

## CHAPTER 259

## ADOPTION; CHANGE OF NAME

**259.01 ADOPTION; PETITION AND CONSENT.**

**HISTORY.** 1876 c. 91 s. 1; G.S. 1878 c. 124 s. 26; G.S. 1894 s. 8016; 1897 c. 214 s. 1; R.L. 1905 s. 3612; 1909 c. 81 s. 1; G.S. 1913 s. 7151; 1917 c. 222 s. 1; G.S. 1923 s. 8624; M.S. 1927 s. 8624.

An adopted child has the rights of a natural child as next of kin for whose benefit an action for wrongful death may be brought. *McKeown v Argetsinger*, 202 M 595, 279 NW 402.

Petition for adoption stating that the residence of child's mother, "so far as known to petitioner" was in Chicago, Illinois, was sufficient compliance. *Youmans v Youmans*, 218 M 172, 15 NW(2d) 537.

The statute does not require either the child or its natural parents to be residents of this state in proceedings for adoption. OAG March 19, 1925.

Wife need not join in the petition of her husband to adopt her illegitimate child. The petition of the husband may show that on a certain day he married Mary Doe, now his wife, who is the mother of the child and whose consent is attached to this petition. OAG June 4, 1926.

Adoption; interpretation of "next of kin", "children", and "parents" under wrongful death act; status of adopted child. 23 MLR 83.

**259.02 INVESTIGATION; PROBATIONARY RESIDENCE.**

**HISTORY.** 1917 c. 222 s. 1; G.S. 1923 s. 8625; 1927 c. 170 s. 1; M.S. 1927 s. 8625.

The district court has the power in an adoption proceeding to waive the requirements of Section 259.02 for notice of the proceedings to the director of social welfare, investigation and report by that official, and the six months waiting period; and may render a judgment of adoption of a child residing in this state and having a domicile in another state. *In re Pratt*, 219 M 414, 18 NW(2d) 148.

A decree of adoption by the district court is valid, even though the court did not notify the director of social welfare of the proceeding. 1918 OAG 3, Aug. 19, 1918.

The statutory provision authorizing the court to waive investigation by the board and the period of residence does not affect the duty of the court to give the board notice. Section 259.02 imposes a mandatory duty upon the court to notify the state agency. 1936 OAG 13, Feb. 28, 1936 (840b-3).

**259.03 CONSENT, WHEN NECESSARY.**

**HISTORY.** 1876 c. 91 ss. 2, 3; G.S. 1878 c. 124 ss. 27, 28; G.S. 1889 c. 127 s. 1; 1894 ss. 8017, 8018; 1897 c. 214 ss. 1, 2; R.L. 1905 s. 3613; G.S. 1913 s. 7153; 1917 c. 222 s. 1; G.S. 1923 s. 8626; M.S. 1927 s. 8626.

The consent of the mother is essential to commit an illegitimate child to care of the director of social welfare. *State ex rel v Juvenile Court*, 147 M 222, 179 NW 1006.

An illegitimate child cannot be adopted without the mother's consent. The mother's consent is revocable at any time before legal adoption. *State ex rel Beardsley*, 149 M 435, 183 NW 956.

Where a child has a guardian of the person appointed by the probate court, the consent of such guardian is necessary to permit an adoption by proceedings in the district court. *In re Adoption of Mair*, 184 M 29, 237 NW 596.

Decree of adoption reversed on lack of evidence sustaining finding that infant had been abandoned by mother, there being no consent to adoption by either

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parent. Consent by parent may be withdrawn at any time before adoption. Possible pecuniary advantage to child is immaterial as against natural rights of parents. In re Adoption of Anderson, 189 M 85, 248 NW 657.

Where the state agency unreasonably withholds its consent to the adoption of a child under its control, the district court may grant the petition for adoption notwithstanding the refusal of the board to consent. Adoption of Kure, 197 M 234, 266 NW 746.

Where the guardian of a child petitions to adopt such child, the consent of the director of social welfare should be obtained. OAG May 21, 1929.

The jurisdiction of a probate court to appoint a guardian for the person of a child is not impaired by a petition to adopt such child filed in the district court. Each court is exclusive in its field. OAG May 16, 1931.

If the unmarried minor mother is of sufficient age and discretion to fully realize the consequences of her consent, the fact that she is a minor would not incapacitate her nor render her consent unnecessary. 1940 OAG 228, April 11, 1940 (840b-2).

Right of natural parents as against third parties; best interests of child. 22 MLR 900.

## 259.04 HOSPITAL MAY CONSENT TO ADOPTION.

HISTORY. 1897 c. 143; R.L. 1905 s. 3619; G.S. 1913 s. 7159; 1917 c. 222 s. 1; G.S. 1923 s. 8627; M.S. 1927 s. 8627.

## 259.05 NOTICE OF HEARING.

HISTORY. 1876 c. 91 s. 4; G.S. 1878 c. 124 s. 29; G.S. 1894 s. 8019; 1897 c. 214 s. 3; R.L. 1905 s. 3614; G.S. 1913 s. 7154; 1917 c. 222 s. 1; G.S. 1923 s. 8628; 1927 c. 170 s. 2; M.S. 1927 s. 8628; 1941 c. 151.

Decree should be opened on showing that notice was not given to the grandparents of the orphan. In re Adoption of Fay, 147 M 472, 180 NW 533.

Three weeks' published notice is mandatory if the child's parents are dead or have abandoned him and he is without a guardian in the state. 1918 OAG 4, July 10, 1918.

Published notice is required where one parent has abandoned although the other may consent. OAG Oct. 21, 1927.

## 259.06 DECREE; CHANGE OF NAME.

HISTORY. 1876 c. 91 s. 5; G.S. 1878 c. 124 s. 30; G.S. 1894 s. 8020; 1895 c. 44; R.L. 1905 s. 3615; G.S. 1913 s. 7155; 1917 c. 222 s. 1; G.S. 1923 s. 8629; 1927 c. 170 s. 3; M.S. 1927 s. 8629.

A decree of a court of general jurisdiction cannot be attacked collaterally unless upon the face of the record want of jurisdiction is disclosed. The contrary appears here for the decree itself recites consent. The law does not require consent to be filed or found by the court. All jurisdictional requisites to rendering a decree of a court of competent jurisdiction are conclusively presumed, unless the contrary affirmatively appears from the face of the record. In re Estate of Sutton, 161 M. 426, 201 NW 925.

An Illinois decree is not void because of the fact that it changed the name of the child, without any wish to that effect appearing in the petition. Youman v Youman, 218 M 172, 15 NW(2d) 539.

Validity of adoption proceedings in a foreign country by residents of Minnesota held questionable. 1922 OAG 22, Sept. 8, 1921.

Fees for copies to the director of social welfare under Laws 1927, Chapter 170, not to be paid by the state. OAG June 1, 1927.

A decree of adoption obtained by fraud may be set aside under the provisions of section 548.14. OAG June 15, 1927.

**259.07 STATUS OF ADOPTED CHILD.**

**HISTORY.** 1876 c. 91 ss. 6, 7, 9, 10; G.S. 1878 c. 124 ss. 31, 32; 1885 c. 75 s. 1; G.S. 1878 Vol. 2 (1888 Supp.) c. 124 ss. 32a, 32b; 1891 c. 96 s. 1; G.S. 1894 ss. 8021 to 8024; 1895 c. 221; R.L. 1905 s. 3616; G.S. 1913 s. 7156; 1917 c. 222 s. 1; G.S. 1923 s. 8630; M.S. 1927 s. 8630.

When the adoptive parents obtain the decree asked for, and take the child into the family and treat it as their own, they and their heirs and personal representatives are estopped from asserting that the child was not legally adopted. *Kenning v. Reichel*, 148 M 433, 182 NW 517.

An adopted child retains the right to inherit from his natural parents as well as his adopted parents. *Roberts v Roberts*, 160 M 140, 199 NW 581.

An adopted child inherits by right of representation from relatives of adoptive parents. A second adoption does not change the status of the adopted child as heir of the first adoptive parents. *In re Estate of Sutton*, 161 M 426, 201 NW 925.

Adoption was unknown to the common law. Prior to the enactment of Laws 1876, Chapter 91, there was in this state no statutory procedure for adopting children, and by section 6 of said chapter it was declared that the adoption itself shall not constitute the child heir of the adoptive parents. Laws 1891, Chapter 96, gave adopted persons the right of inheritance. *In re Estate of Hack*, 166 M 35, 207 NW 17.

When the name of an adopted child is omitted from the will of the parent the presumption is that the omission was not intentional and was occasioned by accident or mistake. *Bakke v Bakke*, 175 M 193, 220 NW 601.

An oral contract to adopt, when executed, creates the same obligations and duties as an adoption legally executed; and in the instant case there is sufficient evidence to support the trial court's findings that there was an executed contract to adopt respondent. *Estate of Firlie*, 197 M 2, 265 NW 848; *Estate of Norman*, 209 M 23, 295 NW 63.

An adopted child may inherit as "lawful issue". *Trust Under Will of Holden*, 207 M 211, 291 NW 104.

Rights of inheritance of an adopted child, in the case of realty, is governed by the law of the place where the realty is located, and in the case of personality by the law of the place where decedent was domiciled. *Youmans v Youmans*, 218 M 172, 15 NW(2d) 537.

Comparative laws of several states. *Wyeth v Merchant*, 34 F.Supp. 788.

The fact that section 259.07 confers all the rights upon an adopted child that are given to a legitimate child does not give him the rights of a citizen in so far as voting is concerned. 1936 OAG 1, Nov. 5, 1936 (68f).

Status of adopted child. 23 MLR 83.

**259.08 GROUNDS FOR ANNULMENT.**

**HISTORY.** 1917 c. 222; s. 1; G.S. 1923 s. 8631; M.S. 1927 s. 8631.

**259.09 RECORDS OF ADOPTION; LIMITATION OF RIGHT TO INSPECT.**

**HISTORY.** 1917 c. 222 s. 1; G.S. 1923 s. 8632; M.S. 1927 s. 8632; 1945 c. 358 s. 1.

**259.10 CHANGE OF NAME; PROCEDURE; PENALTY.**

**HISTORY.** 1872 c. 35 ss. 1, 2; 1873 c. 71 s. 1; G.S. 1878 c. 124 ss. 33, 34; 1887 c. 177 ss. 1 to 3; G.S. 1878 Vol. 2 (1888 Supp.) c. 124 ss. 35a, 35b, 35c; G.S. 1894 ss. 8025 to 8029; R.L. 1905 s. 3620; G.S. 1913 s. 7160; 1917 c. 222 s. 1; G.S. 1923 s. 8633; M.S. 1927 s. 8633; 1943 c. 28, s. 1; 1943 c. 292 s. 1.

**259.11 ORDER; FILING COPIES.**

**HISTORY.** 1872 c. 35 s. 3; G.S. 1878 c. 124 s. 35; 1887 c. 177 s. 2; G.S. 1878 Vol. 2 (1888 Supp.) c. 124 s. 35b; G.S. 1894 ss. 8028, 8030; R.L. 1905 s. 3621; G.S. 1913 s. 7161; 1917 c. 222 s. 1; G.S. 1923 s. 8634; M.S. 1927 s. 8634; 1941 c. 178; 1943 c. 28 s. 2.