Sixty-ninth
Legislative Assembly
of North Dakota

SENATE BILL NO. 2284

Introduced by

Senators Hogan, Weber, Van Oosting

Representatives Dobervich, McLeod, S. Olson

A BILL for an Act to amend and reenact sections 14-15-16 and 23-02.1-18 of the North Dakota Century Code, relating to disclosure of information in adoption proceedings and access to birth records.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 14-15-16 of the North Dakota Century Code is amended and reenacted as follows:

14-15-16. Hearings and records in adoption proceedings - Confidential nature - Disclosure of identifying and nonidentifying information - Retroactive operation.

1. The provisions of this section supersede any other law regarding public hearings and records.
2. For purposes of this section~~:~~
   ~~a.~~ ~~"Genetic~~, "genetic parent" includes a man presumed or adjudicated to be the adopted individual's father under chapter 14-20 and an alleged father when so indicated in the files of the child-placing agency or the department, but only if there exists in those files information that corroborates the allegation of paternity, including the existence of communications between the alleged father and the child-placing agency, or between the alleged father and the genetic mother or members of her family, or such other corroborative information as may be permitted by rules adopted by the department.
   ~~b. "Notify" means to make a personal and confidential contact with the individual to whom a disclosure of identifying information has been requested. The personal and confidential contact must be made by an employee or agent of the child-placing agency that processed the adoption or by some other licensed child-placing agency designated by the individual initiating the search.~~

3. ~~All hearings~~A hearing held in ~~actions~~an action under this chapter must be held in closed court without admittance of any individual other than an essential ~~officers~~officer of the court, ~~the parties~~a party, ~~their witnesses~~a witness, counsel, ~~individuals~~an individual who ~~have~~has not previously consented to the adoption but ~~are~~is required to consent, ~~the parents~~a parent of an adult to be adopted, and ~~representatives of the agencies~~an agency representative present to perform ~~their~~ official duties. Upon a showing of good cause by the petitioner, the court may prohibit ~~the parents~~a parent of an adult to be adopted from attending the adoption hearings and proceedings. A parent of an adult to be adopted who is prohibited by the court from attending the proceedings may submit relevant testimony or information regarding the petition to the court in writing.
4. All papers; records; and identifying and nonidentifying information relating to an adopted individual, birth siblings, birth parents, or adoptive parents, whether part of the permanent record of the court or of a file in the department or in an agency are confidential and may be disclosed only in accordance with this section. Papers, records, and information directly pertaining to the adoption must be kept permanently by the department and agency.
5. Nonidentifying information, if known, concerning undisclosed genetic parents must be ~~furnished~~provided at a reasonable fee to:
   a. ~~The adoptive parents~~An adoptive parent at the time of adoptive placement or upon ~~their~~ written request;
   b. An adopted adult upon written request; or
   c. A birth parent upon written request.
6. The clerk of the appropriate district court, upon request and payment of the proper fee, shall ~~furnish~~provide a certified copy of the decree of adoption to the ~~adoptive parents, the~~:
   a. Adoptive parent or guardian of an adopted minor child, ~~or an adopted adult,~~ provided the decree does not disclose the identity of the genetic parents or the name of the adopted individual before the adoption action; and

b. Adopted adult, including disclosure of the identity of the genetic parents and the name of the adopted adult before the adoption action if such identifying information is included in the decree of adoption.

7. Before the child reaches adulthood, at the discretion of the child-placing agency~~,~~ and with due regard for confidentiality, exchanges of identifying or nonidentifying information may take place between the genetic parents, adoptive parents, and adopted child.
   a. Disclosure of a party's identifying information may not occur unless the party consents to disclosure.
   b. If one parent objects, the identifying information disclosed by the agency may only relate to the consenting parent or parents.
8. An adopted individual who is eighteen years of age or older may request the department to initiate the disclosure of information identifying the adopted individual's genetic parents or to initiate the disclosure of nonidentifying information not on file with the department or a child-placing agency.
9. An adopted individual who is eighteen years of age or older may request the department to initiate the disclosure of information identifying the adopted individual's adult genetic sibling.
10. A genetic parent of an adopted individual, after that individual has reached twenty-one years of age, may request the department to initiate the disclosure of information identifying that individual or to initiate the disclosure of nonidentifying information not on file with the department or a child-placing agency.
11. An adult genetic sibling of an adopted individual, after that individual has reached twenty-one years of age, may request the department to initiate disclosure of information identifying that individual.
12. An adult child of a deceased adopted individual may request the department to initiate the disclosure of information identifying the adopted individual's genetic parents or to initiate the disclosure of nonidentifying information not on file with the department or child-placing agency.
13. An adult child of an adopted individual who is still living may not request the department to initiate disclosure of information identifying the adopted individual's

genetic parents or to initiate the disclosure of nonidentifying information not on file with the department or child-placing agency.

14. The department shall, within ~~five working~~seven days ~~of~~after receipt of a request under subsection 8, 9, 10, 11, 12, or 13, notify in writing a child-placing agency having access to the requested information. If the department's records do not identify any child-placing agency having access to the requested information, the department, within ~~five working~~seven days after receipt of ~~the~~a request, shall so notify the requester in writing. The requester may designate a child-placing agency from a list of ~~such~~ agencies ~~furnished~~provided by the department, ask the department to designate an agency, or terminate the request.

15. Within ninety days after receiving notice of a request made under subsection 8, 9, 10, 11, 12, or 13, the child-placing agency shall ~~make~~:

a. Make complete and reasonable efforts to ~~notify the individual or individuals with respect to which a disclosure of identifying information has been requested. The child-placing agency must certify~~secure and compile the requested information;

b. Certify the results of its efforts to the department ~~within one hundred twenty days after receipt of the request~~; and

c. If applicable, include in the certification a statement of whether an adopted individual or a genetic sibling knows the identity of a living mutual genetic parent in accordance with subsection 17.

16. The child-placing agency may charge a reasonable fee to the requester for the cost of making a search pursuant to ~~the~~a request. ~~All communications under this subsection are confidential.~~ If the search is not completed within ninety days, additional time may be requested. Approval of this request must be given by the individual requesting the search.

~~16. The personal and confidential contact must be evidenced by an affidavit of notification executed by the individual who notified each genetic parent, adopted individual, or genetic sibling and certifying that each genetic parent, adopted individual, or genetic sibling contacted was given the following information:~~

~~a. The nature of the identifying information to which the agency has access.~~

~~b. The nature of any nonidentifying information requested.~~

c. The date of the request of the adopted individual, genetic parent, or genetic sibling.

d. The right of the genetic parent, adopted individual, or genetic sibling to file, authorize disclosure or refuse to authorize disclosure.

e. The effect of a failure of the genetic parent, adopted individual, or genetic sibling to either authorize disclosure or refuse to authorize disclosure.

17. An adopted individual, genetic parent, or genetic sibling, with respect to whom a disclosure of identifying information has been requested, may authorize disclosure, refuse to authorize disclosure, or take no action. If no action is taken in response to a request, the child-placing agency must treat that as a refusal to authorize disclosure, except that it does not preclude disclosure after the individual's death.

18. If the child-placing agency has been able to locate only one genetic parent who authorizes disclosure and the other genetic parent cannot be located, the identifying information must be disclosed to the adopted individual. The information disclosed by the agency may relate only to the consenting parent.

19. If the child-placing agency has located both genetic parents and only one genetic parent authorizes disclosure, the child-placing agency may not disclose identifying information regarding the consenting parties unless there is a court order authorizing the disclosure. Upon application to the court by the child-placing agency, the court shall issue an order authorizing disclosure of information identifying the consenting parties. The order must include any conditions the court determines sufficient to reasonably ensure the continued nondisclosure of information identifying the objecting genetic parent. Conditions placed on the disclosure may include a sworn statement by the consenting genetic parent to refrain from disclosing to the adopted individual any information identifying the objecting genetic parent.

20. The certification of the child-placing agency to the department must include:

a. A statement of whether it has been able to notify the individual about whom a disclosure of identifying information was requested and whether a notification was precluded by the death of the individual.

b. If a genetic sibling was to be notified at the request of an adopted individual, or if an adopted individual was to be notified at the request of a genetic sibling, a

~~statement of whether either individual knows the identity of any mutual genetic parent.~~

~~c. Assurances that:~~

~~(1) No disclosure of identifying information has been made with respect to any adopted individual, genetic parent, or genetic sibling who has not authorized the disclosure in writing unless the child-placing agency has verified that the individual has died leaving no unrevoked written refusal to authorize disclosure.~~

~~(2) Any disclosure of identifying information that might lawfully be made under this section was made within ten days after the date of receipt of written authorization or the date on which the agency verified that the individual had died.~~

~~d. Copies of any written authorization of disclosure or refusal to authorize disclosure.~~

~~e. A statement that the individual about whom disclosure of identifying information was requested has neither authorized nor refused to authorize disclosure at the time of the certification.~~

~~f. The date of each notification.~~

~~g. A copy of each affidavit of notification.~~

~~21.~~17. The child-placing agency, acting on the request of an adopted individual to disclose identifying information about a genetic sibling, or acting on the request of a genetic sibling to disclose identifying information about an adopted individual, must determine if either individual knows the identity of a living mutual genetic parent. If either individual knows the identity of a living mutual genetic parent, ~~no disclosure may be made unless that parent is first notified, in the manner provided for in subsection 13. The identifying information released may only relate to the consenting parties~~that information must be disclosed in accordance with subsection 15.

~~22.~~18. Upon application to the department by an adult adopted individual or the parent or guardian of a minor adopted child, the department may investigate or cause to be investigated facts necessary to determine the adopted individual's eligibility for enrollment as a member of an Indian tribe.

a. The department may inquire of any individual or agency, including a licensed child-placing agency in North Dakota, to assist in the investigation.

b. ~~All identifying information obtained by the department shall remain confidential.~~

~~c.~~ The bureau of Indian affairs or an Indian tribe may be provided sufficient information obtained from the investigation to determine the eligibility of the adopted individual for enrollment in an Indian tribe. Before the department's release of information to the bureau of Indian affairs or an Indian tribe, the department shall request written assurance from the bureau of Indian affairs or an Indian tribe that the information provided will remain confidential and will not be furnished to any unauthorized individual or agency.

~~d.~~c. The procedure used in contacting the genetic parents of the adopted child must be a personal and confidential contact. Any necessary contact must be made by an employee or agent of a licensed child-placing agency or the department. The information requested of the genetic parents must be limited to that information necessary to make a determination of the adopted individual's eligibility for enrollment in an Indian tribe.

~~e.~~d. The department or agency may charge a reasonable fee.

~~23.~~19. An individual may not be required to disclose the name or identity of either an adoptive parent or an adopted individual except:

a. In accordance with this section;

b. As authorized in writing by the adoptive parent or the adopted individual; or

c. Upon order of the court entered in a proceeding brought under subsection ~~24~~20.

~~24.~~20. An adopted individual, a genetic parent, a genetic sibling, or a guardian of any of those individuals may petition the district court for an order directing the disclosure of identifying information.

a. The petitioner shall state that efforts to secure the requested disclosure have been made under this section or are ~~forbidden~~prohibited under this section, that the petitioner has a significant need for the disclosure, and the nature of that need.

b. The petition ~~shall~~must name the department and any child-placing agency that has received a request under subsection 8, 9, 10, 11, 12, or 13 as respondents.

c. The respondents must ~~furnish~~provide, to the court, for in camera review, copies of such records as the respondents may possess that contain requested identifying information.

d. The court may determine if individuals about whom the disclosure of identifying information is requested must be ~~furnished~~provided notice of the proceeding and may require ~~that~~ the respondents give notice to those individuals. If those ~~persons~~individuals participate in the proceeding ~~they~~the individuals must be ~~permitted~~allowed to do so in a manner, to be determined by the court, which avoids disclosure of identifying information except when disclosure is ordered by the court.

e. The court may order disclosure only if the petitioner demonstrates that disclosure will not result in any substantial harm to the individual about whom identifying information is sought. The court may not order the disclosure of identifying information concerning any individual who objects to that disclosure.

~~25.~~21. The provisions of this section governing the release of identifying and nonidentifying adoptive information apply to ~~adoptions~~an adoption completed before and after July 1, 1979.

~~26.~~22. Any child-placing agency discharging in good faith its responsibilities under this section is immune from ~~any~~ liability, civil or criminal, that otherwise might result.

~~27.~~23. The department shall ~~make such reasonable~~adopt rules ~~as are necessary~~ to carry out the purposes of this section.

SECTION 2. AMENDMENT. Section 23-02.1-18 of the North Dakota Century Code is amended and reenacted as follows:

23-02.1-18. New birth records following adoption, legitimation, and paternity determination.

1. The state registrar shall establish a new birth record for ~~a person~~an individual born in this state when the registrar receives the following:

   a. An adoption report as provided in section 23-02.1-17 or a certified copy of the decree of adoption together with the information necessary to identify the original birth record and to establish a new birth record; except that a new birth record

may not be established if so requested by the court decreeing the adoption, the adoptive parents, or the adoptive person.

b. A request that a new record be established and such evidence as required by rules and regulations proving that ~~such person~~individual has been legitimated or that a court of competent jurisdiction has determined the paternity of such ~~person~~individual.

2. For ~~a person~~an individual born in a foreign country whose adoptive parents are residents of the state of North Dakota at the time of the adoption, the state registrar shall prepare a new birth record:

a. In the case of a foreign-born ~~person~~individual adopted in North Dakota, upon presentation of a report of adoption as required by section 23-02.1-17.

b. In the case of a foreign-born ~~person~~individual adopted outside the state of North Dakota or outside the United States, or in the state of North Dakota prior to July 1, 1979, upon presentation of a certified copy of the adoption decree, and:

(1) A certified copy of the birth record of the adopted ~~person~~individual; or

(2) An affidavit of an adoptive parent setting forth the true or probable date and place of birth and parentage of the adopted ~~person~~individual.

Any certification of a birth record issued under this subsection must be in the same form as other certifications of birth records issued in this state except that it must state that it does not purport to be evidence of United States citizenship.

3. When a new birth record is established, the actual place and date of birth must be shown. The new birth record must be substituted for the original birth record:

a. Thereafter, the original birth record and the evidence of adoption, paternity, or legitimation is not subject to inspection except upon ~~order~~:

(1) Request of the adopted individual who is eighteen years of age or older, the state registrar shall provide to the adopted individual a copy of the individual's original birth record and any evidence of adoption previously filed with the state registrar; or

(2) Order of a court of competent jurisdiction or as provided by rules and regulations.

b. Upon receipt of a notice of annulment of adoption, the original birth record must be restored to its place in the files and the new birth record and evidence is not subject to inspection except upon ~~order~~:

(1) Request of the adopted individual who is eighteen years of age or older, the state registrar shall provide to the adopted individual a copy of the new birth record and any evidence of adoption previously filed with the state registrar; or

(2) Order of a court of competent jurisdiction.

4. If no birth record is on file for the ~~person~~individual for whom a new birth record is to be established under this section, an original birth record must be filed with the state registrar in accordance with the appropriate rules ~~and regulations promulgated~~adopted by the department of health and human services. The new record is also to be prepared on the standard forms in use at the time of the adoption, legitimation, or paternity determination.

5. When a new birth record is established by the state registrar, all copies of the original birth record in the custody of any custodian of permanent local records in the state must be sealed from inspection or forwarded to the state registrar, as the registrar directs.