

## Sec. 6. STUDY OF WAYS TO NURTURE THE FAMILY.

The children's cabinet shall study ways to promote, support, protect, and nurture the family. They shall recommend changes in government and nongovernment programs and Minnesota Statutes that will encourage the preservation of the family. The children's cabinet shall report the findings to the legislature by February 1, 1995.

## Sec. 7. EFFECTIVE DATE.

Section 3 (518.158) is effective the day after final enactment.

Presented to the governor May 6, 1994

Signed by the governor May 10, 1994, 3:58 p.m.

## CHAPTER 631—S.F.No. 2129

*An act relating to adoption; regulating certain advertising and payments in connection with adoption; regulating agencies; providing for direct adoptive placement; providing for the enforceability of postadoption contact agreements; providing penalties; amending Minnesota Statutes 1992, sections 144.227, subdivision 1, and by adding a subdivision; 245A.03, subdivision 1; 245A.04, by adding a subdivision; 245A.07, by adding a subdivision; 259.21, by adding subdivisions; 259.22, subdivisions 1, 2, and by adding a subdivision; 259.24, by adding a subdivision; 259.27, subdivisions 1, 2, 5, and by adding a subdivision; 259.31; and 317A.907, subdivision 6; Minnesota Statutes 1993 Supplement, section 245A.03, subdivision 2; proposing coding for new law in Minnesota Statutes, chapter 259.*

## BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 1992, section 144.227, subdivision 1, is amended to read:

Subdivision 1. **FALSE STATEMENTS.** Whoever intentionally makes any false statement in a certificate, record, or report required to be filed under sections 144.211 to 144.214 or 144.216 to 144.227, or in an application for an amendment thereof, or in an application for a certified copy of a vital record, or who supplies false information intending that the information be used in the preparation of any report, record, certificate, or amendment thereof, is guilty of a misdemeanor.

Sec. 2. Minnesota Statutes 1992, section 144.227, is amended by adding a subdivision to read:

Subd. 3. BIRTH REGISTRATION. Whoever intentionally makes a false statement in a registration required under section 144.215 or in an application for an amendment to such a registration, or intentionally supplies false informa-

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tion intending that the information be used in the preparation of a registration under section 144.215 is guilty of a gross misdemeanor. This offense shall be prosecuted by the county attorney.

Sec. 3. Minnesota Statutes 1992, section 245A.03, subdivision 1, is amended to read:

Subdivision 1. **LICENSE REQUIRED.** Unless licensed by the commissioner, an individual, corporation, partnership, voluntary association, other organization, or controlling individual must not:

- (1) operate a residential or a nonresidential program;
- (2) receive a child or adult for care, supervision, or placement in foster care or adoption;
- (3) help plan the placement of a child or adult in foster care or adoption or engage in placement activities as defined in section 259.21, subdivision 9, in this state, whether or not the adoption occurs in this state; or
- (4) advertise a residential or nonresidential program.

Sec. 4. Minnesota Statutes 1993 Supplement, section 245A.03, subdivision 2, is amended to read:

Subd. 2. **EXCLUSION FROM LICENSURE.** Sections 245A.01 to 245A.16 do not apply to:

- (1) residential or nonresidential programs that are provided to a person by an individual who is related, except as provided in subdivision 2a;
- (2) nonresidential programs that are provided by an unrelated individual to persons from a single related family;
- (3) residential or nonresidential programs that are provided to adults who do not abuse chemicals or who do not have a chemical dependency, a mental illness, mental retardation or a related condition, a functional impairment, or a physical handicap;
- (4) sheltered workshops or work activity programs that are certified by the commissioner of jobs and training;
- (5) programs for children enrolled in kindergarten to the 12th grade and prekindergarten special education in a school as defined in section 120.101, subdivision 4, and programs serving children in combined special education and regular prekindergarten programs that are operated or assisted by the commissioner of education;
- (6) nonresidential programs primarily for children that provide care or supervision, without charge for ten or fewer days a year, and for periods of less than three hours a day while the child's parent or legal guardian is in the same

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building as the nonresidential program or present within another building that is directly contiguous to the building in which the nonresidential program is located;

(7) nursing homes or hospitals licensed by the commissioner of health except as specified under section 245A.02;

(8) board and lodge facilities licensed by the commissioner of health that provide services for five or more persons whose primary diagnosis is mental illness who have refused an appropriate residential program offered by a county agency. This exclusion expires on July 1, 1990;

(9) homes providing programs for persons placed there by a licensed agency for legal adoption, unless the adoption is not completed within two years;

(10) programs licensed by the commissioner of corrections;

(11) recreation programs for children or adults that operate for fewer than 40 calendar days in a calendar year;

(12) programs whose primary purpose is to provide, for adults or school-age children, including children who will be eligible to enter kindergarten within not more than four months, social and recreational activities, such as scouting, boys clubs, girls clubs, sports, or the arts; except that a program operating in a school building is not excluded unless it is approved by the district's school board;

(13) head start nonresidential programs which operate for less than 31 days in each calendar year;

(14) noncertified boarding care homes unless they provide services for five or more persons whose primary diagnosis is mental illness or mental retardation;

(15) nonresidential programs for nonhandicapped children provided for a cumulative total of less than 30 days in any 12-month period;

(16) residential programs for persons with mental illness, that are located in hospitals, until the commissioner adopts appropriate rules;

(17) the religious instruction of school-age children; Sabbath or Sunday schools; or the congregate care of children by a church, congregation, or religious society during the period used by the church, congregation, or religious society for its regular worship;

(18) camps licensed by the commissioner of health under Minnesota Rules, chapter 4630;

(19) mental health outpatient services for adults with mental illness or children with emotional disturbance;

(20) residential programs serving school-age children whose sole purpose is cultural or educational exchange, until the commissioner adopts appropriate rules;

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(21) unrelated individuals who provide out-of-home respite care services to persons with mental retardation or related conditions from a single related family for no more than 90 days in a 12-month period and the respite care services are for the temporary relief of the person's family or legal representative;

(22) respite care services provided as a home and community-based service to a person with mental retardation or a related condition, in the person's primary residence; or

(23) community support services programs as defined in section 245.462, subdivision 6, and family community support services as defined in section 245.4871, subdivision 17; or

(24) the placement of a child by a birth parent or legal guardian in a pre-adoptive home for purposes of adoption as authorized by section 259.2591.

For purposes of clause (6), a building is directly contiguous to a building in which a nonresidential program is located if it shares a common wall with the building in which the nonresidential program is located or is attached to that building by skyway, tunnel, atrium, or common roof.

Sec. 5. Minnesota Statutes 1992, section 245A.04, is amended by adding a subdivision to read:

Subd. 10. ADOPTION AGENCY; ADDITIONAL REQUIREMENTS. In addition to the other requirements of this section, an individual, corporation, partnership, voluntary association, other organization, or controlling individual applying for a license to place children for adoption must:

(1) incorporate as a nonprofit corporation under chapter 317A;

(2) file with the application for licensure a copy of the disclosure form required under section 259.258, subdivision 2;

(3) provide evidence that a bond has been obtained and will be continuously maintained in favor of the commissioner throughout the entire operating period of the agency, to cover the cost of transfer and storage of records if the agency voluntarily or involuntarily ceases operation and fails to provide for proper transfer of the records in order to comply with the requirements of section 259.46; and

(4) submit a certified audit to the commissioner each year the license is renewed as required under section 245A.03, subdivision 1.

Sec. 6. Minnesota Statutes 1992, section 245A.07, is amended by adding a subdivision to read:

Subd. 4. ADOPTION AGENCY VIOLATIONS. If a license holder licensed to place children for adoption fails to provide services as described in the disclosure form required by section 259.258, subdivision 2, the sanctions under this section may be imposed.

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Sec. 7. **[259.20] POLICY.**

Subdivision 1. The policy of the state of Minnesota and the purpose of sections 259.20 to 259.406 is to ensure:

(1) that the best interests of children are met in the planning and granting of adoptions; and

(2) that laws and practices governing adoption recognize the diversity of Minnesota's population and the diverse needs of persons affected by adoption.

Subd. 2. Portions of chapters 245A, 257, 260, and 317A may also affect the adoption of a particular child.

Sec. 8. Minnesota Statutes 1992, section 259.21, is amended by adding a subdivision to read:

Subd. 8. PLACEMENT. "Placement" means the transfer of physical custody of a child from a birth parent or legal guardian to a prospective adoptive home.

Sec. 9. Minnesota Statutes 1992, section 259.21, is amended by adding a subdivision to read:

Subd. 9. PLACEMENT ACTIVITIES. "Placement activities" means any of the following:

(1) placement;

(2) arranging or providing short-term foster care pending an adoptive placement;

(3) facilitating placement by maintaining a list in any form of birth parents or prospective adoptive parents;

(4) collecting health and social histories of a birth family;

(5) conducting an adoption study;

(6) witnessing consents to an adoption; or

(7) engaging in any activity listed in clauses (1) to (6) for purposes of fulfilling any requirements of the interstate compact on the placement of children.

Sec. 10. Minnesota Statutes 1992, section 259.21, is amended by adding a subdivision to read:

Subd. 10. DIRECT ADOPTIVE PLACEMENT. "Direct adoptive placement" means the placement of a child by a birth parent or legal guardian other than an agency under the procedure for adoption authorized by section 259.2591.

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Sec. 11. Minnesota Statutes 1992, section 259.21, is amended by adding a subdivision to read:

Subd. 11. WORKING DAY. "Working day" means Monday through Friday, excluding any holiday as defined under section 645.44, subdivision 5.

Sec. 12. Minnesota Statutes 1992, section 259.22, subdivision 1, is amended to read:

Subdivision 1. Any person who has resided in the state for one year or more may petition to adopt a child or an adult, and the same petitioner may petition for the adoption of two or more persons in one petition. The provisions as to length of residence in the state may be ~~waived~~ reduced to 30 days by the court whenever it appears to be for the best interest of the child.

The court may waive any residence requirement of this section if the petitioner is an individual who is related, as defined in section 245A.02, subdivision 13, or a member of a child's extended family or important friends with whom the child has resided or had significant contact.

Sec. 13. Minnesota Statutes 1992, section 259.22, subdivision 2, is amended to read:

Subd. 2. No petition for adoption shall be filed unless the child sought to be adopted has been placed by the commissioner of human services, the commissioner's agent, or a licensed child-placing agency. The provisions of this subdivision shall not apply if

(a) the child is over 14 years of age;

(b) the child is sought to be adopted by a stepparent;

(c) the child is sought to be adopted by a relative related by blood or marriage within the third degree;

(d) the child has been lawfully placed under the laws of another state while the child and petitioner resided in that other state; ~~or~~

(e) the court waives the requirement of ~~placement~~ this subdivision in the best interests of the child or petitioners, provided that the adoption does not involve a placement as defined in section 259.21, subdivision 8; or

(f) the child has been lawfully placed under section 259.2591.

Sec. 14. Minnesota Statutes 1992, section 259.22, is amended by adding a subdivision to read:

Subd. 4. TIME FOR FILING PETITION. A petition shall be filed not later than 24 months after a child is placed in a prospective adoptive home. If a petition is not filed by that time, the agency that placed the child, or, in a direct adoptive placement, the agency that prepared the postplacement adoptive study shall file with the district court in the county where the prospective adoptive

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parent resides a motion for an order and a report recommending one of the following:

(1) that the time for filing a petition be extended because of the child's special needs as defined under title IV-E of the Social Security Act, United States Code, title 42, section 673; or

(2) that the child be removed from the prospective adoptive home.

The prospective adoptive parent must reimburse an agency for the cost of preparing and filing the motion and report under this section, unless the costs are reimbursed by the commissioner under section 259.40 or 259.44.

Sec. 15. Minnesota Statutes 1992, section 259.24, is amended by adding a subdivision to read:

Subd. 2a. TIME OF CONSENT. Not sooner than 72 hours after the birth of a child and not later than 60 days after the child's placement in a prospective adoptive home, a person whose consent is required under this section shall execute a consent.

Sec. 16. ~~[259.256]~~ AGENCY PLACEMENT FACTORS.

An agency shall document, in the records required to be kept under section 259.46, the reasons for each child placement decision.

Sec. 17. ~~[259.258]~~ AGENCY; FEE SCHEDULE; DISCLOSURE; CIVIL ACTION.

Subdivision 1. PAYMENT SCHEDULE. An agency may only require payment of fees in stages as services are performed. An agency engaged in placement activities must provide a prospective adoptive parent with a schedule of fees and a timeline indicating when each fee or portion of the total fees for the agency services must be paid. The agency must also provide a fee schedule for prefinalization postplacement services.

Subd. 2. DISCLOSURE TO BIRTH PARENTS AND ADOPTIVE PARENTS. An agency shall provide a disclosure statement written in clear, plain language to be signed by the prospective adoptive parents and birth parents, except that in inter-country adoptions, the signatures of birth parents are not required. The disclosure statement must contain the following information:

(1) fees charged to the adoptive parent, including any policy on sliding scale fees or fee waivers and an itemization of the amount that will be charged for the adoption study, counseling, postplacement services, family of origin searches, birth parent expenses authorized under section 259.271, or any other services;

(2) timeline for the adoptive parent to make fee payments;

(3) likelihood, given the circumstances of the prospective adoptive parent

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and any specific program to which the prospective adoptive parent is applying, that an adoptive placement may be made and the estimated length of time for making an adoptive placement. These estimates must be based on adoptive placements made with prospective parents in similar circumstances applying to a similar program with the agency during the immediately preceding three to five years. If an agency has not been in operation for at least three years, it must provide summary data based on whatever adoptive placements it has made and may include a statement about the kind of efforts it will make to achieve an adoptive placement, including a timetable it will follow in seeking a child. The estimates must include a statement that the agency cannot guarantee placement of a child or a time by which a child will be placed;

(4) a statement of the services the agency will provide the birth and adoptive parents;

(5) a statement prepared by the commissioner under section 259.2585 that explains the child placement and adoption process and the respective legal rights and responsibilities of the birth parent and prospective adoptive parent during the process including a statement that the prospective adoptive parent is responsible for filing an adoption petition not later than 24 months after the child is placed in the prospective adoptive home;

(6) a statement regarding any information the agency may have about attorney referral services, or about obtaining assistance with completing legal requirements for an adoption; and

(7) an acknowledgment to be signed by the birth parent and prospective adoptive parent that they have received, read, and had the opportunity to ask questions of the agency about the contents of the disclosure statement.

Subd. 3. CIVIL ACTION. An action for damages, including punitive damages, may be brought by a birth parent or prospective adoptive parent aggrieved by:

(1) a violation of subdivision 1;

(2) the failure of an agency to provide services listed in the disclosure form under subdivision 2, clause (4); or

(3) deceptive practices or misrepresentations made by an agency about its services or ability to place children for adoption.

#### Sec. 18. [259.2585] COMMISSIONER'S STATEMENT.

The commissioner shall prepare and make available to all agencies, prospective adoptive parents, and birth parents a short, plain description of the legal adoption process and the rights and responsibilities of agencies, birth parents, and prospective adoptive parents in the process.

#### Sec. 19. [259.2586] ADOPTION STUDY.

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An adoption study and written report must be completed before the child is placed in a prospective adoptive home under this chapter and the study must be completed and filed with the court at the time the adoption petition is filed. In a direct adoptive placement, the report must be filed with the court in support of a motion for temporary preadoptive custody under section 259.2591, subdivision 3. The study and report shall be completed by a licensed child-placing agency and must be thorough and comprehensive. The study and report shall be paid for by the prospective adoptive parent, except as otherwise required under section 259.40 or 259.44.

A step-parent adoption is not subject to this section.

At a minimum, the study must include the following about the prospective adoptive parent:

(1) a check of criminal conviction data, data on substantiated maltreatment of a child under section 626.556, and domestic violence data of each person over the age of 13 living in the home. The prospective adoptive parents, the bureau of criminal apprehension, and other state, county, and local agencies, after written notice to the subject of the study, shall give the agency completing the adoption study substantiated criminal conviction data and reports about maltreatment of minors and vulnerable adults and domestic violence. The adoption study must also include a check of the juvenile court records of each person over the age of 13 living in the home. Notwithstanding provisions of section 260.161 to the contrary, the juvenile court shall release the requested information to the agency completing the adoption study. The study must include an evaluation of the effect of a conviction or finding of substantiated maltreatment on the ability to care for a child;

(2) medical and social history and current health;

(3) assessment of potential parenting skills;

(4) ability to provide adequate financial support for a child; and

(5) the level of knowledge and awareness of adoption issues including where appropriate matters relating to interracial, cross-cultural, and special needs adoptions.

The adoption study must include at least one in-home visit with the prospective adoptive parent. The adoption study is the basis for completion of a written report. The report must be in a format specified by the commissioner and must contain recommendations regarding the suitability of the subject of the study to be an adoptive parent. An adoption study report is valid for 12 months following its date of completion.

A prospective adoptive parent seeking a study under this section must authorize access by the agency to any private data needed to complete the study, must disclose any names used previously other than the name used at the time

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of the study, and must provide a set of fingerprints, which shall be forwarded to the bureau of criminal apprehension to facilitate the criminal conviction background check required under clause (1).

**Sec. 20. [259.2587] BIRTH PARENT HISTORY; COMMISSIONER'S FORM.**

In any adoption under this chapter, except a stepparent adoption, a birth parent or an agency shall provide a prospective adoptive parent with a detailed social and medical history of the birth families, if known after reasonable inquiry. Each birth family history must be provided on a form prepared by the commissioner in a manner so that the completed form protects the identities of all individuals described in it. The commissioner shall make the form available to agencies and court administrators for public distribution. The birth family history must be filed with the court when the adoption petition is filed, or, in a direct adoptive placement, with the motion for temporary preadoptive custody.

**Sec. 21. [259.259] STATE AUDIT OF ADOPTION AGENCY; CIVIL ACTION.**

Subdivision 1. AUDIT. If the commissioner or attorney general has good cause to believe that a child-placing agency has violated section 259.258, subdivision 1, 259.271, 317A.907, or any other applicable law dealing with fees, payments, accounts, or financial disclosure by a child-placing agency, the commissioner or the attorney general may seek a court order requiring a financial audit of the agency, at the agency's expense, by an auditor chosen by the commissioner or attorney general.

Subd. 2. CIVIL ACTION. A court may grant equitable or monetary relief that is just and reasonable in the circumstances or may dissolve an adoption agency and liquidate its assets if the assets of the agency are being misapplied or wasted. The attorney general or the commissioner may bring an action in district court if the directors or those in control of the agency have misapplied or wasted assets of the agency or have acted fraudulently, illegally, or in a manner unfairly prejudicial toward a client of the agency in the capacity of a director or one in control of the agency.

**Sec. 22. [259.2591] DIRECT ADOPTIVE PLACEMENT.**

Subdivision 1. INTENT. The intent of the provisions governing direct adoptive placement is to safeguard the best interests of the child by providing services and protections to the child, birth parents, and adoptive parents which are consistent with those available through an agency placement.

Subd. 2. ADOPTION STUDY. In a direct adoptive placement, an adoption study and report under section 259.2586 must be completed and filed with the court as required by subdivision 3.

Subd. 3. PREADOPTIVE CUSTODY ORDER. (a) Before a child is placed in a prospective adoptive home by a birth parent or legal guardian, other than an agency, the placement must be approved by the district court in the county

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where the prospective adoptive parent resides. An order under this subdivision or subdivision 6 shall state that the prospective adoptive parent's right to custody of the child is subject to the birth parent's right to custody until the consents to the child's adoption become irrevocable. At the time of placement, prospective adoptive parents must have for the child qualifying existing coverage as defined in section 62L.02, subdivision 24, or other similar comprehensive health care coverage. The prospective adoptive parent must meet the residence requirements of section 259.22, subdivision 1, and must file with the court an affidavit of intent to remain a resident of the state for at least three months after the child is placed in the prospective adoptive home. The prospective adoptive parent shall file with the court a notice of intent to file an adoption petition and submit a written motion seeking an order granting temporary preadoptive custody. The notice and motion required under this subdivision may be considered by the court ex parte, without a hearing. The prospective adoptive parent shall serve a copy of the notice and motion upon any parent whose consent is required under section 259.24 or who is named in the affidavit required under paragraph (b) of this subdivision if that person's mailing address is known. The motion may be filed up to 60 days before the placement is to be made and must include:

- (1) the adoption study required under section 259.2586;
- (2) affidavits from the birth parents indicating their support of the motion, or, if there is no affidavit from the birth father, an affidavit from the birth mother under paragraph (b);
- (3) an itemized statement of expenses that have been paid and an estimate of expenses that will be paid by the prospective adoptive parents to the birth parents, any agency, attorney, or other party in connection with the prospective adoption;
- (4) the name of counsel for each party, if any;
- (5) a statement that the birth parents:
  - (i) have provided the social and medical history required under section 259.2587 to the prospective adoptive parent;
  - (ii) have received the written statement of their legal rights and responsibilities under section 259.2585; and
  - (iii) have been notified of their right to receive counseling under subdivision 4; and
- (6) the name of the agency chosen by the adoptive parent to supervise the adoptive placement and complete the postplacement adoption study required by subdivision 9.

The court shall review the expense statement submitted under this subdivision to determine whether payments made or to be made by the prospective

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adoptive parent are lawful and in accordance with section 259.271, subdivision 1.

(b) If the birth mother submits the affidavit required in paragraph (a), clause (2), but the birth father fails to do so, the birth mother must submit an additional affidavit that describes her good faith efforts or efforts made on her behalf to identify and locate the birth father for purposes of securing his consent. In the following circumstances the birth mother may instead submit an affidavit stating on which ground she is exempt from making efforts to identify and locate the father:

(1) the child was conceived as the result of incest or rape;

(2) efforts to locate the father by the affiant or anyone acting on the affiant's behalf could reasonably result in physical harm to the birth mother or child; or

(3) efforts to locate the father by the affiant or anyone acting on the affiant's behalf could reasonably result in severe emotional distress of the birth mother or child.

A court shall consider the motion for temporary preadoptive custody within 30 days of receiving the motion or by the anticipated placement date stated in the motion, whichever comes sooner.

**Subd. 4. BIRTH PARENT COUNSELING.** In a direct adoptive placement the prospective adoptive parent must notify the birth parent that the birth parent has a right to receive counseling about adoption issues at the expense of the prospective adoptive parent. The prospective adoptive parent must bear the cost of counseling upon the request of a birth parent at any time between conception of child and six months after the birth of the child or the placement in the adoptive home, whichever is later. The prospective adoptive parent shall not be responsible for the cost of more than 35 hours of counseling under this subdivision. A birth parent may waive the right to receive counseling under this subdivision.

**Subd. 5. BIRTH PARENT LEGAL COUNSEL.** Upon the request of a birth parent, separate legal counsel must be made available to the birth parent at the expense of the prospective adoptive parent for legal services provided in a direct adoptive placement. The prospective adoptive parent shall only be required to provide legal counsel for one birth parent unless the birth parents elect joint legal representation. The right to legal counsel under this subdivision shall continue until consents become irrevocable, but not longer than 70 days after placement. If consents have not been executed within 60 days of placement, the right to counsel under this subdivision shall end at that time. A birth parent may waive this right only by a written waiver signed and submitted to the court at the time consents are executed under subdivision 7. Representation of a birth parent and a prospective adoptive parent by the same attorney is prohibited.

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Subd. 6. EMERGENCY ORDER. (a) A court may issue an emergency order granting temporary preadoptive custody of a child to a prospective adoptive parent for up to 14 days if the following conditions are met:

(1) the motion is supported by:

(i) a completed adoption study which meets the requirements of section 259.2586; or

(ii) affidavits from each prospective adoptive parent stating whether they or any person residing in the household have been convicted of a crime or are the subject of an open investigation of, or have been the subject of a substantiated allegation of, child or vulnerable-adult abuse within the past ten years. If so, a complete description of the crime, open investigation, or substantiated abuse and a complete description of any sentence, treatment, or disposition must be included. If, at any time before the adoption is final, a court receives evidence leading it to conclude that a prospective adoptive parent knowingly gave false information in this affidavit, it shall be presumed that the placement of the child with the adoptive parent is not in the best interests of the child; and

(iii) the information required by section 259.2591, subdivision 3, paragraph (a), clause (2), and clause (5), items (ii) and (iii); and

(iv) affidavits from the prospective adoptive parent and birth parent indicating that an emergency order is needed because of the unexpected premature birth of the child or other specifically described extraordinary circumstances which prevented the completion of the requirements of section 259.2591; and

(2) the court concludes from the record submitted that the emergency order will preserve the health and safety of the child.

(b) An order granting or denying the motion shall be issued under this section within 24 hours of the time it is brought. Notwithstanding section 259.23, any judge of district court may consider a motion brought under this subdivision. An order granting the motion shall direct that an adoption study be commenced immediately, if that has not occurred, and that the agency conducting the study shall supervise the emergency placement.

(c) An emergency order under this subdivision expires 14 days after it is issued. If the requirements of subdivision 3 are completed and a preadoptive custody motion is filed on or before the expiration of the emergency order, placement may continue until the court rules on the motion. The court shall consider the preadoptive custody motion within seven days of filing.

Subd. 7. CONSENT; TIME FRAME; HEARING; VENUE; COMMISSIONER'S FORM. Not sooner than 72 hours after the birth of a child and not later than 60 days after the child's placement in a prospective adoptive home under this section, a person whose consent is required under section 259.24 shall execute a consent. A birth parent, whose consent is required under section

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259.24 and who has chosen not to receive counseling through a licensed agency or a licensed social services professional trained in adoption issues, shall appear before a judge or judicial officer to sign the written consent to the child's adoption by the prospective adoptive parent who has temporary preadoptive custody of the child. Notwithstanding where the prospective adoptive parent resides, the consent hearing may be held in any county in this state where the birth parent is found. If a birth parent has chosen to receive counseling through a licensed agency or a licensed social services professional trained in adoption issues, the birth parent may choose to execute a written consent under section 259.24, subdivision 5. A person whose consent is required under section 259.24, subdivision 2, may choose to execute consent at a judicial hearing as described in this section or under the procedures in section 259.24, subdivision 5.

The consent becomes irrevocable on the tenth working day after it is given, except that if the consent was obtained by fraud, proceedings to determine the existence of fraud shall be governed by section 259.24, subdivision 6a. Until the consent becomes irrevocable, the child shall be returned to the birth parent upon request.

The written consent under this subdivision must state that:

(1) the birth parent has had the opportunity to consult with independent legal counsel at the expense of the prospective adoptive parent, unless the birth parent knowingly waived the opportunity;

(2) the birth parent was notified of the right to receive counseling at the expense of the prospective adoptive parent and has chosen to exercise or waive that right; and

(3) the birth parent was informed that if the birth parent withdraws consent, the prospective adoptive parent cannot require the birth parent to reimburse any costs the prospective adoptive parent has incurred in connection with the adoption, including payments made to or on behalf of the birth parent.

If a birth parent has chosen to have legal counsel, the attorney must be present at the execution of consents. If a birth parent waives counsel, the written waiver must be filed with the consent under this subdivision.

The consent signed under this subdivision must be on a form prepared by the commissioner and made available to agencies and court administrators for public distribution.

**Subd. 8. NOTICE AND CONSENT DEADLINE; CONSENT HEARING; BIRTH PARENT NOT APPEARING.** (a) With the exception of a person who receives notice under paragraph (b), if a birth parent whose consent is required under section 259.24 does not appear at a consent hearing under this section, the agency which is supervising the placement shall notify the court and the court shall issue an order regarding continued placement of the child. The court shall order the local social service agency to determine whether to commence proceedings for termination of parental rights on grounds of abandonment as defined in section 260.221. The court may disregard the six and 12-month requirements of section 260.221, paragraph (b), clause (1), item (i), in finding

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abandonment if the birth parent has failed to execute a consent within the time required under this section and has made no effort to obtain custody of the child.

(b) A birth parent who intends to consent to the adoption of a child shall notify the other birth parent of that fact if the other birth parent's consent to the adoption is required under section 259.24, subdivision 1, at the time of placement. Notice shall be provided to the other birth parent by personal service in the manner provided in the rules of civil procedure for service of a summons and complaint within 72 hours of the date on which the child is placed. The notice shall inform the birth parent of the notifying birth parent's intent regarding consent to adoption and shall notify the receiving birth parent that, not later than 60 days after the date of service, the birth parent must either consent or refuse to consent to the adoption. On the sixty-first day following service of the notice required under this subdivision, a birth parent who fails to take either of these actions, is deemed to have consented to the child's adoption regarding the child.

Subd. 9. POSTPLACEMENT ADOPTION STUDY AND REPORT. The agency designated by the prospective adoptive parent under subdivision 3, paragraph (a), clause (6), shall complete a postplacement adoption report and file it with the court with which the adoption petition has been filed not later than 90 days after the filing of a petition for adoption.

At a minimum, the report must include the following information:

(1) assessment of adaptation by the prospective adoptive parents to parenting the child;

(2) assessment of the health and well-being of the child in the prospective adoptive parents' home;

(3) analysis of the level of incorporation by the child into the prospective adoptive parents' home, extended family and community; and

(4) assessment of the level of incorporation of the child's previous history into the prospective adoptive home, such as cultural or ethnic practices, or contact with former foster parents, or biological relatives.

If the consent hearing is held in a county other than where the prospective adoptive parent resides, the court shall forward a copy of its order to the district court in the county where the prospective adoptive parent resides. The report shall be filed with the local social service agency in the county where the prospective adoptive parent resides. The local social service agency may seek a court order to remove the child from the prospective adoptive home, if the report so recommends and the agency finds that continued placement in the adoptive home endangers the physical or emotional health of the child. A postplacement adoption report is valid for 12 months after its date of completion.

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Subd. 10. RECORDS. All records filed with the court in a direct adoptive placement under this section must be permanently maintained by the agency which completed the adoption study. Notwithstanding the provisions of section 259.31, an agency shall, upon request, be given any court records needed to provide post-adoption services pursuant to section 259.47 at the request of adoptive parents, birth parents, or adopted individuals age 19 or older.

Subd. 11. PENALTY. It is a gross misdemeanor for a person, not being the commissioner or an agency, knowingly to engage in placement activities as defined in section 259.21, subdivision 9, without being licensed by the commissioner under chapter 245A, except as authorized by section 245A.03, subdivision 2.

This offense shall be prosecuted by the county attorney.

Sec. 23. Minnesota Statutes 1992, section 259.27, subdivision 1, is amended to read:

Subdivision 1. **COMMISSIONER'S NOTICE TO COMMISSIONER; COUNTY DUTIES.** Upon the filing of a petition for adoption of a child the court administrator shall immediately transmit a copy of the petition to the commissioner of human services. The commissioner and the local social services agency of the county in which the prospective adoptive parent lives. Except as provided in subdivision 2, the local social services agency shall verify the allegations of the petition, investigate the conditions and antecedents of the child for the purpose of ascertaining whether the child is a proper subject for adoption, and make appropriate inquiry to ascertain whether the proposed foster adoptive home and the child are suited to each other and whether the proposed foster home adoption meets the preferences described in section 259.28, subdivision 2. The report of the county welfare board submitted to the commissioner of human services bearing on the suitability of the proposed foster home and the child to each other shall be confidential, and the records of the county welfare board or the contents thereof of them shall not be disclosed either directly or indirectly to any person other than the commissioner of human services or a judge of the court having jurisdiction of the matter. Within 90 days after the receipt of said the copy of the petition the commissioner local social services agency shall submit to the court and the commissioner a full report in writing with recommendations as to the granting of the petition. If such the report is not returned within the 90 days, without fault of petitioner, the court may hear the petition upon giving the commissioner local social services agency five days notice by mail of the time and place of the hearing. If such the report disapproves of the adoption of the child, the commissioner local social services agency may recommend that the court dismiss the petition.

Sec. 24. Minnesota Statutes 1992, section 259.27, subdivision 2, is amended to read:

Subd. 2. **ADOPTION AGENCIES.** Notwithstanding the provisions of subdivision 1, if the child to be adopted has been committed to the guardianship of

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an agency pursuant to section 260.241, or if the child has been surrendered to an agency pursuant to section 259.25, or the child's direct adoptive placement is being supervised by an agency pursuant to section 259.2591 the court; ~~in its discretion, may shall~~ refer the adoption petition to ~~such the~~ agency, or, if the adopting parent has a stepparent relationship to the child, to the county welfare department of the county in which the adoption is pending. The agency or county welfare department, within 90 days of receipt of a copy of the adoption petition, shall file with the court a report of its investigation of the environment and antecedents of the child to be adopted and of the home of the petitioners and its determination whether the home of the petitioners meets the preferences described in section 259.28, subdivision 2. If ~~such the~~ report disapproves of the adoption of the child, the agency or county welfare department may recommend that the court dismiss the petition. In the case of a direct adoptive placement under section 259.2591, a postplacement adoption study completed under subdivision 9 of that section shall be considered as meeting the requirement for a report under this section.

Sec. 25. Minnesota Statutes 1992, section 259.27, subdivision 5, is amended to read:

Subd. 5. **RESIDENCE AND INVESTIGATION WAIVED; STEPPARENT.** ~~Such The~~ investigation and period of residence required by this section may be waived by the court when the petition for adoption is submitted by a stepparent or when, upon good cause being shown, the court is satisfied that the proposed adoptive home and the child are suited to each other, but in either event at least ten working days notice of the hearing shall be given to the ~~commissioner~~ local social services agency by certified mail. The reports of investigations shall be a part of the court files in the case, unless otherwise ordered by the court.

Sec. 26. Minnesota Statutes 1992, section 259.27, is amended by adding a subdivision to read:

Subd. 6. **FEES AND PAYMENTS; FILING WITH ADOPTION PETITION.** Upon the filing of a petition for adoption, an agency shall file with the court a statement of expenses that have been paid or are required to be paid by the prospective adoptive parent in connection with the adoption. In a direct adoptive placement the statement of expenses shall be filed by the prospective adoptive parent.

Sec. 27. [259.271] **PAYMENT OF BIRTH PARENT EXPENSES; PENALTY.**

**Subdivision 1. AUTHORIZED PAYMENTS.** In any adoption under this chapter, a prospective adoptive parent or anyone acting in concert with, at the direction of, or on behalf of a prospective adoptive parent may pay only the following expenses of the birth parent:

(1) reasonable counseling, medical, and legal fees, which shall be paid directly to the provider of the service;

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(2) reasonable expenses for transportation, meals, and lodging incurred for placement of the child;

(3) reasonable expenses for adoption services provided by an agency at the request of the birth parent, which shall be paid directly to the agency; and

(4)(i) reasonable living expenses of the birth mother which are needed to maintain an adequate standard of living which the birth mother is unable to otherwise maintain because of loss of income or other support resulting from the pregnancy. The payments may cover expenses incurred during the pregnancy-related incapacity but not for a period longer than six weeks following delivery;

(ii) the payment shall not be contingent upon placement of the child for adoption, consent to adoption, or cooperation in the completion of the adoption; and

(iii) reasonable living expenses does not include expenses for lost wages, gifts, educational expenses, or other similar expenses of the birth mother.

Subd. 2. NO BIRTH PARENT REIMBURSEMENT TO ADOPTIVE PARENT. A contract purporting to require a birth parent to reimburse a prospective adoptive parent for such payments under any circumstances, including circumstances in which a birth parent refuses to consent to adoption or withdraws consent to adoption, is void as against public policy.

Subd. 3. PROHIBITED PAYMENTS; PENALTY. (a) Except as authorized under subdivision 1, it is a gross misdemeanor for an individual to give, or for a birth parent to accept, money or anything of value, or compensation for the placement of a child for adoption.

(b) It is a gross misdemeanor for any person to give money or anything of value to the birth parent of a child if the person is engaged or has engaged in any placement activity, as defined in section 259.21, subdivision 9, in connection with the adoption of the child.

(c) An offense under this subdivision shall be prosecuted by the county attorney.

Sec. 28. Minnesota Statutes 1992, section 259.31, is amended to read:

#### 259.31 HEARINGS, CONFIDENTIAL.

All hearings held in proceedings under sections 259.21 to 259.32 shall be confidential and shall be held in closed court without admittance of any persons other than the petitioners, their witnesses, the commissioner of human services or an agency, or their authorized representatives, attorneys, and persons entitled to notice by sections 259.21 to 259.32, except by order of the court. The files and records of the court in adoption proceedings shall not be open to inspection by any person except the commissioner of human services or the commissioner's representatives, an agency acting under section 259.2591, subdivision 10, or

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upon an order of the court expressly so permitting pursuant to a petition setting forth the reasons therefor.

Sec. 29. Minnesota Statutes 1992, section 317A.907, subdivision 6, is amended to read:

Subd. 6. **EXPENSE REIMBURSEMENT.** ~~(a)~~ An organization, association, or society licensed by the commissioner of human services may receive payment for expenses related to adoption services in an amount that fairly reflects the agency's reasonable and necessary expenses of:

- (1) adoptive counseling, whether or not legal adoption is completed;
- (2) provision of services to children before adoptive placement; ~~or~~
- (3) the supervision of children in the home until legal adoption is completed;

or

(4) expenses of a birth parent authorized under section 259.271 if paid to the agency to forward to the birth parent.

Only that part of the expenses may be requested that the person seeking to adopt is financially able to meet. No person may be barred from receiving a child for adoption because of inability to pay part of the expenses referred to in this subdivision. In addition to other reports as may be required, a licensed agency shall file annually with the commissioner of human services a full accounting of expense reimbursement received under this subdivision, together with the record of the services given for which the reimbursement was made. If the person returns the child to the corporation, the person may not receive compensation for the care, clothing, or medical expenses of the child. ~~This paragraph does not preclude voluntary contributions by an individual or organization. A pledge by an adoption applicant to make a voluntary contribution is voidable at the option of the person pledging.~~

~~(b) No organization, association, or society is eligible to receive an expense reimbursement from a person who takes a child into the person's home or who adopts a child during the first 12 months that the organization, association, or society is licensed by the commissioner of human services.~~

#### Sec. 30. **ADOPTION ADVISORY COMMITTEE REPORT.**

The commissioner of human services shall use an advisory committee including birth parents, adoptive parents, adopted adults, county agencies, private adoption agencies, consumer advocates, representatives of the state councils of color, and the legal community to make recommendations on further changes needed in order to protect children placed for the purpose of adoption, birth parents or guardians, and prospective adoptive parents. A report with recommendations for state law changes must be made to the governor and the legislature no later than February 1, 1995.

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## Sec. 31. INSTRUCTIONS TO THE REVISOR.

(a) In the next and subsequent editions of Minnesota Statutes, the revisor shall change the terms “natural parent” and “genetic parent” to “birth parent” wherever they appear.

(b) In the next and subsequent editions of Minnesota Statutes, the revisor shall change the terms “county welfare board” and “county welfare department” to “local social services agency” wherever they appear.

(c) In the next and subsequent editions of Minnesota Statutes, the revisor shall renumber chapter 259 in order to eliminate seven-digit section numbers and make more room for future sections. The revisor shall also correct all cross-references in Minnesota Statutes and Minnesota Rules to reflect the new section numbers in chapter 259.

Presented to the governor May 6, 1994

Signed by the governor May 10, 1994, 3:44 p.m.

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**CHAPTER 632—S.F.No. 2913**

*An act relating to the organization and operation of state government; appropriating money for agriculture, the environment, natural resources, public administration, community development, public safety, transportation, and certain agencies of state government; supplementing, reducing, and transferring earlier appropriations, with certain conditions; regulating certain activities and practices; providing for appointments, penalties, accounts, fees, and reports; amending Minnesota Statutes 1992, sections 3.97, subdivision 11; 3.971, by adding a subdivision; 13.99, by adding subdivisions; 16A.124, subdivisions 2 and 7; 16A.127, as amended; 16A.15, subdivision 3; 16B.01, subdivision 4; 16B.05, subdivision 2; 16B.06, subdivisions 1 and 2; 16B.32, by adding a subdivision; 17B.15, subdivision 1; 32.103; 41A.09, subdivisions 2 and 5; 43A.316, subdivision 9; 43A.37, subdivision 1; 44A.0311; 60A.14, subdivision 1; 60A.19, subdivision 4; 60A.21, subdivision 2; 60K.03, subdivisions 1, 5, and 6; 60K.06; 60K.19, subdivision 8; 69.031, subdivision 5; 82.20, subdivisions 7 and 8; 82.21, by adding a subdivision; 82B.08, subdivisions 4 and 5; 82B.09, subdivision 1; 82B.19, subdivision 1; 83.25; 84.0887, by adding subdivisions; 85.015, subdivision 1; 94.09, subdivision 5; 97A.441, by adding a subdivision; 97A.485, subdivision 8; 103F.725, by adding a subdivision; 103F.745; 103F.761, subdivision 2; 115A.5501, subdivision 2; 116.07, by adding a subdivision; 116.182, subdivisions 2, 3, 4, and 5; 116J.9673, subdivision 4; 129D.14, subdivision 5; 138.01, subdivision 1; 138.34; 138.35, subdivision 1; 138.38; 138.40, subdivisions 3; 138.94, by adding a subdivision; 151.01, subdivision 28; 151.15, subdivision 3; 151.25; 154.11, subdivision 1; 154.12; 168A.29, subdivision 1; 171.06, subdivision 3; 176.102, subdivisions 3a and 14; 176.611, subdivision 6a; 204B.27, by adding a subdivision; 257.0762, subdivision 2; 257.0768; 268.53, subdivision 5; 296.02, subdivision 7; 298.2211, by adding a subdivision; 326.12, subdivision 3; 345.47, subdivision 4; 353.65, subdivision 7; 354.06, subdivision 1; 446A.02, subdivision 1, and by adding a subdivision; 446A.03, by adding a subdivision;*

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