



2013 SENATE BILL 461

December 23, 2013 - Introduced by Senators LEIBHAM, HARRIS, LASSA, MILLER, LEHMAN, CARPENTER and L. TAYLOR, cosponsored by Representatives KLEEFISCH, JOHNSON, TITTL, GOYKE, SANFELIPPO, KESSLER, SPIROS, HESSELBEIN, ZEPNICK, THIESFELDT, MILROY, KULP, T. LARSON, A. OTT, BERCEAU, OHNSTAD, RINGHAND, VRUWINK, SINICKI, BIES, RICHARDS, PRIDEMORE, LEMAHIEU and KAUFERT. Referred to Committee on Health and Human Services.

1 **AN ACT to amend** 48.825 (1) (a), 48.825 (2) (a), 48.825 (2) (b), 48.825 (2) (c), 48.825
2 (3) (a), 48.825 (3) (e), 48.979 (1) (a) and 48.979 (2); and **to create** 48.979 (1) (am),
3 48.979 (1m) and 948.25 of the statutes; **relating to:** advertising related to
4 adoption or other permanent physical placements of a child, delegation of
5 parental power regarding the care and custody of a child for more than one year,
6 unauthorized interstate placements of children, requesting a study of adoption
7 disruption and dissolution, and providing penalties.

Analysis by the Legislative Reference Bureau

Introduction

This bill makes various changes relating to advertising related to adoption or other permanent physical placements of a child, delegation of parental power regarding the care and custody of a child for more than one year, and unauthorized interstate placements of children. The bill also requests the Joint Legislative Council (JLC) to study adoption disruption and dissolution in this state.

Advertising related to adoption or other permanent physical placements

Under current law, subject to certain exceptions, no person may communicate by any public medium that originates within this state, including by newspaper, periodical, telephone book listing, outdoor advertising sign, radio, or television: 1)

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for the purpose of finding a child to adopt; 2) that the person will find an adoptive home for a child or arrange for or assist in the adoption of adoptive placement of a child; or 3) that the person will place a child for adoption (advertising related to adoption). That prohibition, however, does not apply to the Department of Children and Families (DCF), a county department of human services or social services that is authorized to place children for adoption (county department), or a child welfare agency that is licensed to place children for adoption; the State Adoption Information Exchange or the State Adoption Center; a foster care and adoption resource center or a postadoption resource center funded by this state; an individual who has received a favorable recommendation regarding his or her fitness to be an adoptive parent from DCF, a county department, a child welfare agency, or an entity of another jurisdiction that is authorized to conduct adoption home studies; or an individual seeking to place his or her own child for adoption.

This bill expands the prohibition against advertising related to adoption to include communicating by any computerized communication system, including by electronic mail, Internet site, Internet profile, or any similar medium of communication provided via the Internet.

The bill also expands the prohibition against advertising related to adoption to prohibit a person from advertising: 1) for the purpose of finding a child to otherwise take into permanent physical custody; 2) that the person will find any other permanent physical placement for a child or arrange for or assist in any other permanent physical placement of a child; or 3) that the person will place a child in any other permanent physical placement.

In addition, the bill limits the current exception to the prohibition against advertising related to adoption that permits an individual seeking to place his or her own child for adoption to permit such an individual to advertise for adoption only if the child is under one year of age.

Delegation of parental powers

Under current law, subject to certain exceptions, a parent who has legal custody of a child may, by a properly executed power of attorney, delegate to an agent, for no longer than one year, any of his or her powers regarding the care and custody of the child (parental powers).

This bill permits a parent who has legal custody of a child, by a properly executed power of attorney, to delegate to an agent, for longer than one year, any of his or her parental powers, but only if the court assigned to exercise jurisdiction under the Children's Code (juvenile court) approves that delegation.

Under the bill, a parent who wishes to delegate his or her parental powers to an agent for longer than one year, the agent to whom the parent wishes to delegate those powers, or an organization that is facilitating that delegation must file a petition with the juvenile court requesting the court's approval of that delegation. The petition must have a draft copy of the power of attorney delegating those powers attached to the petition and must state, among other things, all of the following: 1) the relationship of the agent to the child; 2) whether the parent wishes to delegate to the agent full parental power or partial parental power and, if the parent wishes to delegate partial parental power, the specific powers that the parent wishes to

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delegate and any limitations on those powers; 3) the proposed term of the delegation of parental powers, the reasons for the delegation of parental powers, and whether the parent proposes to provide any support to the agent during that term; and 4) facts and circumstances showing that the delegation of parental powers would be in the best interests of the child and that the person nominated as agent is fit, willing, and able to exercise those powers.

The juvenile court must hold a hearing on a petition requesting the court's approval of a proposed delegation of parental powers. In determining the appropriate disposition of such a petition, the juvenile court must consider the best interests of the child as the prevailing factor and must also consider whether the person nominated as agent would be fit, willing, and able to exercise the parental powers to be delegated, the reasons for the delegation of parental powers, and the amount of support that the parent is willing and able to provide to the agent during the term of the delegation of parental powers. If the juvenile court determines that the proposed delegation of parental powers is in the best interests of the child, the juvenile court may approve the proposed delegation of parental powers and may also designate an amount of support to be paid by the child's parents to the agent. If the juvenile court approves the proposed delegation of parental powers, the parent and the person nominated as agent may execute a power of attorney delegating those powers as approved by the juvenile court.

Under the bill, any person who delegates his or her powers regarding the care and custody of a child for longer than one year without first obtaining the approval of the juvenile court is subject to a fine not to exceed \$10,000 or imprisonment not to exceed nine months, or both.

Unauthorized interstate placements of children

Under current law, the Interstate Compact on the Placement of Children and certain other statutory provisions govern the interstate placement of children.

This bill prohibits any person from sending a child out of this state, bringing a child into this state, or causing a child to be sent out of this state or brought into this state for the purpose of permanently transferring physical custody of the child to a person who is not a relative of the child. A person who violates that prohibition is subject to a fine not to exceed \$10,000 or imprisonment not to exceed nine months, or both. That prohibition, however, does not apply to a placement of a child that is authorized under the Interstate Compact on the Placement of Children or any other statutory provisions governing the interstate placement of children or a placement of a child that is approved by a court of competent jurisdiction of the sending state or receiving state.

Study of adoption disruption and dissolution

Finally, the bill requests the JLC to study adoption disruption and dissolution in this state. If the JLC undertakes such a study, the JLC must do all of the following: 1) study the extent of adoption disruption and dissolution in this state and the efforts by DCF, counties, and child welfare agencies to prevent such disruption and dissolution; 2) recommend legislation to define adoption disruption and adoption dissolution, to prevent adoption disruption and adoption dissolution in this state, to require DCF, county departments, and child welfare agencies to track and report on

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disrupted or dissolved adoptions; 3) consider legislative options to prepare prospective adoptive parents for adoption and to support adoptive parents after an adoption; and 4) submit its findings, conclusions, and recommendations to the 2015 legislature when it commences.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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

1 **SECTION 1.** 48.825 (1) (a) of the statutes is amended to read:

2 48.825 (1) (a) "Advertise" means to communicate by any public medium that
3 originates within this state, including by newspaper, periodical, telephone book
4 listing, outdoor advertising sign, radio, or television, or by any computerized
5 communication system, including by electronic mail, Internet site, Internet profile,
6 or any similar medium of communication provided via the Internet.

7 **SECTION 2.** 48.825 (2) (a) of the statutes is amended to read:

8 48.825 (2) (a) Advertise for the purpose of finding a child to adopt or to
9 otherwise take into permanent physical custody.

10 **SECTION 3.** 48.825 (2) (b) of the statutes is amended to read:

11 48.825 (2) (b) Advertise that the person will find an adoptive home or any other
12 permanent physical placement for a child or arrange for or assist in the adoption or,
13 adoptive placement, or any other permanent physical placement of a child.

14 **SECTION 4.** 48.825 (2) (c) of the statutes is amended to read:

15 48.825 (2) (c) Advertise that the person will place a child for adoption or in any
16 other permanent physical placement.

17 **SECTION 5.** 48.825 (3) (a) of the statutes is amended to read:

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1 48.825 (3) (a) The department, a county department, or a child welfare agency
2 licensed under s. 48.60 to place children for adoption, in licensed foster homes or
3 group homes, or in the homes of guardians under s. 48.977 (2).

4 **SECTION 6.** 48.825 (3) (e) of the statutes is amended to read:

5 48.825 (3) (e) An individual seeking to place his or her child under one year of
6 age for adoption.

7 **SECTION 7.** 48.979 (1) (a) of the statutes is amended to read:

8 48.979 (1) (a) A parent who has legal custody of a child, by a power of attorney
9 that is properly executed by all parents who have legal custody of the child, may
10 delegate to an agent, ~~for a period not to exceed one year~~ as provided in par. (am), any
11 of his or her powers regarding the care and custody of the child, except the power to
12 consent to the marriage or adoption of the child, the performance or inducement of
13 an abortion on or for the child, the termination of parental rights to the child, or the
14 enlistment of the child in the U.S. armed forces. A delegation of powers under this
15 paragraph does not deprive the parent of any of his or her powers regarding the care
16 and custody of the child.

17 **SECTION 8.** 48.979 (1) (am) of the statutes is created to read:

18 48.979 (1) (am) A delegation of powers to an agent under par. (a) may remain
19 in effect for no longer than one year, except that such a delegation may remain in
20 effect for longer than one year if the delegation is approved by the court as provided
21 in sub. (1m).

22 **SECTION 9.** 48.979 (1m) of the statutes is created to read:

23 48.979 (1m) (a) A parent who wishes a delegation of powers to an agent under
24 sub. (1) (a) to remain in effect for longer than one year, the agent to whom the parent
25 wishes to delegate those powers, or an organization that is facilitating that

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1 delegation shall file a petition with the court requesting the court's approval of that
2 delegation. The petition shall be entitled "In the interest of (child's name), a
3 person under the age of 18." The petitioner shall attach a draft copy of the power of
4 attorney delegating those powers to the petition and shall state in the petition all of
5 the following:

6 1. The name, address, and date of birth of the child who is the subject of the
7 delegation of powers.

8 2. The names and addresses of the parents of the child.

9 3. The name and address of the person nominated as agent and the relationship
10 of the agent to the child.

11 4. Whether the parent wishes to delegate to the agent full parental power
12 regarding the care and custody of the child or partial parental power regarding the
13 care and custody of the child and, if the parent wishes to delegate partial parental
14 power, the specific powers that the parent wishes to delegate and any limitations on
15 those powers.

16 5. The proposed term of the delegation of powers, the reasons for the delegation
17 of powers, and whether the parent proposes to provide any support to the agent
18 during that term. If so, the petition shall indicate the amount of that support.

19 6. Facts and circumstances showing that the delegation of powers would be in
20 the best interests of the child and that the person nominated as agent is fit, willing,
21 and able to exercise those powers.

22 7. If the delegation of powers is being facilitated by an entity, as defined in s.
23 48.685 (1) (b), facts and circumstances showing that the entity has complied with
24 sub. (1) (b) and is permitted under sub. (1) (b) to facilitate that delegation.

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1 8. The information required under s. 822.29 (1) and whether the child is subject
2 to the jurisdiction of the court under s. 48.13, 48.14, 938.12, 938.13, or 938.14.

3 9. Whether the proceedings are subject to the Uniform Child Custody
4 Jurisdiction and Enforcement Act under ch. 822.

5 10. Whether the child may be subject to the federal Indian Child Welfare Act,
6 25 USC 1901 to 1963.

7 (b) The court shall hold a hearing on a petition filed under par. (a) within 45
8 days after the filing of the petition. The petitioner shall cause the petition and notice
9 of the time and place of the hearing to be served at least 10 days before the time of
10 the hearing on the child, if 12 years of age or over; the child's guardian ad litem and
11 counsel, if any; the parents of the child; the person nominated as agent; any
12 guardian, legal custodian, and physical custodian of the child; and any organization
13 that is facilitating the delegation of power. Notice shall be served in person or by 1st
14 class mail. Notice is considered to be given by proof of personal service, by proof that
15 the notice was mailed to the last-known address of the recipient, or, if the recipient
16 is an adult, by the written admission of service of the person served.

17 (c) At the hearing the court shall first determine whether any party wishes to
18 contest the petition. If the petition is not contested, the court shall immediately
19 proceed to a fact-finding and dispositional hearing, unless an adjournment is
20 requested. If the petition is contested or if an adjournment is requested, the court
21 shall set a date for a fact-finding and dispositional hearing that allows reasonable
22 time for the parties to prepare but is no more than 30 days after the initial hearing.
23 At the fact-finding and dispositional hearing, any party may present evidence and
24 argument relating to the allegations in the petition.

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1 (d) In determining the appropriate disposition of a petition filed under par. (a),
2 the best interests of the child shall be the prevailing factor to be considered by the
3 court. The court shall also consider whether the person nominated as agent would
4 be fit, willing, and able to exercise the powers to be delegated, the reasons for the
5 delegation of powers, and the amount of support that the parent is willing and able
6 to provide to the agent during the term of the delegation of powers.

7 (e) At the conclusion of the fact-finding and dispositional hearing, the court
8 shall grant one of the following dispositions, unless the court adjourns the hearing
9 under par. (f):

10 1. A disposition dismissing the petition if the court finds that the petitioner has
11 not proved the allegations in the petition by clear and convincing evidence or
12 determines that approval of the proposed delegation of powers is not in the best
13 interests of the child.

14 2. A disposition approving the proposed delegation of powers, if the court finds
15 that the petitioner has proved the allegations in the petition by clear and convincing
16 evidence and determines that the proposed delegation of powers is in the best
17 interests of the child. The disposition may also designate an amount of support to
18 be paid by the child's parents to the agent. If the court approves the proposed
19 delegation of powers, the parent and the person nominated as agent may execute a
20 power of attorney delegating those powers as approved by the court.

21 (f) If at the conclusion of the fact-finding and dispositional hearing the court
22 finds that the petitioner has proved the allegations in the petition by clear and
23 convincing evidence, but that the person nominated as agent is not fit, willing, and
24 able to serve as agent or that appointment of that person as agent would not be in
25 the best interests of the child, the court may, in lieu of granting a disposition

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1 dismissing the petition under par. (e) 1., adjourn the hearing for not more than 30
2 days and request the petitioner or any other party to nominate a different person as
3 agent.

4 (g) Any person who delegates his or her powers regarding the care and custody
5 of a child for longer than one year without first obtaining the approval of the court
6 as provided in this subsection is subject to a fine not to exceed \$10,000 or
7 imprisonment not to exceed 9 months, or both.

8 **SECTION 10.** 48.979 (2) of the statutes is amended to read:

9 48.979 (2) A power of attorney complies with sub. (1) (a) if the power of attorney
10 substantially conforms to the following form:

11 **POWER OF ATTORNEY**

12 **DELEGATING PARENTAL POWER**

13 AUTHORIZED BY s. 48.979, Wis. Stats.

14 NAME(S) OF CHILD(REN)

15 This power of attorney is for the purpose of providing for the care and custody
16 of:

17 Name, address, and date of birth of child

18 Name, address, and date of birth of child

19 Name, address, and date of birth of child

20 **DELEGATION OF POWER TO AGENT**

21 I, (name and address of parent), state that I have legal custody of the
22 child(ren) named above. (*Only a parent who has legal custody may use this form.*)

23 *A parent may not use this form to delegate parental powers regarding a child who is*
24 *subject to the jurisdiction of the juvenile court under s. 48.13, 48.14, 938.12, 938.13,*
25 *or 938.14, Wis. Stats.*

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1 I delegate my parental power to:

2 Name of agent

3 Agent’s address

4 Agent’s telephone number(s)

5 Agent’s e-mail address

6 Relationship of agent to child(ren)

7 The parental power I am delegating is as follows:

8 FULL

9 *(Check if you want to delegate full parental power regarding the care and*
10 *custody of the child(ren) named above.)*

11 Full parental power regarding the care and custody of the child(ren) named
12 above

13 PARTIAL

14 *(Check each subject over which you want to delegate your parental power*
15 *regarding the child(ren) named above.)*

16 The power to consent to all health care; or

17 The power to consent to only the following health care:

18 Ordinary or routine health care, excluding major surgical procedures,
19 extraordinary procedures, and experimental treatment

20 Emergency blood transfusion

21 Dental care

22 Disclosure of health information about the child(ren)

23 The power to consent to educational and vocational services

24 The power to consent to the employment of the child(ren)

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1 ~~after the effective date of this Power of Attorney~~, this Power of Attorney will remain
 2 in effect for a period of one year after the effective date, but no longer. If the
 3 termination date given is more than one year after the effective date of this Power
 4 of Attorney, this Power of Attorney must be approved by the juvenile court. This
 5 Power of Attorney may be revoked in writing at any time by a parent who has legal
 6 custody of the child(ren) and such a revocation invalidates the delegation of parental
 7 powers made by this Power of Attorney, except with respect to acts already taken in
 8 reliance on this Power of Attorney.

SIGNATURE(S) OF PARENT(S)

10 Signature of parent Date

11 Parent's name printed

12 Parent's address

13 Parent's telephone number

14 Parent's e-mail address

15 Signature of parent Date

16 Parent's name printed

17 Parent's address

18 Parent's telephone number

19 Parent's e-mail address

WITNESSING OF SIGNATURE(S) (OPTIONAL)

21 State of

22 County of

23 This document was signed before me on (date) by (name(s) of parent(s)).

24 Signature of notary

25 My commission expires:

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1 STATEMENT OF AGENT

2 I, (name and address of agent), understand that (name(s) of parent(s)) has
3 (have) delegated to me the powers specified in this Power of Attorney regarding the
4 care and custody of (name(s) of child(ren)). I further understand that this Power
5 of Attorney may be revoked in writing at any time by a parent who has legal custody
6 of (name(s) of child(ren)). I hereby declare that I have read this Power of Attorney,
7 understand the powers delegated to me by this Power of Attorney, am fit, willing, and
8 able to undertake those powers, and accept those powers.

9 Agent's signature Date

10 APPENDIX

11 *(Here the parent(s) may indicate where they may be located during the term of*
12 *the Power of Attorney if different from the address(es) set forth above.)*

13 I can be located at:

14 Address(es)

15 Telephone number(s)

16 E-mail address(es)

17 Or, by contacting:

18 Name

19 Address

20 Telephone number

21 E-mail address

22 Or, I cannot be located

23 **SECTION 11.** 948.25 of the statutes is created to read:

24 **948.25 Unauthorized interstate placements of children.** (1) Any person
25 who sends a child out of this state, brings a child into this state, or causes a child to

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1 be sent out of this state or brought into this state for the purpose of permanently
2 transferring physical custody of the child to a person who is not a relative of the child
3 is guilty of a Class A misdemeanor.

4 (2) Subsection (1) does not apply to any of the following:

5 (a) A placement of a child that is authorized under s. 48.98, 48.988, or 48.99.

6 (b) A placement of a child that is approved by a court of competent jurisdiction
7 of the sending state or receiving state.

8 **SECTION 12. Nonstatutory provisions.**

9 (1) STUDY OF ADOPTION DISRUPTION AND DISSOLUTION. The joint legislative council
10 is requested to study adoption disruption and dissolution in this state. If the joint
11 legislative council undertakes such a study, the joint legislative council shall do all
12 of the following:

13 (a) Study the extent of adoption disruption and dissolution in this state and the
14 efforts by the department of children and families, counties, and child welfare
15 agencies to prevent such disruption and dissolution.

16 (b) Recommend legislation to accomplish all of the following:

17 1. Define adoption disruption and adoption dissolution.

18 2. Prevent adoption disruption and adoption dissolution in this state.

19 3. Require the department of children and families, county departments of
20 human services or social services that are authorized to place children for adoption,
21 and child welfare agencies that are licensed to place children for adoption to track
22 and report on disrupted or dissolved adoptions.

23 (c) Consider legislative options to prepare prospective adoptive parents for
24 adoption and to support adoptive parents after an adoption.

