



State of Wisconsin
2021 - 2022 LEGISLATURE

LRBs0353/1
EAW:amn&cjs

**SENATE SUBSTITUTE AMENDMENT 1,
TO SENATE BILL 686**

February 2, 2022 - Offered by Senator JACQUE.

- 1 **AN ACT** *to amend* 48.92 (2); and *to create* 48.43 (2) (c) and 48.905 of the statutes;
2 **relating to:** postadoption contact 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 a legally-enforceable 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 postadoption contact agreement may control the types and frequency of contact that the parties agree to. A court in an adoption proceeding 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, and enforced. Under the bill, no adoption may be conditioned on the court's approval of or a party's compliance with a postadoption contact agreement.

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

1 **SECTION 1.** 48.43 (2) (c) of the statutes is created to read:

2 48.43 (2) (c) A court may approve a postadoption contact agreement entered
3 into under s. 48.905.

4 **SECTION 2.** 48.905 of the statutes is created to read:

5 **48.905 Postadoption contact agreement. (1) PARTIES.** A proposed adoptive
6 parent may enter into a postadoption contact agreement with a birth parent of the
7 child who is the subject of the adoption or with another former relative with whom
8 the child has a substantial relationship.

9 **(2) TERMS.** A postadoption contact agreement shall contain all of the following
10 provisions:

11 (a) An acknowledgment by the birth parent or former relative that failure to
12 comply with the terms of the agreement is not grounds to revoke the termination of
13 the birth parent's rights or the adoption. An acknowledgment under this paragraph
14 is not required if s. 48.028 and the federal Indian Child Welfare Act, 25 USC 1901
15 to 1963, apply to the proceeding.

16 (b) A statement by each party to the agreement that the agreement was entered
17 into voluntarily, that the terms of the agreement are understood, that no promises

1 or threats were made to coerce a party to enter into the agreement, and that no
2 representations have been relied upon other than those contained in the agreement.

3 (c) An acknowledgment that if a dispute arises about fulfillment of the terms
4 of the agreement, the parties shall participate, or attempt to participate, in good
5 faith, in mediation or an alternative dispute resolution process, with the mediator
6 or arbitrator to be selected by mutual agreement of the parties or, if the parties
7 cannot agree, the court.

8 (d) A description of the postadoption contact and frequency of contact agreed
9 to by the proposed adoptive parent. Contact may include any of the following:

10 1. Sharing of information about the child between the adoptive parent and the
11 birth parent or former relative.

12 2. Sharing of the birth parent's or former relative's medical history.

13 3. Written, oral, or electronic communication between the child and the birth
14 parent or former relative.

15 4. Visitation by the birth parent or former relative with the child under
16 specified conditions or conditions that may be set by the proposed adoptive parent
17 at the time of visitation.

18 **(3) APPROVAL.** In a proceeding to grant an adoption, a court may approve a
19 postadoption contact agreement if it finds all of the following:

20 (a) The agreement contains all of the provisions specified in sub. (2), and the
21 court is satisfied that the proposed adoptive parent and the birth parent or former
22 relative understand those provisions.

23 (b) The agreement is signed by the proposed adoptive parent and the birth
24 parent or former relative.

1 (c) In the case of an Indian child, the Indian child's tribe has submitted a
2 favorable recommendation for approval of the postadoption contact agreement.

3 (d) The court determines that the birth parent or former relative will not
4 undermine the proposed adoptive parent's relationship with the child.

5 (e) The court determines that the birth parent or former relative will not act
6 in a manner that is contrary to the proposed adoptive parent's parenting decisions
7 that are related to the child's physical, emotional, educational, or spiritual welfare.

8 (f) The court determines by a preponderance of the evidence that approval of
9 the agreement is in the best interests of the child. In considering the best interests
10 of the child under this section, the court may consider all of the following:

11 1. Whether the child has a substantial relationship with the birth parent or
12 former relative, and whether it would be harmful to the child not to preserve that
13 relationship.

14 2. The needs of the child and how those needs would be affected by postadoption
15 contact with the birth parent or former relative as provided under the agreement.

16 3. The wishes of the child, which may be communicated by the child, or through
17 the child's guardian ad litem or other appropriate professional.

18 4. Any other factor that the court determines is relevant to the best interests
19 of the child.

20 **(4) STIPULATED MODIFICATION.** At any time after approval of an agreement by
21 a court, the parties may agree to modify the postadoption contact agreement. The
22 modified agreement shall be in writing, signed by the parties, and submitted to the
23 court. The court may approve the modified agreement, without a hearing, if it finds
24 by a preponderance of the evidence that modification of the agreement is in the best
25 interests of the child.

1 **(5) PETITION TO MODIFY OR TERMINATE.** At any time after approval of an
2 agreement by a court, an adoptive parent may petition the court for modification or
3 termination of the postadoption contact agreement. The court shall schedule a
4 hearing on the petition, with notice to the adoptive parent, birth parent or former
5 relative, and, in the case of an Indian child, the Indian child's tribe. The court may
6 modify or terminate the agreement, after a hearing, if it finds by a preponderance
7 of the evidence that modification or termination of the agreement is in the best
8 interests of the child and that there has been a substantial change in circumstances
9 since the agreement was approved by the court.

10 **(6) ENFORCEMENT.** (a) A party may petition the court for enforcement of the
11 terms of the agreement after attempting mediation or an alternative dispute
12 resolution process in good faith to obtain specific performance of the terms of the
13 agreement. The court shall schedule a hearing on the petition, with notice to the
14 adoptive parent, birth parent or former relative, and, in the case of an Indian child,
15 the Indian child's tribe. The court may order specific performance of the terms of the
16 agreement, after a hearing, if it finds by a preponderance of the evidence that
17 enforcement is in the best interests of the child. In first attempting mediation or an
18 alternative dispute resolution process, the mediator or arbitrator shall be selected
19 by mutual agreement of the parties. If the parties cannot agree on a mediator or
20 arbitrator, the court shall appoint the mediator or arbitrator within 30 days of a
21 request by any party. The mediator or arbitrator's fees shall be paid equally by the
22 adoptive parent and birth parent or former relative unless agreed otherwise in the
23 mediation or ordered otherwise by the arbitrator or the court.

24 (b) An agreement under this section is not enforceable for any period during
25 which the child has been placed outside of the adoptive parent's home under ch. 48

1 or 938, or during which the adoptive parent is denied physical placement with the
2 child in a court order under ch. 767.

3 **(7) LIMITATIONS.** (a) No adoption may be conditioned on the court's approval
4 of or a party's compliance with a postadoption contact agreement.

5 (b) An agreement under this section does not affect a tribal right under s.
6 48.028 or under the federal Indian Child Welfare Act, 25 USC 1901 to 1963, and may
7 not impair a cultural contact agreement or other agreement made between the
8 adoptive parents of a child and an Indian tribe.

9 **SECTION 3.** 48.92 (2) of the statutes is amended to read:

10 48.92 (2) After the order of adoption is entered the relationship of parent and
11 child between the adopted person and the adopted person's birth parents and the
12 relationship between the adopted person and all persons whose relationship to the
13 adopted person is derived through those birth parents shall be completely altered
14 and all the rights, duties, and other legal consequences of those relationships shall
15 cease to exist, unless the birth parent is the spouse of the adoptive parent, in which
16 case those relationships shall be completely altered and those rights, duties, and
17 other legal consequences shall cease to exist only with respect to the birth parent who
18 is not the spouse of the adoptive parent and all persons whose relationship to the
19 adopted person is derived through that birth parent. Notwithstanding the extinction
20 of all parental rights under this subsection, a court may approve a postadoption
21 contact agreement under s. 48.905 or order reasonable visitation under s. 48.925.

22 (END)