

HOUSE BILL REPORT

2SHB 2211

As Passed House:
February 11, 2012

Title: An act relating to adoptees' access to information, including original birth certificates.

Brief Description: Regarding adoptees' access to information, including original birth certificates.

Sponsors: House Committee on Health & Human Services Appropriations & Oversight (originally sponsored by Representatives Orwall, Ormsby, Upthegrove and Hunt).

Brief History:

Committee Activity:

Judiciary: 1/16/12, 1/30/12 [DPS];

Health & Human Services Appropriations & Oversight: 2/2/12, 2/3/12 [DP2S(w/o sub JUDI)].

Floor Activity:

Passed House: 2/11/12, 95-0.

Brief Summary of Second Substitute Bill

- Makes disclosure of non identifying information of a birth parent, adoptee, or adoptive parent mandatory, upon request.
- Allows an adult adoptee to obtain an uncertified copy of the original birth certificate, regardless of when the adoption was finalized, unless the birth parent filed an affidavit of nondisclosure.
- Provides time periods for how long an affidavit of nondisclosure is valid unless renewed.
- Requires, if the adoptee requests, the Department of Health to conduct a search to determine if a birth parent who signed an affidavit of nondisclosure is deceased.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 13 members: Representatives Pedersen, Chair; Goodman, Vice Chair; Rodne,

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Ranking Minority Member; Shea, Assistant Ranking Minority Member; Chandler, Eddy, Hansen, Kirby, Klippert, Nealey, Orwall, Rivers and Roberts.

Staff: Trudes Tango (786-7384).

HOUSE COMMITTEE ON HEALTH & HUMAN SERVICES APPROPRIATIONS & OVERSIGHT

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass and do not pass the substitute bill by Committee on Judiciary. Signed by 11 members: Representatives Dickerson, Chair; Appleton, Vice Chair; Johnson, Ranking Minority Member; Schmick, Assistant Ranking Minority Member; Cody, Green, Harris, Kagi, Overstreet, Pettigrew and Walsh.

Staff: Amy Skei (786-7109).

Background:

Generally, all records of adoption proceedings are sealed and not open to inspection except by a court order or through a confidential intermediary procedure.

Washington's confidential intermediary process allows a birth parent or an adoptee who is at least 21 years old to petition the court for a confidential intermediary to search for the person sought. If the person is found, the intermediary must discreetly inquire whether the person consents to having his or her identity disclosed. The intermediary must report the person's consent or refusal to the court.

Adoptees who are 18 years old or over (adult adoptees) may file with the Department of Health (DOH) a certified statement indicating his or her consent or refusal to be contacted by a confidential intermediary or the birth parent and his or her consent or refusal to disclose personally identifying information.

Non-identifying Information.

Reasonably available non-identifying information may be disclosed without a court order upon the written request of the adoptive parent, the adoptee, or the birth parent. The statute contains a nonexclusive list of what constitutes non-identifying information of a birth parent, adoptive parent, and adoptee, such as: medical and genetic history of birth parents, educational level (but not the name or location of schools), general physical appearance, religion, occupation (but not specific titles or places of employment), and photographs.

Disclosure of Birth Certificates.

An adult adoptee may obtain a copy of his or her original birth certificate from the DOH if: (1) the adoption was finalized after October 1, 1993; and (2) the birth parent has not filed an affidavit of nondisclosure.

Indian Child Welfare Act.

The federal Indian Child Welfare Act allows an adult adoptee to obtain information from the court that finalized the adoption, for the purposes of protecting any rights flowing from the

adoptee's tribal relationship. Information includes the tribal affiliation, if any, of the adoptee's birth parents.

Summary of Second Substitute Bill:

Non-identifying Information.

The disclosure of reasonably available non-identifying information in agency and court files is mandatory, rather than discretionary, upon the written request of the adoptive parent, the adoptee, or the birth parent. The definition of non-identifying information is amended to provide that the information must include, if available, the information listed in the statute.

Disclosure of Birth Certificates.

Regardless of when an adoption was finalized, the DOH must provide an adult adoptee, upon the adoptee's request, a noncertified copy of the adoptee's original birth certificate, unless the birth parent filed a valid affidavit of nondisclosure.

A birth parent may file an affidavit of nondisclosure, regardless of when the adoption was finalized. Affidavits of nondisclosure are valid for five years from the date of filing for adoptions finalized on or after October 1, 1993, and 10 years for adoptions finalized before October 1, 1993. A birth parent may renew the affidavit before it expires by filing a new affidavit and may continue to renew it or file a new affidavit if the previously filed affidavit expired. An affidavit is considered expired upon the death of the birth parent.

Birth parents may file with the DOH a contact preference form indicating whether he or she desires to be contacted. If the birth parent files an affidavit of nondisclosure or a contact preference form, the birth parent must also file a medical history form, created by the DOH. The medical history form may not request any identifying information.

If the DOH provides a copy of the original birth certificate to an adoptee, the DOH must also provide a copy of any contact preference form and any medical history form filed by the birth parent.

If the DOH does not provide a copy of the original birth certificate to the adoptee because the birth parent has filed a valid affidavit of nondisclosure, the DOH must provide the medical history form, and, if the adoptee requests, must attempt to determine if the birth parent is deceased. The DOH must make a reasonable effort to search public records that are accessible and already available to the DOH. The DOH may charge the adoptee a reasonable fee to cover the cost of conducting the search. The adoptee may not request the DOH to conduct a search more than once per year. The affidavit of nondisclosure must include the birth parent's social security number.

The DOH may charge an adoptee a fee up to \$20 for providing a noncertified copy of the adoptee's birth certificate.

Indian Child Welfare Act.

The provisions in the bill do not alter or affect a person's rights under the federal or state Indian Child Welfare Acts.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony (Judiciary):

(In support) Adoptees have a potential family that they may never be able to contact. Native Americans may not be able to get into their tribe without their original birth certificate. The bill tries to create a balance of the rights of adoptees to have access to information and the right a of birth parent to file an affidavit. Adoptees cannot access their own birth records even though everyone else can. The state treats adoptees differently just because they are adopted. It is understandable to keep the records sealed when the adoptee is still a child. The history of adoption shows that there never was a promise to birth parents that they would not be found. The state does not need to legislate the relationship between an adoptee and a birth parent. People should be able to negotiate these relationships. Adoptees need more information about themselves to form a healthy sense of identity. The old system of closed adoptions causes shame and guilt. Oregon has open records. There are thousands of adoptions in Washington and most of the time contact is desired. Birth parents are told today that the laws could change. This bill would take Washington in the direction that is considered the best practice. Public service announcements would be used to get the word out about the change in the law.

(Opposed) There are two sides to these stories. Adoptees can currently ask for a confidential intermediary to look for a birth parent. If the birth parent is willing to have contact, then contact can take place. The law must balance the rights of adoptees with rights of birth parents. The bill requires a birth parent to renew every two years, forcing them to re-live a possibly undesirable situation. The affidavit of nondisclosure is not valid upon death of the birth parent, but the family of the birth parent might still care. The rights of birth parents should be respected. They had an understanding of the rules of the game and now the rules are being changed. If the affidavit period is lengthened, the birth parent might forget to renew.

Staff Summary of Public Testimony (Health & Human Services Appropriations & Oversight):

(In support) The current law that interfaces between birth parents and adoptees is very flawed with a lot of inequality. This bill strikes a better balance between the interests of birth parents, adoptees, and adoptive parents. For adoptees, this is an issue of wanting to know who they are and where they come from, including ethnicity and medical history. Individuals of Native American descent are not able to join a tribe without the original birth certificate. Nine states currently have open records. Of these states, two have never sealed original birth records and the others have passed laws in the past decade. There are two models generally, but most states utilize the contact preference form approach. The contact preference forms are generally respected and work well. This adds the request to provide the medical history

which can give adoptees information they are seeking. The bill is fiscally neutral. Adoptees would be happy to pay a simple fee to get a birth certificate.

(Opposed) None.

Persons Testifying (Judiciary): (In support) Jodi McBride, Stephanie Alphier, and Angie Langseth-Bostwick, Washington Coalition for Adoptee Rights and Equality; Sherrie Wilson; Connie Hudson; and Laurie Lippold, Children's Home Society of Washington.

(Opposed) Rick Bartholomew, Washington State Bar Association.

Persons Testifying (Health & Human Services Appropriations & Oversight): Representative Orwall, prime sponsor; Deborah Meyers and Penni Johnson, Washington Coalition for Adoptee Rights and Equality; and Laurie Lippold, Children's Home Society of Washington.

Persons Signed In To Testify But Not Testifying (Judiciary): None.

Persons Signed In To Testify But Not Testifying (Health & Human Services Appropriations & Oversight): None.