

## CHAPTER 259

## ADOPTION; CHANGE OF NAME

**259.01 ADOPTION; PETITION AND CONSENT.**

The probate court has jurisdiction under section 525.54 to appoint a guardian for an infant and the district court, under section 259.06, to render a judgment of adoption of a child residing in the state, and having its domicile in another state. A decree of adoption rendered by a court of another state is void for lack of jurisdiction when the child was not physically present in that state and was domiciled in this state. *Gale v Lee*, 219 M 414, 18 NW(2d) 147.

Jurisdictional and social aspects of adoption. 11 MLR 605.

Specific performance of preadoption contract in derogation of adoptive parents' rights. 15 MLR 719.

Specific performance of oral contract to adopt. 16 MLR 578.

Status of adopted child as it applies to death by wrongful act. 23 MLR 83.

Domicile of illegitimate child; the appointment of guardian and adoption in jurisdiction other than that of the domicile of the deceased mother. 30 MLR 397.

**259.02 INVESTIGATION; PROBATIONARY RESIDENCE.**

Amended by L. 1947, c. 399, s. 1.

Adoption was practiced under the civil law but was unknown to the common law of England. In Minnesota the right of adoption exists only by virtue of statutory authority. Adoption is an act by which relations of paternity and filiation are recognized as legally existing between persons not so related by nature. *Peterson v James*, 223 M 33, 27 NW 656.

While the rights of a child's natural parents should be carefully guarded, such rights are subject to public regulation, and if these come into conflict with the paramount interests of the child it lies within the state's power by appropriate legislation to separate children from their parents when their welfare and that of the public so requires. *Peterson v James*, 223 M 33, 27 NW(2d) 656.

Circumstances may be such that the refusal of the child's parent to consent to adoption of the child is not a bar to an adoption favorable to the child. *Peterson v James*, 223 M 33, 27 NW(2d) 656.

**259.03 CONSENT, WHEN NECESSARY.**

Amended by L. 1947 c. 400 s. 1.

A minor child's domicile follows that of his divorced parent to whom his custody was awarded by the decree of divorce and a judgment of a court of this state decreeing the adoption of such child by his stepfather does not impair the full faith and credit of the divorce decree entered in the court of another state. *Buckman v Houghton*, 202 M 460, 278 NW 908.

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ADOPTION; CHANGE OF NAME 259.07

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## 259.06 DECREE; CHANGE OF NAME.

Where a decree of adoption of an orphan was entered without giving notice to the child's maternal grandparents the refusal of the trial court to set aside the decree on the application of the grandparents on the sole ground that there was want of jurisdiction was error. The trial court should have taken jurisdiction and exercised its discretion in the matter. *Adoption of Fay*, 147 M 472, 180 NW 533.

The presumptive heirs of the adoptive parents cannot complain because they may be deprived of rights of inheritance by the adoption of a child. *Kenning v Reichel*, 148 M 433, 182 NW 517.

A second adoption under our statute does not change the status of the adoptive child as heir of the first adoptive parents. By virtue of the adoption, the child also inherits by right of representation from relatives of the adoptive parents. *Estate of Sutton*, 161 M 426, 201 NW 925.

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An adopted child, given all the rights of a natural child by statute, has the rights of a natural child as next of kin for whose benefit an action for wrongful death may be brought. *Distinguishing Watson v St. P. City Ry.* 70 M 514, 73 NW 400. *McKeown v Argetsinger*, 202 M 595, 279 NW 402.

A decree of adoption rendered by a court of another state is void for lack of jurisdiction where the child was not physically present in that state and was domiciled in this state. The district court has jurisdiction to render a judgment of adoption of a child residing in this state and having its domicile in another state. *Gale v Lee*, 219 M 414, 18 NW(2d) 147.

## 259.07 STATUS OF ADOPTED CHILD.

In distinguishing the case of *Watson v St. Paul Street Ry.* 70 M 514, 73 NW 400, it is held that although a statute cannot abrogate the laws of nature by providing that those who are not children of the blood shall be so in fact, it may provide that persons standing in the relation of parent and child, or parent and adoptive child, shall have all the rights and duties growing out of and incident to that relation; and the right of inheritance between parent and adoptive child is reciprocal. *McKeown v Argetsinger*, 202 M 595, 279 NW 402.

Section 259.07 applies prospectively and retrospectively. One claiming right of inheritance as an adopted child by virtue of an oral contract must establish said contract by proof that is clear, cogent, and convincing. *Olson v Tubbs*, 209 M 19; 295 NW 63.

Where the court orders the father to pay \$10.00 per month for support of his illegitimate child and, upon the father's induction into the army, the welfare board obtains an allowance under 37 USCA, ss. 201 et seq., military paternity proceedings of \$38.00 per month; upon adoption of the child by another and return of the father from military service the \$733 in the hands of the welfare board cannot be refunded to the father but inures to the benefit of the child. OAG May 29, 1947 (310).

Rights of adopted child under trust deeds. 2 MLR 300.

Right of inheritance in case of second adoption. 2 MLR 301.

Right of natural and adoptive parent to inherit in case of death of adoptive child. 6 MLR 65.

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Right of adoptive parents as against natural parents tested by habeas corpus proceedings. 7 MLR 417.

Recovery of damages by foster parent for abduction of adopted child. 15 MLR 125.

Inheritance from adopted children. 18 MLR 67.

Status of adopted child under wrongful death statutes. 23 MLR 83.

Adoption in another state as affecting descent and distribution of decedent's estate. 24 MLR 268.

Effect of second adoption on child's right to inherit from first adoptive parents. 26 MLR 114.