or other appropriate professional.

5　　　　4. Any other factor that the court determines is relevant to the best interests

6　　of the child.

7　　　　**(4)** STIPULATED MODIFICATION. At any time after approval of an agreement by

8　　a court, an adoptive parent may agree to modify the postadoption contact agreement

9　　with the former parent or relative. The modified agreement shall be in writing,

10　　signed by the parties, and submitted to the court. The court may approve the

11　　modified agreement, without a hearing, if it finds by clear and convincing evidence

12　　that modification of the agreement is in the best interests of the child.

13　　　　**(5)** PETITION TO MODIFY OR TERMINATE. At any time after approval of an

14　　agreement by a court, an adoptive parent may petition the court for modification or

15　　termination of the postadoption contact agreement. The court shall schedule a

16　　hearing on the petition, with notice to the adoptive parent, former parent or relative,

17　　an agency that had guardianship, legal custody, or supervision of the child before the

18　　adoption, and, in the case of an Indian child, the Indian child's tribe. The court may

19　　modify or terminate the agreement, after a hearing, if it finds by clear and convincing

20　　evidence that modification or termination of the agreement is in the best interests

21　　of the child and that there has been a substantial change in circumstances since the

22　　agreement was approved by the court.

23　　　　**(6)** ENFORCEMENT. (a) A party may petition the court for enforcement of the

24　　terms of the agreement after attempting mediation or an alternative dispute

25　　resolution process in good faith to obtain specific performance of the terms of the

1   agreement. The court shall schedule a hearing on the petition, with notice to the

2   adoptive parent, former parent or relative, an agency that had guardianship, legal

3   custody, or supervision of the child before the adoption, and, in the case of an Indian

4   child, the Indian child's tribe. The court may order specific performance of the terms

5   of the agreement, after a hearing, if it finds by clear and convincing evidence that

6   enforcement is in the best interests of the child. In first attempting mediation or an

7   alternative dispute resolution process, the mediator or arbitrator shall be selected

8   by mutual agreement of the parties. If the parties cannot agree on a mediator or

9   arbitrator, the court shall appoint the mediator or arbitrator within 30 days of a

10   request by any party. The mediator or arbitrator's fees shall be paid equally by the

11   adoptive parent and former parent or relative unless agreed otherwise in the

12   mediation or ordered otherwise by the arbitrator or the court.

13   (b) An agreement under this section is not enforceable for any period during

14   which the child has been placed outside of the adoptive parent's home under ch. 48

15   or 938, or during which the parent is denied physical placement with the child in a

16   court order under ch. 767.

17   **(7)** LIMITATION. An agreement under this section does not affect a tribal right

18   under s. 48.028 or under the federal Indian Child Welfare Act, 25 USC 1901 to 1963,

19   and may not impair a cultural contact agreement or other agreement made between

20   the adoptive parents of a child and an Indian tribe.

21   SECTION 5. 48.92 (2) of the statutes is amended to read:

22   48.92 **(2)** After the order of adoption is entered the relationship of parent and

23   child between the adopted person and the adopted person's birth parents and the

24   relationship between the adopted person and all persons whose relationship to the

25   adopted person is derived through those birth parents shall be completely altered

1   and all the rights, duties, and other legal consequences of those relationships shall

2   cease to exist, unless the birth parent is the spouse of the adoptive parent, in which

3   case those relationships shall be completely altered and those rights, duties, and

4   other legal consequences shall cease to exist only with respect to the birth parent who

5   is not the spouse of the adoptive parent and all persons whose relationship to the

6   adopted person is derived through that birth parent. Notwithstanding the extinction

7   of all parental rights under this subsection, a court may approve a postadoption

8   contact agreement under s. 48.905 or order reasonable visitation under s. 48.925.

9   **SECTION 6. Initial applicability.**

10   (1) This act first applies to a termination of parental rights petition filed under

11   s. 48.42 (1) on the effective date of this subsection.

12   **(END)**