

SENATE BILL REPORT

SHB 1525

As Reported by Senate Committee On:
Human Services & Corrections, April 1, 2013

Title: An act relating to birth certificates and other birth-related information.

Brief Description: Concerning birth certificates and other birth-related information.

Sponsors: House Committee on Judiciary (originally sponsored by Representatives Orwall, Pedersen, Goodman, Hunt, Roberts, Upthegrove, Ryu and Jinkins).

Brief History: Passed House: 3/06/13, 95-2.

Committee Activity: Human Services & Corrections: 3/21/13, 4/01/13 [DPA, DNP].

SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

Majority Report: Do pass as amended.

Signed by Senators Pearson, Vice Chair; Darneille, Ranking Member; Baumgartner and Harper.

Minority Report: Do not pass.

Signed by Senators Hargrove and Padden.

Staff: Joan Miller (786-7784)

Background: Generally, adoption records are sealed and may not be released except upon a court order for good cause or by using a confidential intermediary.

An adoptee over the age of 21, an adoptee under age 21 with the permission of the adoptive parent, or a member of the birth parent's family after the adoptee reaches age 21 may petition the court to appoint a confidential intermediary. If appointed by the court, the intermediary will search for and discreetly contact the birth parent or adoptee. If the birth parent or adoptee are not alive or cannot be contacted within one year, the intermediary may attempt to locate family members of the birth parent or adoptee. If the person being sought is located, the intermediary must make a discreet and confidential inquiry as to whether the person will consent to having the person's identity disclosed to the petitioner. If the person being sought refuses disclosure, then the intermediary must report the refusal to the court and refrain from further inquiry without judicial approval.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Upon written request from the adoptive parent, the adoptee, or the birth parent, nonidentifying information contained in adoption records held by the Department of Social and Health Services, held by an adoption agency, or maintained in court files, may be disclosed. Nonidentifying information includes, but is not limited to, the following information about the birth parents, adoptive parents, and the adoptee: age at the time of adoption; heritage; education; general physical appearance; religion; occupation; medical and genetic history; first names; and the name of the agency or individual who facilitated the adoption.

For adoptions finalized after October 1, 1993, the Department of Health (DOH) must make available a noncertified copy of the original birth certificate to the adoptee after the adoptee's 18th birthday, unless the birth parent filed an affidavit of nondisclosure.

Summary of Bill (Recommended Amendments): For adoptions finalized after October 1, 1993, DOH must provide a noncertified copy of the original birth certificate to an adopted person age 18 or older upon request, unless the birth parent has filed a valid affidavit of nondisclosure before the effective date of this legislation or has filed a valid contact preference form that indicates the birth parent does not want the original birth certificate released.

For adoptions finalized on or before October 1, 1993, DOH may not make available a copy of the original birth certificate until after June 30, 2014. After June 30, 2014, all adopted persons, regardless of when the adoption was finalized, will be able to access noncertified copies of their original birth certificates unless the birth parent has filed a valid affidavit of nondisclosure before the effective date of this legislation or has filed a valid contact preference form that indicates the birth parent does not want the original birth certificate released.

Both the affidavit of nondisclosure and the contact preference form expire upon the death of the birth parent.

Regardless of when an adoption was finalized or whether an affidavit of nondisclosure has already been filed, a birth parent may at any time complete a contact preference form that includes the following options: (1) I would like to be contacted and give DOH consent to release the original birth certificate; (2) I would like to be contacted only through a confidential intermediary and give DOH consent to release the original birth certificate; (3) I prefer not to be contacted, have completed the medical history form, and give DOH consent to release the original birth certificate; and (4) I prefer not to be contacted, have completed the medical history form, and do not give DOH consent to release the original birth certificate.

If a birth parent files a contact preference form, the birth parent must also complete a medical history form. Both the contact preference form and the medical history form, if applicable, must accompany a birth certificate issued to an adopted person. DOH must create the contact preference and medical history forms. DOH may charge a fee not to exceed \$20 for providing a noncertified copy of a birth certificate to an adopted person.

If DOH does not provide an adoptee with a copy of the original birth certificate, DOH must attempt to determine if the birth parent is deceased, upon request. DOH must make a reasonable effort to search public records that are accessible and available, and may charge the adoptee a reasonable fee to cover the cost of conducting the search. The adoptee may not request a search more than once per year.

EFFECT OF CHANGES MADE BY HUMAN SERVICES & CORRECTIONS COMMITTEE (Recommended Amendments): The public records search provision from the House bill is included, and the Senate bill process for releasing birth certificates to adoptees is adopted. The options that a birth parent may select on the contact preference form include language about whether the birth parent consents to the release of the original birth certificate. The term adopted person is changed to adoptee to better match the rest of the chapter. The provision requiring DOH to place the contact preference form and updated medical history form in a secure file until it can be placed in the sealed file is removed.

Appropriation: None.

Fiscal Note: Available.

[OFM requested ten-year cost projection pursuant to I-960.]

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: This complex issue is a little different when you have been adopted. It is like when you are missing several pieces to a puzzle. You feel incomplete. So I understand why adoptees feel the right to know more information about themselves, especially with respect to medical information. When you are adopted, you really have very little knowledge of any medical conditions. There are a number of compelling reasons why people go looking for this information, but it is very difficult to find the right balance between adoptee and birth parent rights. I am sponsoring this bill because it will provide more information to the vast majority of adoptees in Washington State.

People keep using the words complex and concerns, but as a 49-year-old child, I am here to tell you that it is not that complicated. As an adoptee, I do not have the right to make my own decisions. Other people need to decide whether I can have a copy of my original birth certificate. The confidential intermediary process was supposed to be a stop-gap measure until we had the records opened. It is simply wrong that I cannot access my own birth certificate without someone having veto power. This system is archaic, cruel, and barbaric. Please support this bill so that adoptees can find out about themselves. I know what access to my original birth certificate has done for me. Being able to have a relationship with my birth family was just icing on the cake. The peace came when I was able to find out where I came from. I know what I look like. I know my nationality. I have been able to include my birth name, and now, every time I write my name, it puts joy in my heart.

The Washington Adoption Reunion Movement (WARM) has completed nearly 9000 searches for birth parents and adoptees separated by adoption. Our intermediaries have never encountered in a Washington court order, decree, or relinquishment form any promise that a

birth parent's identity would be concealed forever. WARM is pleased with the progress of this bill but fully endorses unconditional, unrestricted access to original birth certificates. Several states now require adoptees to present an original birth certificate to enroll in Medicare, obtain a Social Security card, or apply for a passport. Please enable adoptees to have the same rights and privileges as all people born in Washington. Many states have already passed this type of legislation, including Alabama, Alaska, Delaware, Kansas, New Hampshire, Oregon, and Tennessee.

CON: I oppose this bill because it is just riddled with affidavits of nondisclosure and all sorts of restrictions and conditions. This is a progressive state, yet I am 50 years old and not supposed to have a copy of my original birth certificate. Since 1993, only four affidavits of nondisclosure have been filed, which tells you that there is not a huge number of people who want to keep original birth certificates sealed. Compare that number to the thousands of adoptees who are prohibited by state law from access. Statutes are not promises. Bastard Nation does not support any bill that restricts access for even one person. Please restore our equal rights. The contact preference form is a good form that provides helpful information, but it should not be used to restrict adoptees' access to their original birth certificates.

OTHER: When I heard about the ballot measure in Oregon to allow adult adoptees to get a copy of their original birth certificate, I was very apprehensive at first. I could not see myself being identified or acknowledged as a birth mother. Ultimately, I decided supporting the measure was the right thing to do. The Oregon measure was so simple, and the bill before you does not need to be so convoluted. All of my children have begun asking about their birth families. I am able to answer this question about myself with a copy of my original birth certificate because I am not adopted. It is so important for adoptees to find out about themselves and their identity. Adoptees deserve equal and fair treatment and should be able to access their birth certificates with no restrictions. As an adoptee, I have no history, no roots, and I would really like to be able to have those things. I am proud to be a Washington native, and I look forward to saying that my home state acted progressively on this issue as it does on so many others.

Adoptees must jump through one hoop after another. First, we must find someone reputable to help with our search; then we have to rely on that searcher to know which judges are sympathetic; and finally, the searcher might be able to put us in contact with our family. At any point in this process, which takes at least several months, an adoptee can be denied. In our biological make-up, there is a need to know our roots, heritage, and sense of self. Please pass this bill without any restrictions. Birth mothers make this decision, not knowing the ultimate consequences, because they are desperately trying to save themselves and their families. We think we are doing the right thing and should not have to live in shame our whole lives. Finding my birth son has filled so many gaps for both of us and has allowed the healing process to begin. I cannot take back the past 35 years, but I can be here, supporting adoptees' right to find out who they are. Please allow them to access their original birth certificates without restriction.

Birth mothers who do not want this bill passed are grappling with their fears, but preventing adults from finding out about themselves causes real problems in our society. The information adoptees are looking for is information that everyone else takes for granted. I deserve to know my medical background. The updated medical history form is helpful but is

not a sufficient remedy for denying access to an original birth certificate. The form will not always be accurate and medical issues can come up later in life, which will not be documented unless the parent regularly updates the form.

An adoption support group was my introduction to the real world of adoption. It was the adoptees' unanimous cry for help each month – new faces, same story – that inspired me to take responsibility and find my son. I wish a successful reunion like mine for all adoptees, but for now I implore you to give adoptees the right to access their original birth certificates without restrictions. The bottom line is that Washington has been discriminating against adoptees for 70 years now. The only way to end that discrimination is to give all adoptees unrestricted access to their original birth certificate. We are not asking for a search or a reunion; we just want the right to our identity. Many people here in support of this reform movement are birth parents. Most of us here have already found our birth families. We know what a big deal this is, and that is why we are still fighting for this issue. Please remove the affidavits of nondisclosure and veto powers. The American Adoption Congress and other national organizations support open records access for all adoptees. I understand the concerns that some birth parents wish to retain some privacy, but this bill simply goes too far. Oregon has been doing it right for 13 years. The Oregon law is much more fair and respectful. It takes into consideration the privacy needs of a birth mother and the identity needs of an adoptee.

Persons Testifying: PRO: Representative Orwall, prime sponsor; Laurie Lippold, Partners for Our Children; Michelle Meeker, WARM; Nancy Ekdahl, Colleen Florio-Montgomery, Valerie Oren Stewart, citizens.

CON: Lori Jeske, Bastard Nation Adoptee Rights Organization.

OTHER: Marlene Funk, Richard Funk, WARM; Stephanie Alphier, Jodi Hansen, Connie Hudson, Penni Johnson, Gary Lafever, Deborah Meyers, WA-Coalition for Adoptee Rights and Equality; Patricia Bauer-Collins, Jane Edwards, Maureen Evans, Sara Long, Pat Valerio, citizens.