

State of Wisconsin



2015 Senate Bill 308

Date of enactment: **February 4, 2016**
Date of publication*: **February 5, 2016**

2015 WISCONSIN ACT 129

AN ACT *to renumber* 48.623 (6) and 48.977 (3r); *to amend* 48.623 (1) (c), 48.623 (2) (intro.), 48.623 (3) (c) 3., 48.623 (6) (title), 48.685 (1) (ag) 1. b., 48.685 (1) (b), 48.685 (2) (am) 5., 48.685 (2) (b) 1. e., 48.685 (3) (a), 48.685 (4m) (a) (intro.), 48.685 (4m) (ad), 48.685 (5) (bm) (intro.) and 48.977 (4) (b) 2.; and *to create* 48.623 (6) (bm), 48.623 (7) (e), 48.977 (3r) (a) (title), 48.977 (3r) (b), 48.977 (4) (c) 1. gm. and 48.977 (5m) of the statutes; **relating to:** appointment of a successor guardian for a child in need of protection or services and eligibility of a successor guardian for subsidized guardianship payments, providing an exemption from emergency rule procedures, and granting rule-making authority.

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

SECTION 1. 48.623 (1) (c) of the statutes is amended to read:

48.623 (1) (c) An order under s. 48.345, 48.357, 48.363, 48.365, 938.345, 938.357, 938.363, or 938.365 placing the child, or continuing the placement of the child, outside of the child's home has been terminated, or any proceeding in which the child has been adjudged to be in need of protection or services specified in s. 48.977 (2) (a) has been dismissed, as provided in s. 48.977 (3r) (a).

SECTION 2. 48.623 (2) (intro.) of the statutes is amended to read:

48.623 (2) **SUBSIDIZED GUARDIANSHIP AGREEMENT.** (intro.) Before a county department or the department may approve the provision of subsidized guardianship payments under sub. (1) to a proposed guardian, the county department or department shall negotiate and enter into a written, binding subsidized guardianship agreement with the proposed guardian and provide the proposed guardian with a copy of the agreement. A sub-

sidized guardianship agreement or an amended subsidized guardianship agreement may also name a prospective successor guardian of the child to assume the duty and authority of guardianship on the death or incapacity of the guardian. A successor guardian is eligible for monthly subsidized guardianship payments under this section only if the successor guardian is named as a prospective successor guardian of the child in a subsidized guardianship agreement or amended subsidized guardianship agreement that was entered into before the death or incapacity of the guardian, the conditions specified in sub. (6) (bm) are met, and the court appoints the successor guardian to assume the duty and authority of guardianship as provided in s. 48.977 (5m). A subsidized guardianship agreement shall specify all of the following:

SECTION 3. 48.623 (3) (c) 3. of the statutes is amended to read:

48.623 (3) (c) 3. A county department or the department may propose to a person receiving monthly subsidized guardianship payments that the agreement under sub. (2) (b) be amended to adjust the amount of those payments. If an adjustment in the amount of those payments

* Section 991.11, WISCONSIN STATUTES: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication."

is agreed to by the person receiving those payments, the agreement shall be amended in writing to specify the adjusted amount of those payments.

SECTION 4. 48.623 (6) (title) of the statutes is amended to read:

48.623 (6) (title) INTERIM CARETAKER; SUCCESSOR GUARDIAN.

SECTION 5. 48.623 (6) of the statutes is renumbered 48.623 (6) (am).

SECTION 6. 48.623 (6) (bm) of the statutes is created to read:

48.623 (6) (bm) On the death or incapacity of a guardian receiving payments under sub. (1), the county department or the department providing those payments shall provide monthly subsidized guardianship payments in the amount specified in sub. (3) (b) to a person named as a prospective successor guardian of the child in a subsidized guardianship agreement or amended subsidized guardianship agreement that was entered into before the death or incapacity of the guardian if all of the following conditions are met and the court appoints the person as successor guardian to assume the duty and authority of guardianship as provided in s. 48.977 (5m):

1. The county department or department determines that the child, if 14 years of age or over, has been consulted with regarding the successor guardianship arrangement.

2. The county department or department determines that the person has a strong commitment to caring permanently for the child.

3. The county department or department inspects the home of the person, interviews the person, and determines that placement of the child with the person is in the best interests of the child. In the case of an Indian child, the best interests of the Indian child shall be determined in accordance with s. 48.01 (2).

4. Prior to being appointed as successor guardian to assume the duty and authority of guardianship, the person enters into a subsidized guardianship agreement under sub. (2) with the county department or department.

5. Prior to the person entering into the subsidized guardianship agreement, the county department or department conducts a background investigation under s. 48.685 of the person and any nonclient resident, as defined in s. 48.685 (1) (bm), of the home of the person and determines that those individuals meet the requirements specified in s. 48.685. The county department or department shall provide the department of health services with information about each person who is denied monthly subsidized guardianship payments or permission to reside in the home of a person receiving those payments for a reason specified in s. 48.685 (4m) (a) 1. to 5. or (b) 1. to 5.

6. Any order under s. 48.345, 48.357, 48.363, 48.365, 938.345, 938.357, 938.363, or 938.365 placing the child, or continuing the placement of the child, outside of the

child's home has been terminated, or any proceeding in which the child has been adjudged to be in need of protection or services specified in s. 48.977 (2) (a) has been dismissed, as provided in s. 48.977 (3r) (b).

7. If the county department or department knows or has reason to know that the child is an Indian child, the county department or department provides notice of the Indian child's placement in the home of the person to the Indian child's parent, Indian custodian, and tribe and determines that the home of the person complies with the order of placement preference under s. 48.028 (7) (b) or, if applicable, s. 48.028 (7) (c), unless the county department or department finds good cause, as described in s. 48.028 (7) (e), for departing from that order.

SECTION 7. 48.623 (7) (e) of the statutes is created to read:

48.623 (7) (e) Rules governing the payment of monthly subsidized guardianship payments to a successor guardian of a child.

SECTION 8. 48.685 (1) (ag) 1. b. of the statutes is amended to read:

48.685 (1) (ag) 1. b. A person who has, or is seeking, a license, certification or contract to operate an entity ~~or~~, who is receiving, or is seeking, payment under s. 48.623 (6) (am) for operating an entity, or who is seeking payment under s. 48.623 (6) (bm) for operating an entity.

SECTION 9. 48.685 (1) (b) of the statutes is amended to read:

48.685 (1) (b) "Entity" means a child welfare agency that is licensed under s. 48.60 to provide care and maintenance for children, to place children for adoption, or to license foster homes; a foster home that is licensed under s. 48.62; an interim caretaker to whom subsidized guardianship payments are made under s. 48.623 (6); a person who is proposed to be named as a successor guardian in a successor guardianship agreement under s. 48.623 (2); a group home that is licensed under s. 48.625; a shelter care facility that is licensed under s. 938.22; a child care center that is licensed under s. 48.65 or established or contracted for under s. 120.13 (14); a child care provider that is certified under s. 48.651; an organization that facilitates delegations of the care and custody of children under s. 48.979; or a temporary employment agency that provides caregivers to another entity.

SECTION 10. 48.685 (2) (am) 5. of the statutes is amended to read:

48.685 (2) (am) 5. Information maintained by the department of health services under this section and under ss. 48.623 (6) ~~(b)~~ (am) 2. and (bm) 5., 48.651 (2m), 48.75 (1m), 48.979 (1) (b), and 120.13 (14) regarding any denial to the person of a license, continuation or renewal of a license, certification, or a contract to operate an entity, or of payments under s. 48.623 (6) for operating an entity, for a reason specified in sub. (4m) (a) 1. to 5. and regarding any denial to the person of employment at, a contract with, or permission to reside at an entity or of

permission to reside with a caregiver specified in sub. (1) (ag) 1. am. for a reason specified in sub. (4m) (b) 1. to 5. If the information obtained under this subdivision indicates that the person has been denied a license, continuation or renewal of a license, certification, a contract, payments, employment, or permission to reside as described in this subdivision, the department, a county department, an agency contracted with under s. 48.651 (2), a child welfare agency, or a school board need not obtain the information specified in subs. 1. to 4.

SECTION 11. 48.685 (2) (b) 1. e. of the statutes is amended to read:

48.685 (2) (b) 1. e. Information maintained by the department of health services under this section and under ss. 48.623 (6) ~~(b)~~ (am) 2. and (bm) 5., 48.651 (2m), 48.75 (1m), 48.979 (1) (b), and 120.13 (14) regarding any denial to the person of a license, continuation or renewal of a license, certification, or a contract to operate an entity, or of payments under s. 48.623 (6) for operating an entity, for a reason specified in sub. (4m) (a) 1. to 5. and regarding any denial to the person of employment at, a contract with, or permission to reside at an entity or of permission to reside with a caregiver specified in sub. (1) (ag) 1. am. for a reason specified in sub. (4m) (b) 1. to 5. If the information obtained under this subd. 1. e. indicates that the person has been denied a license, continuation or renewal of a license, certification, a contract, payments, employment, or permission to reside as described in this subd. 1. e., the entity need not obtain the information specified in subd. 1. a. to d.

SECTION 12. 48.685 (3) (a) of the statutes is amended to read:

48.685 (3) (a) Subject to par. (am), every 4 years or at any time within that period that the department, a county department, or a child welfare agency considers appropriate, the department, county department, or child welfare agency shall request the information specified in sub. (2) (am) 1. to 5. for all caregivers specified in sub. (1) (ag) 1. b. who are licensed, certified, or contracted to operate an entity, or who are receiving payments under s. 48.623 (6) (am) for operating an entity, and for all persons who are nonclient residents of such a caregiver.

SECTION 13. 48.685 (4m) (a) (intro.) of the statutes is amended to read:

48.685 (4m) (a) (intro.) Notwithstanding s. 111.335, and except as provided in par. (ad) and sub. (5), the department may not license, or continue or renew the license of, a person to operate an entity, the department in a county having a population of ~~500,000~~ 750,000 or more, a county department, or an agency contracted with under s. 48.651 (2) may not certify a child care provider under s. 48.651, a county department or a child welfare agency may not license, or renew the license of, a foster home under s. 48.62, the department in a county having a population of 750,000 or more or a county department may not provide subsidized guardianship payments to an

interim caretaker under s. 48.623 (6) (am) or to a person seeking those payments as a successor guardian under s. 48.623 (6) (bm), and a school board may not contract with a person under s. 120.13 (14), if the department, county department, contracted agency, child welfare agency, or school board knows or should have known any of the following:

SECTION 14. 48.685 (4m) (ad) of the statutes is amended to read:

48.685 (4m) (ad) The department, a county department, or a child welfare agency may license a foster home under s. 48.62; the department may license a child care center under s. 48.65; the department in a county having a population of ~~500,000~~ 750,000 or more, a county department, or an agency contracted with under s. 48.651 (2) may certify a child care provider under s. 48.651; the department in a county having a population of 750,000 or more or a county department may provide subsidized guardianship payments to an interim caretaker under s. 48.623 (6) (am) or to a person seeking those payments as a successor guardian under s. 48.623 (6) (bm); and a school board may contract with a person under s. 120.13 (14), conditioned on the receipt of the information specified in sub. (2) (am) and (ar) indicating that the person is not ineligible to be licensed, certified, provided payments, or contracted with for a reason specified in par. (a) 1. to 5.

SECTION 15. 48.685 (5) (bm) (intro.) of the statutes is amended to read:

48.685 (5) (bm) (intro.) For purposes of licensing a foster home for the placement of a child on whose behalf foster care maintenance payments under s. 48.62 (4) will be provided or of providing subsidized guardianship payments to an interim caretaker under s. 48.623 (6) (am) or to a person seeking those payments as a successor guardian under s. 48.623 (6) (bm), no person who has been convicted of any of the following offenses may be permitted to demonstrate that he or she has been rehabilitated:

SECTION 16. 48.977 (3r) of the statutes is renumbered 48.977 (3r) (a).

SECTION 17. 48.977 (3r) (a) (title) of the statutes is created to read:

48.977 (3r) (a) (title) *Guardian*.

SECTION 18. 48.977 (3r) (b) of the statutes is created to read:

48.977 (3r) (b) *Successor guardian*. Subsidized guardianship payments under s. 48.623 (6) (bm) may not be made to a successor guardian of a child unless the court makes a finding confirming that the successor guardian is named as a prospective successor guardian of the child in a subsidized guardianship agreement or amended subsidized guardianship agreement under s. 48.623 (2) that was entered into before the death or incapacity of the guardian and that the conditions specified in s. 48.623 (6) (bm) have been met, appoints the successor guardian to assume the duty and authority of guardianship as pro-

vided in sub. (5m), and either terminates any order specified in sub. (2) (a) or dismisses any proceeding in which the child has been adjudicated in need of protection or services as specified in sub. (2) (a). If the court makes that finding and appointment and either terminates such an order or dismisses such a proceeding, the county department or, as provided in s. 48.623 (3) (a), the department shall provide monthly subsidized guardianship payments to the successor guardian under s. 48.623 (6) (bm).

SECTION 19. 48.977 (4) (b) 2. of the statutes is amended to read:

48.977 (4) (b) 2. The names and addresses of the child's parent or parents, guardian, and legal custodian, the person nominated as the guardian of the child in the petition, and any person nominated as a successor guardian of the child in the petition.

SECTION 20. 48.977 (4) (c) 1. gm. of the statutes is created to read:

48.977 (4) (c) 1. gm. Any person nominated as a successor guardian of the child in the petition.

SECTION 21. 48.977 (5m) of the statutes is created to read:

48.977 (5m) SUCCESSOR GUARDIAN. (a) *Petition.* If a guardian dies or becomes incapacitated, any person authorized to file a petition under sub. (4) (a) may petition for the appointment of a person named as a prospective successor guardian of the child in a subsidized guardianship agreement or amended subsidized guardianship agreement under s. 48.623 (2) entered into before the death or incapacity of the guardian as successor guardian to assume the duty and authority of guardian. The petition shall be heard in the same manner and subject to the same requirements as provided under this section for an original appointment of a guardian. The petitioner shall include in the petition a statement that the person was so named as a prospective successor guardian of the child and that the conditions specified in s. 48.623 (6) (bm) have been met and a request for the court to include in the

court's findings a finding confirming that the person was so named and that those conditions have been met.

(b) *Appointment.* After hearing, the court may appoint a person named in a petition under par. (a) as successor guardian to assume the duty and authority of guardianship. The court shall include in the court's findings a finding confirming that the person was named as a prospective successor guardian as stated in the petition and that the conditions specified in s. 48.623 (6) (bm) have been met. The person appointed as successor guardian shall receive a copy of the initial guardianship order, any court order revising that initial order, and the order appointing the person as successor guardian.

SECTION 22. Nonstatutory provisions.

(1) SUBSIDIZED GUARDIANSHIP PAYMENTS TO SUCCESSOR GUARDIANS; RULES. Using the procedure under section 227.24 of the statutes, the department of children and families may promulgate the rules required under section 48.623 (7) (e) of the statutes, as created by this act, for the period before the effective date of the permanent rules promulgated under section 48.623 (7) (e) of the statutes, as created by this act, but not to exceed the period authorized under section 227.24 (1) (c) of the statutes, subject to extension under section 227.24 (2) of the statutes. Notwithstanding section 227.24 (1) (a), (2) (b), and (3) of the statutes, the department of children and families is not required to provide evidence that promulgating a rule under this subsection as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated under this subsection.

SECTION 23. Effective dates. This act takes effect on the first day of the 4th month beginning after publication, except as follows:

(1) EMERGENCY RULES GOVERNING SUBSIDIZED GUARDIANSHIP PAYMENTS TO SUCCESSOR GUARDIANS. SECTION 22 of this act takes effect on the day after publication.