

This Document can be made available
in alternative formats upon request

State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-EIGHTH SESSION

H. F. No. **2440**

02/27/2014 Authored by Hortman, Abeler and Cornish

The bill was read for the first time and referred to the Committee on Health and Human Services Policy

A bill for an act

relating to adoption; modifying provisions governing access to original birth records and other adoption-related information; modifying provisions related to affidavits of disclosure and nondisclosure; providing for a contact preference form; amending Minnesota Statutes 2012, sections 13.10, subdivision 5; 13.465, subdivision 8; 144.218, subdivision 1; 144.225, subdivision 2; 144.2252; 259.83, subdivisions 1, 1a, 1b, 4; 259.89, by adding subdivisions; 260C.317, subdivision 4; 260C.637; Minnesota Statutes 2013 Supplement, section 144.226, subdivision 1; proposing coding for new law in Minnesota Statutes, chapters 144; 259; repealing Minnesota Statutes 2012, sections 259.83, subdivision 3; 259.89, subdivisions 1, 2, 3, 4, 5; Minnesota Statutes 2013 Supplement, section 144.212, subdivision 11.

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

Section 1. Minnesota Statutes 2012, section 13.10, subdivision 5, is amended to read:

Subd. 5. **Adoption records.** Notwithstanding any provision of this chapter, adoption records shall be treated as provided in sections 144.2253, 259.53, 259.61, 259.79, and 259.83 to 259.89.

Sec. 2. Minnesota Statutes 2012, section 13.465, subdivision 8, is amended to read:

Subd. 8. **Adoption records.** Various adoption records are classified under section 259.53, subdivision 1. Access to the original birth record of a person who has been adopted is governed by section ~~259.89~~ 144.2253.

Sec. 3. Minnesota Statutes 2012, section 144.218, subdivision 1, is amended to read:

Subdivision 1. **Adoption.** Upon receipt of a certified copy of an order, decree, or certificate of adoption, the state registrar shall register a replacement vital record in the new name of the adopted person. The original record of birth is confidential pursuant to

section 13.02, subdivision 3, and shall not be disclosed except pursuant to court order or, section 144.2252, or section 144.2253.

The information contained on the original birth record, ~~except for the registration number,~~ shall be provided on request to a parent who is named on the original birth record. Upon the receipt of a certified copy of a court order of annulment of adoption the state registrar shall restore the original vital record to its original place in the file.

Sec. 4. Minnesota Statutes 2012, section 144.225, subdivision 2, is amended to read:

Subd. 2. **Data about births.** (a) Except as otherwise provided in this subdivision, data pertaining to the birth of a child to a woman who was not married to the child's father when the child was conceived nor when the child was born, including the original record of birth and the certified vital record, are confidential data. At the time of the birth of a child to a woman who was not married to the child's father when the child was conceived nor when the child was born, the mother may designate demographic data pertaining to the birth as public. Notwithstanding the designation of the data as confidential, it may be disclosed:

(1) to a parent or guardian of the child;
(2) to the child when the child is 16 years of age or older;
(3) under paragraph (b) or (e); or
(4) pursuant to a court order. For purposes of this section, a subpoena does not constitute a court order.

(b) Unless the child is adopted, data pertaining to the birth of a child that are not accessible to the public become public data if 100 years have elapsed since the birth of the child who is the subject of the data, or as provided under section 13.10, whichever occurs first.

(c) If a child is adopted, data pertaining to the child's birth are governed by the provisions relating to adoption records, including sections 13.10, subdivision 5; 144.218, subdivision 1; 144.2252; 144.2253; and 259.89.

(d) The name and address of a mother under paragraph (a) and the child's date of birth may be disclosed to the county social services or public health member of a family services collaborative for purposes of providing services under section 124D.23.

(e) The commissioner of human services shall have access to birth records for:
(1) the purposes of administering medical assistance, general assistance medical care, and the MinnesotaCare program;
(2) child support enforcement purposes; and
(3) other public health purposes as determined by the commissioner of health.

Sec. 5. Minnesota Statutes 2012, section 144.2252, is amended to read:

144.2252 ACCESS TO ORIGINAL BIRTH RECORD AFTER ADOPTION.

(a) Whenever an adopted person requests the state registrar to disclose the information on the adopted person's original birth record, the state registrar shall act according to section ~~259.89~~ 144.2253.

(b) The state registrar shall provide a transcript of an adopted person's original birth record to an authorized representative of a federally recognized American Indian tribe for the sole purpose of determining the adopted person's eligibility for enrollment or membership. Information contained in the birth record may not be used to provide the adopted person information about the person's birth parents, except as provided in this section or section ~~259.83~~ 144.2253.

Sec. 6. [144.2253] ACCESS TO ORIGINAL BIRTH RECORDS OF ADOPTED PERSONS; DEPARTMENT DUTIES.

Subdivision 1. **Definition.** For purposes of this section, "person related to the adopted person" means:

- (1) the surviving spouse of the adopted person;
- (2) a lineal descendant of the adopted person;
- (3) the adoptive parent of the adopted person; or
- (4) a sibling of the adopted person.

Subd. 2. **Disclosure.** (a) An adopted person who is age 18 years or older, or a person related to the adopted person if the adopted person is deceased, may request the state registrar to provide the adopted person or the person related to the adopted person with a noncertified copy of the adopted person's original birth record. If there is no affidavit of nondisclosure on file with the Office of Vital Records, the state registrar shall provide the adopted person, or the person related to the adopted person if the adopted person is deceased, with a noncertified copy of the adopted person's original birth record.

(b) If a contact preference form is attached to the original birth record as authorized under section 259.432, the state registrar shall provide a copy of the contact preference form with the noncertified copy of the adopted person's original birth record.

(c) Affidavits of nondisclosure on file with the Office of Vital Records as of the effective date of this act must be honored by the state registrar. An affidavit of nondisclosure submitted to the Office of Vital Records after the effective date of this act shall not be honored by the state registrar.

Subd. 3. **Rescission of affidavit of nondisclosure.** A birth parent may rescind an affidavit of nondisclosure at any time.

4.1 Subd. 4. **Affidavit of nondisclosure; access to birth record.** (a) When an original
4.2 birth record is subject to an affidavit of nondisclosure, an adopted person age 18 years
4.3 or older, or a person related to the adopted person if the adopted person is deceased,
4.4 may petition any district court for disclosure of the original birth record pursuant to
4.5 subdivision 5.

4.6 (b) An adopted person age 18 years or older, or a person related to the adopted
4.7 person if the adopted person is deceased, may request the state registrar search the state
4.8 death records to determine if the birth parent is deceased. The state registrar may impose a
4.9 fee for the record search. If the birth parent is deceased, a noncertified copy of the original
4.10 birth record shall be released to the adopted person or the person related to the adopted
4.11 person if the adopted person is deceased.

4.12 Subd. 5. **Procedure for requesting access to certain birth records.** (a) Within ten
4.13 days of filing a petition with a district court under subdivision 4, the adopted person shall
4.14 file a copy of the petition with the Office of Vital Records. Within 30 days of receipt of
4.15 the petition with the Office of Vital Records, the state registrar shall serve a copy of the
4.16 petition by first class mail on the birth parent who filed the affidavit of nondisclosure. The
4.17 copy of the petition shall be sent to the birth parent's last known address.

4.18 (b) Within 30 days of receipt of the petition, the birth parent may file with the Office
4.19 of Vital Records a statement either:

4.20 (1) rescinding the affidavit of nondisclosure; or

4.21 (2) setting forth the basis why the affidavit of nondisclosure should remain in effect.

4.22 (c) Within ten days of receipt of the birth parent's statement, the state registrar shall
4.23 serve a copy of the statement on the court of record and the petitioner. The statement shall
4.24 be redacted to protect the identity of the birth parent.

4.25 (d) The court shall schedule a date for a hearing on the adopted person's petition.
4.26 The hearing shall be conducted in accordance with section 259.61.

4.27 (e) The court shall grant the petition if, after consideration of the interests of all
4.28 known persons involved, the court determines that disclosure of the information would
4.29 be of greater benefit than nondisclosure.

4.30 Subd. 6. **Original birth record; public record.** An original birth record of an
4.31 adopted person shall become a public record on the 100th anniversary of the adopted
4.32 person's birth.

4.33 Subd. 7. **Information provided.** (a) The department shall, in consultation with
4.34 adoption agencies and adoption advocates, provide information and educational materials
4.35 to adopted persons and birth parents about the changes in the law affecting accessibility

to birth records. For purposes of this subdivision, an adoption advocate is a nonprofit organization that works with adoption issues in Minnesota.

(b) The department shall provide notice on the department Web site about the change in the law, and will direct individuals to private agencies and advocates for postadoption resources.

Sec. 7. Minnesota Statutes 2013 Supplement, section 144.226, subdivision 1, is amended to read:

Subdivision 1. **Which services are for fee.** The fees for the following services shall be the following or an amount prescribed by rule of the commissioner:

(a) The fee for the administrative review and processing of a request for a certified vital record or a certification that the vital record cannot be found is \$9. The fee is payable at the time of application and is nonrefundable.

(b) The fee for processing a request for the replacement of a birth record for all events, except when filing a recognition of parentage pursuant to section 257.73, subdivision 1, is \$40. The fee is payable at the time of application and is nonrefundable.

(c) The fee for administrative review and processing of a request for the filing of a delayed registration of birth, stillbirth, or death is \$40. The fee is payable at the time of application and is nonrefundable.

(d) The fee for administrative review and processing of a request for the amendment of any vital record is \$40. The fee is payable at the time of application and is nonrefundable.

(e) The fee for administrative review and processing of a request for the verification of information from vital records is \$9 when the applicant furnishes the specific information to locate the vital record. When the applicant does not furnish specific information, the fee is \$20 per hour for staff time expended. Specific information includes the correct date of the event and the correct name of the subject of the record. Fees charged shall approximate the costs incurred in searching and copying the vital records. The fee is payable at the time of application and is nonrefundable.

(f) The fee for administrative review and processing of a request for the issuance of a copy of any document on file pertaining to a vital record or statement that a related document cannot be found is \$9. The fee is payable at the time of application and is nonrefundable.

(g) The commissioner shall charge a fee of \$40 for noncertified copies of birth records provided to persons authorized by section 144.2253 to access the information contained on the original birth record in order to cover the cost of providing the birth record.

6.1 Sec. 8. **[259.432] CONTACT PREFERENCE; FORM.**

6.2 Subdivision 1. **Contact preference form provided.** The state registrar shall provide
6.3 upon request to each birth parent a contact preference form as described in this section.

6.4 Subd. 2. **Form.** The state registrar shall develop a contact preference form on which
6.5 a birth parent may state a preference regarding contact by the adopted person. The form
6.6 must contain the following statements from which the birth parent may choose only one:

6.7 (1) "I would like to be contacted. I have completed this contact preference form and
6.8 am filing it with the Office of Vital Records. I may change this contact preference form by
6.9 filling out another contact preference form."

6.10 (2) "I would not like to be contacted. I have completed this contact preference form
6.11 and am filing it with the Office of Vital Records. I may change this contact preference
6.12 form by filling out another contact preference form."

6.13 Subd. 3. **Attachment of form to birth certificate; treatment.** Upon receipt of a
6.14 completed contact preference form, the state registrar shall attach the completed form
6.15 to the original birth certificate of the adopted person. Access to a completed contact
6.16 preference form is governed in the same manner as access to original birth records by
6.17 adopted persons or persons related to adopted persons under section 144.2253.

6.18 Sec. 9. Minnesota Statutes 2012, section 259.83, subdivision 1, is amended to read:

6.19 Subdivision 1. **Services provided.** Agencies shall provide assistance and counseling
6.20 services upon receiving a request for current information from adoptive parents, birth
6.21 parents, or adopted persons aged ~~19~~ 18 years and over. The agency shall contact the
6.22 other adult persons or the adoptive parents of a minor child in a personal and confidential
6.23 manner to determine whether there is a desire to receive or share information or to have
6.24 contact. If there is such a desire, the agency shall provide the services requested. The
6.25 agency shall provide services to adult genetic siblings ~~if there is no known violation of the~~
6.26 ~~confidentiality of a birth parent or if the birth parent gives written consent.~~

6.27 Sec. 10. Minnesota Statutes 2012, section 259.83, subdivision 1a, is amended to read:

6.28 Subd. 1a. **Social and medical history.** (a) If a person aged ~~19~~ 18 years and over
6.29 who was adopted on or after August 1, 1994, or the adoptive parent requests the detailed
6.30 nonidentifying social and medical history of the adopted person's birth family that was
6.31 provided at the time of the adoption, agencies must provide the information to the adopted
6.32 person or adoptive parent on the form required under section 259.43.

6.33 (b) If an adopted person aged ~~19~~ 18 years and over or the adoptive parent requests
6.34 the agency to contact the adopted person's birth parents to request current nonidentifying

social and medical history of the adopted person's birth family, agencies must use the form required under section 259.43 when obtaining the information for the adopted person or adoptive parent.

Sec. 11. Minnesota Statutes 2012, section 259.83, subdivision 1b, is amended to read:

Subd. 1b. **Genetic siblings.** (a) A person who is at least ~~19~~ 18 years old who was adopted or, because of a termination of parental rights, was committed to the guardianship of the commissioner of human services, whether adopted or not, must upon request be advised of other siblings who were adopted or who were committed to the guardianship of the commissioner of human services and not adopted.

(b) Assistance must be provided by the county or placing agency of the person requesting information to the extent that information is available in the existing records at the Department of Human Services. If the sibling received services from another agency, the agencies must share necessary information in order to locate the other siblings and to offer services, as requested. Upon the determination that parental rights with respect to another sibling were terminated, identifying information and contact must be provided only upon mutual consent. A reasonable fee may be imposed by the county or placing agency.

Sec. 12. Minnesota Statutes 2012, section 259.83, subdivision 4, is amended to read:

Subd. 4. **Confidentiality.** Agencies shall provide adoptive parents, birth parents and adult siblings, and adopted persons aged ~~19~~ 18 years and over reasonable assistance in a manner consistent with state and federal laws, rules, and regulations regarding the confidentiality and privacy of child welfare and adoption records.

Sec. 13. Minnesota Statutes 2012, section 259.89, is amended by adding a subdivision to read:

Subd. 1a. **Access to original birth record.** Access to the original birth record of a person who has been adopted is governed by section 144.2253.

Sec. 14. Minnesota Statutes 2012, section 259.89, is amended by adding a subdivision to read:

Subd. 2a. **Affidavits of nondisclosure.** (a) The state registrar must honor an affidavit of nondisclosure on file with the Office of Vital Records.

(b) If an adopted person or a person related to the adopted person requests access to a noncertified copy of the adopted person's original birth record and the information on the original birth record is subject to an affidavit of nondisclosure, the state registrar

shall not provide the requestor with a copy of the original birth record, but shall inform the requestor of the existence of the affidavit of nondisclosure and the petition process available under section 144.2253, subdivision 4.

(c) For purposes of this subdivision, an affidavit of nondisclosure means an affidavit filed with the Office of Vital Records prior to the effective date of this act by a birth parent of an adopted person stating that the state registrar shall not disclose the information on the adopted person's original birth record.

Sec. 15. Minnesota Statutes 2012, section 259.89, is amended by adding a subdivision to read:

Subd. 2b. Affidavits of disclosure or nondisclosure; not required to be obtained. As of the effective date of this act, an agency that is responsible for an adoptive placement or for supervising an adoptive placement shall not obtain from a birth parent an affidavit of disclosure or an affidavit of nondisclosure.

Sec. 16. Minnesota Statutes 2012, section 260C.317, subdivision 4, is amended to read:

Subd. 4. Rights of terminated parent. ~~(a) Upon entry of an order terminating the parental rights of any person who is identified as a parent on the original birth record of the child as to whom the parental rights are terminated, the court shall cause written notice to be made to that person setting forth:~~

~~(1) the right of the person to file at any time with the state registrar of vital statistics a consent to disclosure, as defined in section 144.212, subdivision 11;~~

~~(2) the right of the person to file at any time with the state registrar of vital statistics an affidavit stating that the information on the original birth record shall not be disclosed as provided in section 144.2252; and~~

~~(3) the effect of a failure to file either a consent to disclosure, as defined in section 144.212, subdivision 11, or an affidavit stating that the information on the original birth record shall not be disclosed.~~

(b) A parent whose rights are terminated under this section shall retain the ability to enter into a contact or communication agreement under section 260C.619 if an agreement is determined by the court to be in the best interests of the child. The agreement shall be filed with the court at or prior to the time the child is adopted. An order for termination of parental rights shall not be conditioned on an agreement under section 260C.619.

Sec. 17. Minnesota Statutes 2012, section 260C.637, is amended to read:

260C.637 ACCESS TO ORIGINAL BIRTH RECORD INFORMATION.

9.1 An adopted person may ask the commissioner of health to disclose the information
9.2 on the adopted person's original birth record according to section ~~259.89~~ 144.2253.

9.3 Sec. 18. **REPEALER.**

9.4 Minnesota Statutes 2012, sections 259.83, subdivision 3; and 259.89, subdivisions 1,
9.5 2, 3, 4, and 5, are repealed.

9.6 Minnesota Statutes 2013 Supplement, section 144.212, subdivision 11, are repealed.

9.7 Sec. 19. **EFFECTIVE DATE.**

9.8 (a) Sections 1 to 14 and 17 are effective January 1, 2015.

9.9 (b) Sections 15, 16, and 18 are effective the day following final enactment.

144.212 DEFINITIONS.

Subd. 11. **Consent to disclosure.** "Consent to disclosure" means an affidavit filed with the state registrar which sets forth the following information:

- (1) the current name and address of the affiant;
- (2) any previous name by which the affiant was known;
- (3) the original and adopted names, if known, of the adopted child whose original birth record is to be disclosed;
- (4) the place and date of birth of the adopted child;
- (5) the biological relationship of the affiant to the adopted child; and
- (6) the affiant's consent to disclosure of information from the original birth record of the adopted child.

259.83 POSTADOPTION SERVICES.

Subd. 3. **Identifying information.** In adoptive placements made on and after August 1, 1982, the agency responsible for or supervising the placement shall obtain from the birth parents named on the original birth record an affidavit attesting to the following:

- (a) that the birth parent has been informed of the right of the adopted person at the age specified in section 259.89 to request from the agency the name, last known address, birthdate and birthplace of the birth parents named on the adopted person's original birth record;
- (b) that each birth parent may file in the agency record an affidavit objecting to the release of any or all of the information listed in clause (a) about that birth parent, and that parent only, to the adopted person;
- (c) that if the birth parent does not file an affidavit objecting to release of information before the adopted person reaches the age specified in section 259.89, the agency will provide the adopted person with the information upon request;
- (d) that notwithstanding the filing of an affidavit, the adopted person may petition the court according to section 259.61 for release of identifying information about a birth parent;
- (e) that the birth parent shall then have the opportunity to present evidence to the court that nondisclosure of identifying information is of greater benefit to the birth parent than disclosure to the adopted person; and
- (f) that any objection filed by the birth parent shall become invalid when withdrawn by the birth parent or when the birth parent dies. Upon receipt of a death record for the birth parent, the agency shall release the identifying information to the adopted person if requested.

259.89 ACCESS TO ORIGINAL BIRTH RECORD INFORMATION.

Subdivision 1. **Request.** An adopted person who is 19 years of age or over may request the commissioner of health to disclose the information on the adopted person's original birth record. The commissioner of health shall, within five days of receipt of the request, notify the commissioner of human services' agent or licensed child-placing agency when known, or the commissioner of human services when the agency is not known in writing of the request by the adopted person.

Subd. 2. **Search.** Within six months after receiving notice of the request of the adopted person, the commissioner of human services' agent or a licensed child-placing agency shall make complete and reasonable efforts to notify each parent identified on the original birth record of the adopted person. The commissioner, the commissioner's agents, and licensed child-placing agencies may charge a reasonable fee to the adopted person for the cost of making a search pursuant to this subdivision. Every licensed child-placing agency in the state shall cooperate with the commissioner of human services in efforts to notify an identified parent. All communications under this subdivision are confidential pursuant to section 13.02, subdivision 3.

For purposes of this subdivision, "notify" means a personal and confidential contact with the birth parents named on the original birth record of the adopted person. The contact shall be by an employee or agent of the licensed child-placing agency which processed the pertinent adoption or some other licensed child-placing agency designated by the commissioner of human services when it is determined to be reasonable by the commissioner; otherwise contact shall be by mail or telephone. The contact shall be evidenced by filing with the commissioner of health an affidavit of notification executed by the person who notified each parent certifying that each parent was given the following information:

- (1) the nature of the information requested by the adopted person;
- (2) the date of the request of the adopted person;

APPENDIX

Repealed Minnesota Statutes: 14-3262

(3) the right of the parent to file, within 30 days of receipt of the notice, an affidavit with the commissioner of health stating that the information on the original birth record should not be disclosed;

(4) the right of the parent to file a consent to disclosure with the commissioner of health at any time; and

(5) the effect of a failure of the parent to file either a consent to disclosure or an affidavit stating that the information on the original birth record should not be disclosed.

Subd. 3. **Failure to notify parent.** If the commissioner of human services certifies to the commissioner of health an inability to notify a parent identified on the original birth record within six months, and if neither identified parent has at any time filed an unrevoked consent to disclosure with the commissioner of health, the information may be disclosed as follows:

(a) If the person was adopted prior to August 1, 1977, the person may petition the appropriate court for disclosure of the original birth record pursuant to section 259.61, and the court shall grant the petition if, after consideration of the interests of all known persons involved, the court determines that disclosure of the information would be of greater benefit than nondisclosure.

(b) If the person was adopted on or after August 1, 1977, the commissioner of health shall release the requested information to the adopted person.

If either parent identified on the birth record has at any time filed with the commissioner of health an unrevoked affidavit stating that the information on the original birth record should not be disclosed, the commissioner of health shall not disclose the information to the adopted person until the affidavit is revoked by the filing of a consent to disclosure by that parent.

Subd. 4. **Release of information after notice.** If, within six months, the commissioner of human services' agent or licensed child-placing agency documents to the commissioner of health notification of each parent identified on the original birth record pursuant to subdivision 2, the commissioner of health shall disclose the information requested by the adopted person 31 days after the date of the latest notice to either parent. This disclosure will occur if, at any time during the 31 days both of the parents identified on the original birth record have filed a consent to disclosure with the commissioner of health and neither consent to disclosure has been revoked by the subsequent filing by a parent of an affidavit stating that the information should not be disclosed. If only one parent has filed a consent to disclosure and the consent has not been revoked, the commissioner of health shall disclose, to the adopted person, original birth record information on the consenting parent only.

Subd. 5. **Death of parent.** Notwithstanding the provisions of subdivisions 3 and 4, if a parent named on the original birth record of an adopted person has died, and at any time prior to the death the parent has filed an unrevoked affidavit with the commissioner of health stating that the information on the original birth record should not be disclosed, the adopted person may petition the court of original jurisdiction of the adoption proceeding for disclosure of the original birth record pursuant to section 259.61. The court shall grant the petition if, after consideration of the interests of all known persons involved, the court determines that disclosure of the information would be of greater benefit than nondisclosure.