

## CHAPTER 259

## CHANGE OF NAME, ADOPTION

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**NOTE:** Chapter 259 is excepted from the application of the Rules of Civil Procedure.

**259.01-259.09** [Repealed, 1951 c 508 s 13]

## CHANGE OF NAME

**259.10 PROCEDURE.**

A person who shall have resided in this state for six months may apply to the district court in the county where the person resides to change the person's name, the names of minor children, if any, and the name of a spouse, if the spouse joins in the application, in the manner herein specified. The person shall state in the application the name and age of the spouse and each of the children, if any, and shall describe all lands in the state in or upon which the person, the children and the spouse if their names are also to be changed by the application, claim any interest or lien, and shall appear personally before the court and prove identity by at least two witnesses. If the person be a minor, the application shall be made by the person's guardian or next of kin. Every person who, with intent to defraud, shall make a false statement in any such application shall be guilty of a misdemeanor provided, however, that no minor child's name may be changed without both parents having notice of the pending of the application for change of name, whenever practicable, as determined by the court.

**History:** (8633) *RL s 3620; 1917 c 222 s 1; 1943 c 28 s 1; 1943 c 292 s 1; 1951 c 535 s 1; 1975 c 52 s 1; 1986 c 317 s 1; 1986 c 444*

**259.11 ORDER; FILING COPIES.**

Upon meeting the requirements of section 259.10, the court shall grant the application unless it finds that there is an intent to defraud or mislead or in the case of the change of a minor child's name, the court finds that such name change is not in the best interests of the child. The court shall set forth in the order the name and age of the applicant's spouse and each child of the applicant, if any, and shall state a description of the lands, if any, in which the applicant and the spouse and children, if any, claim to have an interest. The clerk shall file such order, and record the same in the judgment book. If lands be described therein, a certified copy of the order shall be filed for record, by the applicant, with the county recorder of each county wherein any of the same are situated. Before doing so the clerk shall present the same to the county auditor who shall enter the change of name in the auditor's official records and note upon the instrument, over an official signature, the words "change of name recorded." Any such order shall not be filed, nor any certified copy thereof be issued, until the applicant shall have paid to the county recorder and clerk the fee required by law. No application shall be denied on the basis of the marital status of the applicant.

**History:** (8634) *RL s 3621; 1917 c 222 s 1; 1941 c 178; 1943 c 28 s 2; 1959 c 250 s 2; 1975 c 52 s 2; 1976 c 181 s 2; 1986 c 317 s 2; 1986 c 444*

## ADOPTION

### 259.21 DEFINITIONS.

Subdivision 1. **Terms.** For the purposes of sections 259.21 to 259.32 the terms defined in this section shall have the meanings respectively ascribed to them.

Subd. 2. **Child.** "Child" means a person under the age of 18 years.

Subd. 3. **Parent.** "Parent" means the natural or adoptive parent of a child.

Subd. 4. **Guardian.** "Guardian" means a guardian of the person of the ward appointed by a court of competent jurisdiction.

Subd. 5. **Commissioner.** "Commissioner" means the commissioner of human services of the state of Minnesota.

Subd. 6. **Agency.** "Agency" means an organization or department of government designated or authorized by law to place children for adoption or any person, group of persons, organization, association or society licensed or certified by the commissioner of human services to place children for adoption.

Subd. 7. **Petitioner.** "Petitioner" means a person with spouse, if there be one, petitioning for the adoption of any person or persons pursuant to sections 259.21 to 259.32.

**History:** 1951 c 508 s 1; 1953 c 593 s 2; 1973 c 725 s 49; 1984 c 654 art 5 s 58; 1986 c 444

### 259.22 PETITION.

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 by the court whenever it appears to be for the best interest of the child.

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 in the best interests of the child or petitioners.

Subd. 3. This section shall not apply to placements made prior to August 1, 1974. Any placement made prior to that date may be finalized by a petition for adoption.

**History:** 1951 c 508 s 2; 1974 c 499 s 1; 1984 c 654 art 5 s 58; 1986 c 444

### 259.23 JUVENILE COURT, JURISDICTION.

Subdivision 1. **Venue.** Except as provided in section 260.111, subdivision 2, the juvenile court shall have original jurisdiction in all adoption proceedings. The proper venue for an adoption proceeding shall be the county of the petitioner's residence. However, if the petitioner has acquired a new residence in another county and requests a transfer of the adoption proceeding, the court in which an adoption is initiated may transfer the proceeding to the appropriate court in the new county of residence if the transfer is in the best interests of the person to be adopted. The court transfers the proceeding by ordering a continuance and by forwarding to the court administrator of the appropriate court a certified copy of all papers filed, together with an order of

transfer. The transferring court also shall forward copies of the order of transfer to the commissioner of human services and any agency participating in the proceedings. The judge of the receiving court shall accept the order of the transfer and any other documents transmitted and hear the case; provided, however, the receiving court may in its discretion require the filing of a new petition prior to the hearing.

**Subd. 2. Contents of petition.** The petition shall be signed by the petitioner and, if married, by the spouse. It shall be verified, and filed in duplicate. The petition shall allege:

(a) The full name, age and place of residence of petitioner, and if married, the date and place of marriage;

(b) The date petitioner acquired physical custody of the child and from what person or agency;

(c) The date of birth of the child, if known, and the state and county where born;

(d) The name of the child's parents, if known, and the guardian if there be one;

(e) The actual name of the child, if known, and any known aliases;

(f) The name to be given the child if a change of name is desired;

(g) The description and value of any real or personal property owned by the child;

(h) That the petitioner desires that the relationship of parent and child be established between petitioner and the child, and that it is to the best interests of the child for the child to be adopted by the petitioner.

In agency placements, the information required in clauses (d) and (e) above shall not be required to be alleged in the petition but shall be transmitted to the court by the commissioner of human services.

**Subd. 3. Court rules.** The provisions of subdivision 2 shall be subject to rules of the court made pursuant to section 480.051.

**History:** 1951 c 508 s 3; 1959 c 685 s 45; 1965 c 558 s 1; 1967 c 45 s 1; 1984 c 654 art 5 s 58; 1986 c 444; 1Sp1986 c 3 art 1 s 82

## 259.24 CONSENTS.

**Subdivision 1. Exceptions.** No child shall be adopted without the consent of the child's parents and the child's guardian, if there be one, except in the following instances:

(a) Consent shall not be required of a parent not entitled to notice of the proceedings.

(b) Consent shall not be required of a parent who has abandoned the child, or of a parent who has lost custody of the child through a divorce decree or a decree of dissolution, and upon whom notice has been served as required by section 259.26.

(c) Consent shall not be required of a parent whose parental rights to the child have been terminated by a juvenile court or who has lost custody of a child through a final commitment of the juvenile court or through a decree in a prior adoption proceeding.

(d) If there be no parent or guardian qualified to consent to the adoption, the consent may be given by the commissioner.

(e) The commissioner or agency having authority to place a child for adoption pursuant to section 259.25, subdivision 1, shall have the exclusive right to consent to the adoption of such child.

**Subd. 2. Parents, guardian.** If an unmarried parent who consents to the adoption of a child is under 18 years of age, the consent of the minor parent's parents or guardian, if any, also shall be required; if either or both the parents are disqualified for any of the reasons enumerated in subdivision 1, the consent of such parent shall be waived, and the consent of the guardian only shall be sufficient; and, if there be neither parent nor guardian qualified to give such consent, the consent may be given by the commissioner. The agency overseeing the adoption proceedings shall ensure that the minor parent is offered the opportunity to consult with an attorney, a member of the clergy or a

physician before consenting to adoption of the child. The advice or opinion of the attorney, clergy member or physician shall not be binding on the minor parent. If the minor parent cannot afford the cost of consulting with an attorney, a member of the clergy or physician, the county shall bear that cost.

Subd. 3. **Child.** When the child to be adopted is over 14 years of age, the child's written consent also shall be necessary.

Subd. 4. **Adult adoptee.** In the adoption of an adult, the adult's written consent only shall be required.

Subd. 5. **Execution.** All consents to an adoption, except those by the commissioner, the commissioner's agent, a licensed child-placing agency, or the child's parent when that parent is either a copetitioner in the adoption proceeding or does not have custody of the child, shall be executed before a representative of the commissioner, the commissioner's agent or a licensed child-placing agency. In addition all consents to an adoption shall be in writing and shall contain notice to the parent of the substance of subdivision 6a, providing for the right to withdraw consent. Consents shall be executed before two competent witnesses and acknowledged by the consenting party. Consents shall be filed in the adoption proceedings at any time before the matter is heard provided, however, that a consent executed and acknowledged outside of this state, either in accordance with the law of this state or in accordance with the law of the place where executed, is valid.

Subd. 6. [Repealed, 1980 c 561 s 14]

Subd. 6a. **Withdrawal of consent.** A parent's consent to adoption may be withdrawn for any reason within ten working days after the consent is executed and acknowledged. Written notification of withdrawal of consent must be received by the agency to which the child was surrendered no later than the tenth working day after the consent is executed and acknowledged. On the day following the tenth working day after execution and acknowledgment, the consent shall become irrevocable, except upon order of a court of competent jurisdiction after written findings that consent was obtained by fraud. In proceedings to determine the existence of fraud, the adoptive parents and the child shall be made parties. The proceedings shall be conducted to preserve the confidentiality of the adoption process. There shall be no presumption in the proceedings favoring the natural parents over the adoptive parents.

Subd. 7. **Withholding consent; reason.** Consent to an adoption shall not be unreasonably withheld by a guardian, who is not a parent of the child, by the commissioner or by an agency.

Subd. 8. **Adoptive parents defined.** For the purposes of subdivision 6, and section 259.25, subdivision 2, the term "adoptive parents" shall mean parents who have received a child into their home with the intent to adopt the child.

**History:** 1951 c 508 s 4; 1953 c 593 s 2; 1959 c 685 s 46; 1969 c 428 s 1; 1974 c 66 s 2-4; 1974 c 113 s 1; 1975 c 208 s 33; 1977 c 126 s 1; 1979 c 138 s 1,3; 1980 c 561 s 4-6; 1980 c 589 s 32,33; 1986 c 444

## 259.25 AGREEMENT CONFERRING AUTHORITY TO PLACE FOR ADOPTION.

Subdivision 1. **Consents required.** The parents and guardian, if there be one, of a child may enter into a written agreement with the commissioner of human services or an agency, giving the commissioner or such agency authority to place the child for adoption. If an unmarried parent is under the age of 18 years the written consent of the parents and guardian, if any, of the minor parent also shall be required; if either or both of the parents are disqualified from giving such consent for any of the reasons enumerated in section 259.24, subdivision 1, then the written consent of the guardian shall be required. The agreement and consent shall be in the form prescribed by the commissioner and shall contain notice to the parent of the substance of subdivision 2a providing for the right to revoke the agreement. The agreement shall be executed by the commissioner or agency, or one of their authorized agents, and all other necessary

parties, and shall be filed, together with the consent, in the proceedings for the adoption of the child.

Subd. 2. [Repealed, 1980 c 561 s 14]

Subd. 2a. **Revocation.** A parent's agreement to authorize placing a child for adoption may be revoked for any reason within ten working days after the agreement is executed. Written notification of revocation must be received by the agency which was given authority to place the child no later than the tenth working day after the agreement is executed. On the day following the tenth working day after execution the agreement shall become irrevocable, except upon order of a court of competent jurisdiction after written findings that the agreement was obtained by fraud. Proceedings to determine the existence of fraud shall be conducted as provided in section 259.24, subdivision 6a, for proceedings to determine fraud in obtaining consent.

**History:** 1951 c 508 s 5; 1974 c 66 s 5; 1979 c 138 s 2; 1980 c 561 s 7,8; 1980 c 589 s 34; 1984 c 654 art 5 s 58; 1986 c 444

### 259.255 PROTECTION OF HERITAGE OR BACKGROUND.

The policy of the state of Minnesota is to ensure that the best interests of the child are met by requiring due consideration of the child's minority race or minority ethnic heritage in adoption placements. For purposes of intercountry adoptions, due consideration is deemed to have occurred if the appropriate authority in the child's country of birth has approved the placement of the child.

The authorized child placing agency shall give preference, in the absence of good cause to the contrary, to placing the child with (a) a relative or relatives of the child, or, if that would be detrimental to the child or a relative is not available, (b) a family with the same racial or ethnic heritage as the child, or, if that is not feasible, (c) a family of different racial or ethnic heritage from the child which is knowledgeable and appreciative of the child's racial or ethnic heritage.

If the child's genetic parent or parents explicitly request that the preference described in clause (a) or clauses (a) and (b) not be followed, the authorized child placing agency shall honor that request consistent with the best interests of the child.

If the child's genetic parent or parents express a preference for placing the child in an adoptive home of the same or a similar religious background to that of the genetic parent or parents, in following the preferences in clause (a) or (b), the agency shall place the child with a family that also meets the genetic parent's religious preference. Only if no family is available that is described in clause (a) or (b) may the agency give preference to a family described in clause (c) that meets the parent's religious preference.

**History:** 1983 c 278 s 7

### 259.26 NOTICE, HEARING ON PETITION.

Subdivision 1. **To whom given.** Except as provided in subdivision 3, and subject to section 259.261, notice of the hearing upon a petition to adopt a child shall be given to:

- (1) The guardian, if any, of a child;
- (2) The parent of a child if
  - (a) The person's name appears on the child's birth certificate, as a parent, or
  - (b) The person has substantially supported the child, or
  - (c) The person either was married to the person designated on the birth certificate as the natural mother within the 325 days before the child's birth or married that person within the ten days after the child's birth, or
  - (d) The person is openly living with the child or the person designated on the birth certificate as the natural mother of the child, or both, or
  - (e) The person has been adjudicated the child's parent, or
  - (f) The person has filed an affidavit pursuant to section 259.261.

This notice need not be given to any above named person whose parental rights have been terminated, whose notice of intention to retain parental rights filed pursuant to section 259.261 has been successfully challenged, who has consented to the adoption or who has waived notice of the hearing. The notice of the hearing may be waived by a parent, guardian or other interested party by a writing executed before two competent witnesses and duly acknowledged. The waiver shall be filed in the adoption proceedings at any time before the matter is heard.

Subd. 2. **Service.** Such notice shall be served, within or without the state, at least 14 days before the date of the hearing, in the manner provided by law for the service of a summons in a civil action. If personal service cannot be made, the court may order service by publication. The petitioner or petitioner's attorneys shall make an affidavit setting forth the effort that was made to locate the parents, and the names and addresses of the known kin of the child. If satisfied that the parents cannot be served personally, the court shall order three weeks published notice to be given, the last publication to be at least ten days before the time set for the hearing. Where service is made by publication the court may cause such further notice to be given as it deems just. If, in the course of the proceedings, the court shall consider that the interests of justice will be promoted it may continue the proceeding and require that such notice as it deems proper shall be served on any person. In the course of proceedings the court may enter reasonable orders for the protection of the child if the court determines that the best interests of the child require such an order.

Subd. 3. **Service, guardian only.** Where a child is adjudicated a dependent or neglected child and a court of competent jurisdiction has appointed a permanent guardian, or where a juvenile court has appointed a guardian after terminating parental rights, no notice of hearing need be given to the parents.

**History:** 1951 c 508 s 6; 1959 c 685 s 47; 1965 c 45 s 38; 1965 c 786 s 1; 1974 c 66 s 6,7; 1980 c 589 s 35; 1986 c 444

## 259.261 RETENTION OF RIGHTS.

Subdivision 1. **Notice by illegitimate parent.** Any person not entitled to notice under section 259.26, shall lose parental rights and not be entitled to notice at termination, adoption, or other proceedings affecting the child, unless within 90 days of the child's birth or within 60 days of the child's placement with prospective adoptive parents, whichever is sooner, that person gives to the division of vital statistics of the Minnesota department of health an affidavit stating intention to retain parental rights.

Subd. 2. **Notice, contents.** Such affidavit shall contain the claimant's name and address, the name and the last known address of the other parent of the child and the month and the year of the birth of the child, if known.

Subd. 3. **Notice, effect.** Upon receipt of the aforementioned affidavit the division of vital statistics of the Minnesota department of health shall notify the other parent of same within seven days. This notice to the parent shall constitute conclusive evidence of parenthood for the purposes of this statute, unless within 60 days of its receipt, either the notified parent or some other interested petitioner denies that claimant is the parent of the child and files a petition pursuant to chapter 260 to challenge such notice of parenthood.

**History:** 1974 c 66 s 1; 1986 c 444

## 259.27 PETITION; INVESTIGATIONS; REPORTS.

Subdivision 1. **Commissioner's 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 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 home and the child are suited to each other and whether the proposed foster home 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 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 copy of the petition the commissioner shall submit to the court a full report in writing with recommendations as to the granting of the petition. If such report is not returned within the 90 days, without fault of petitioner, the court may hear the petition upon giving the commissioner five days notice by mail of the time and place of the hearing. If such report disapproves of the adoption of the child, the commissioner may recommend that the court dismiss the petition.

**Subd. 2. Adoption agencies.** Notwithstanding the provisions of subdivision 1, if the child to be adopted has been committed to the guardianship of an agency pursuant to section 260.241, or if the child has been surrendered to an agency pursuant to section 259.25 the court, in its discretion, may refer the adoption petition to such 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 report disapproves of the adoption of the child, the agency or county welfare department may recommend that the court dismiss the petition.

**Subd. 3. Reports and records; confidential.** All reports and records of the commissioner of human services, county welfare board, or child placing agency bearing on the suitability of the proposed adoptive home and the child to each other shall be confidential, and the contents thereof 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, provided, however, that a judge of the court having jurisdiction of the matter may disclose any such report or record to a party to the proceedings or the party's counsel when such report or record disapproves the granting of the adoption petition.

**Subd. 4. Preadoption residence.** No petition shall be granted until the child shall have lived three months in the proposed home, subject to a right of visitation by the commissioner or an agency or their authorized representatives.

**Subd. 5. Residence and investigation waived; stepparent.** Such investigation and period of residence 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 days notice of the hearing shall be given to the commissioner by certified mail. The reports of investigations shall be a part of the court files in the case, unless otherwise ordered by the court.

**History:** 1951 c 508 s 7; 1953 c 268 s 1; 1959 c 685 s 48; 1971 c 207 s 1; 1980 c 561 s 9; 1983 c 278 s 8,9; 1984 c 654 art 5 s 58; 1986 c 444; 1Sp1986 c 3 art 1 s 82

## **259.28 HEARING, DECREE.**

**Subdivision 1. Findings; orders.** Upon the hearing,

(a) if the court finds that it is in the best interests of the child that the petition be granted, a decree of adoption shall be made and recorded in the office of the court administrator, ordering that henceforth the child shall be the child of the petitioner. In the decree the court may change the name of the child if desired. After the decree is granted the court administrator shall immediately mail a copy of the recorded decree to the commissioner of human services;

(b) if the court is not satisfied that the proposed adoption is in the best interests

of the child, the court shall deny the petition, and shall order the child returned to the custody of the person or agency legally vested with permanent custody or certify the case for appropriate action and disposition to the court having jurisdiction to determine the custody and guardianship of the child.

**Subd. 2. Protection of heritage or background.** The policy of the state of Minnesota is to ensure that the best interests of children are met by requiring due consideration of the child's minority race or minority ethnic heritage in adoption placements. For purposes of intercountry adoptions, due consideration is deemed to have occurred if the appropriate authority in the child's country of birth has approved the placement of the child.

In the adoption of a child of minority racial or minority ethnic heritage, in reviewing adoptive placement, the court shall consider preference, and in determining appropriate adoption, the court shall give preference, in the absence of good cause to the contrary, to (a) a relative or relatives of the child, or, if that would be detrimental to the child or a relative is not available, to (b) a family with the same racial or ethnic heritage as the child, or if that is not feasible, to (c) a family of different racial or ethnic heritage from the child that is knowledgeable and appreciative of the child's racial or ethnic heritage.

If the child's genetic parent or parents explicitly request that the preference described in clause (a) or in clauses (a) and (b) not be followed, the court shall honor that request consistent with the best interests of the child.

If the child's genetic parent or parents express a preference for placing the child in an adoptive home of the same or a similar religious background to that of the genetic parent or parents, in following the preferences in clause (a) or (b), the court shall place the child with a family that also meets the genetic parent's religious preference. Only if no family is available as described in clause (a) or (b) may the court give preference to a family described in clause (c) that meets the parent's religious preference.

**History:** 1951 c 508 s 8; 1959 c 685 s 49; 1983 c 278 s 10; 1984 c 654 art 5 s 58; 1Sp1986 c 3 art 1 s 82

## **259.29 EFFECT OF ADOPTION.**

**Subdivision 1.** Upon adoption, the child shall become the legal child of the adopting persons and they shall become the legal parents of the child with all the rights and duties between them of natural parents and legitimate child. By virtue of the adoption the child shall inherit from the adoptive parents or their relatives the same as though the child were the natural child of the parents, and in case of the child's death intestate the adoptive parents and their relatives shall inherit the child's estate as if they had been the child's natural parents and relatives. After a decree of adoption is entered the natural parents of an adopted child shall be relieved of all parental responsibilities for the child, and they shall not exercise or have any rights over the adopted child or the child's property. The child shall not owe the natural parents or their relatives any legal duty nor shall the child inherit from the natural parents or kindred, except as provided in subdivision 1a.

**Subd. 1a.** Notwithstanding any other provisions to the contrary in this section, the adoption of a child by a stepparent shall not in any way change the status of the relationship between the child and the child's natural parent who is the spouse of the petitioning stepparent.

If a parent dies and a child is subsequently adopted by a stepparent who is the spouse of a surviving parent, any rights of inheritance of the child or the child's issue from or through the deceased parent of the child which exist at the time of the death of that parent shall not be affected by the adoption.

**Subd. 2.** Notwithstanding the provisions of subdivision 1, the adoption of a child whose natural parent or parents are enrolled in an American Indian tribe shall not change the child's enrollment in that tribe.

**History:** 1951 c 508 s 9; 1978 c 602 s 2; 1979 c 11 s 1; 1980 c 589 s 36



**259.30** [Repealed, 1975 c 216 s 1]**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, or upon an order of the court expressly so permitting pursuant to a petition setting forth the reasons therefor.

**History:** 1951 c 508 s 11; 1984 c 654 art 5 s 58; 1986 c 444

**259.32 APPEALS.**

Any order, judgment, or decree of a court pursuant to the provisions of sections 259.21 to 259.32 may be appealed by any person against whom the order, judgment, or decree is made or who is affected by it as in other civil cases.

**History:** 1951 c 508 s 12; 1959 c 685 s 50; 1983 c 247 s 110

**259.33 APPOINTMENT OF ATTORNEY AND GUARDIAN AD LITEM.**

Subdivision 1. In any adoption proceeding, the court may appoint an attorney or a guardian ad litem, or both, for the person being adopted.

Subd. 2. The court may order the adopting parents to pay the costs of services rendered by guardians or attorneys appointed pursuant to subdivision 1, provided that such parents shall be given a reasonable opportunity to be heard.

**History:** 1974 c 383 s 1,2

**259.40 SUBSIDIZED ADOPTION PROGRAM.**

Subdivision 1. **Subsidy payments.** The commissioner of human services may make subsidy payments as necessary to an adoptive parent or parents who adopt a child who is a Minnesota resident and is under guardianship of the commissioner or of a licensed child placing agency after the final decree of adoption is issued. The subsidy payments and any subsequent modifications to the subsidy payments shall be based on the needs of the child that the commissioner has determined cannot be met using other resources including programs available to the child and the child's adoptive parent or parents.

Subd. 2. **Subsidy agreement.** The placing agency shall certify a child as eligible for a subsidy according to rules promulgated by the commissioner. When a parent or parents are found and approved for adoptive placement of a child certified as eligible for a subsidy, and before the final decree of adoption is issued, a written agreement must be entered into by the commissioner, the adoptive parent or parents, and the placing agency. The written agreement must be in the form prescribed by the commissioner and must set forth the responsibilities of all parties, the anticipated duration of the subsidy payments, and the payment terms. The subsidy agreement shall be subject to the commissioner's approval.

The commissioner shall provide adoption subsidies to the adoptive parent or parents according to the terms of the subsidy agreement. The subsidy may include payment for basic maintenance expenses of food, clothing, and shelter; ongoing supplemental maintenance expenses related to the child's special needs; nonmedical expenses periodically necessary for purchase of services, items or equipment related to the child's special needs; and medical expenses. The placing agency or the adoptive parent or parents shall provide written documentation to support requests for subsidy payments. The commissioner may require periodic reevaluation of subsidy payments. The amount of the subsidy payment may in no case exceed that which would be allowable for the child under foster family care.

Subd. 3. **Annual affidavit.** When subsidies are for more than one year, the adoptive parents or guardian or conservator shall annually present an affidavit stating whether the adopted child remains under their care and whether the need for subsidy continues to exist. The commissioner may verify the affidavit. The subsidy agreement shall continue in accordance with its terms as long as the need for subsidy continues and the child remains the legal dependent of the adoptive parent or parents or guardian or conservator. Termination or modification of the subsidy agreement may be requested by the adoptive parents or subsequent guardian or conservator at any time. When the commissioner determines that a child is eligible for adoption assistance under Title IV-E of the Social Security Act, United States Code, title 42, sections 670 to 676, the commissioner shall modify the subsidy agreement in order to obtain the funds under that act.

Subd. 4. **Eligibility conditions.** The placing agency shall certify a child as eligible for a subsidy only if the following criteria are met:

(a) A placement agency has made reasonable efforts to place the child for adoption without subsidy, but has been unsuccessful; or

(b) The child's licensed foster parents desire to adopt the child and it is determined by the placing agency that:

(1) The adoption is in the best interest of the child; and,

(2) Due to the child's characteristics or circumstances it would be difficult to provide the child an adoptive home without subsidy; and

(c) The child has been a ward of the commissioner, or licensed child placing agency.

Subd. 5. **Determination of residency.** A child who is a resident of any county in this state when eligibility for subsidy is certified shall remain eligible and receive the subsidy in accordance with the terms of the subsidy agreement, regardless of the domicile or residence of the adopting parents at the time of application for adoptive placement, legal decree of adoption, or thereafter.

Subd. 6. **Right of appeal.** The adoptive parents have the right to appeal to the commissioner pursuant to section 256.045, when the commissioner denies, discontinues, or modifies the agreement.

Subd. 7. **Reimbursement of costs.** Subject to rules of the commissioner, a placing agency shall receive a reimbursement from the commissioner equal to 100 percent of the reasonable and appropriate cost of providing or purchasing adoption services for a child certified as eligible for a subsidy, including adoptive family recruitment, counseling, and special training when needed.

Subd. 8. **Indian children.** The commissioner is encouraged to work with American Indian organizations to assist in the establishment of American Indian child adoption organizations able to be licensed as child placing agencies. Children certified as eligible for a subsidy under this section who are protected under the Federal Indian Child Welfare Act of 1978 should, whenever possible, be served by the tribal governing body, tribal courts, or a licensed Indian child placing agency.

Subd. 9. **Effect on other aid.** Subsidy payments received under this section shall not affect eligibility for any other financial payments to which a person may otherwise be entitled.

Subd. 10. **Rules.** The commissioner shall promulgate rules necessary to implement this section and to comply with the adoption assistance requirements of the Social Security Act to qualify for funds available under the act.

**History:** 1979 c 256 s 1; 1982 c 553 s 3-5; 1984 c 654 art 5 s 58; 1986 c 414 s 1,2

**259.405** [Repealed, 1Sp1985 c 9 art 2 s 104]

#### **259.406 TRANSFER OF FUNDS.**

The commissioner of human services may transfer funds into the subsidized

adoption account when a deficit in the subsidized adoption program occurs pursuant to section 256F.05, subdivision 7.

**History:** 1986 c 414 s 3

### **259.431 INTERSTATE ADOPTION COMPACTS; SERVICE PAYMENTS.**

Subdivision 1. **Purpose.** It is the purpose and policy of the state of Minnesota to:

(a) Enter into interstate agreements with agencies of other states for the protection of children for whom the commissioner is providing adoption assistance.

(b) Provide procedures for interstate assistance payments, including medical payments, for eligible children who are adopted interstate and for children adopted in Minnesota who move to another state.

Subd. 2. **Definitions.** For the purposes of this section, the terms defined in this subdivision shall have the meanings given them, unless the context clearly indicates otherwise.

(a) "Adoption assistance state" means the state that signs an adoption assistance agreement in a particular case.

(b) "Commissioner" means the commissioner of human services of the state of Minnesota.

(c) "Resident state" means the state of which the child is a resident because of the residence of the adoptive parents.

(d) "State" means a state of the United States, the District of Columbia, the commonwealth of Puerto Rico, the Virgin Islands, Guam, the commonwealth of the Northern Mariana Islands, or a territory or possession of the United States.

Subd. 3. **Compacts authorized.** The commissioner is authorized to develop, negotiate and enter into one or more interstate compacts on behalf of this state with other states to implement the purposes of Laws 1984, chapter 422. When entered into, the compact will have the force and effect of law.

Subd. 4. **Contents of compacts.** A compact entered into under Laws 1984, chapter 422 must include:

(a) A provision allowing all states to join the compact;

(b) A provision for withdrawal from the compact upon written notice to the parties. The provision must require a period of one year between the date of the notice and the effective date of the withdrawal;

(c) A requirement that the protections afforded under the compact continue in force for the duration of the adoption assistance from a party state other than the one in which the adoptive parents and the child are resident;

(d) A requirement that each instance of adoption assistance to which the compact applies be covered by an adoption assistance agreement in writing between the adoptive parents and the state child welfare agency of the state which provides the adoption assistance, and that the agreement be expressly for the benefit of the adopted child and enforceable by the adoptive parents and the state agency providing the adoption assistance; and

(e) Other provisions necessary and appropriate for the proper administration of the compact.

A compact entered into under Laws 1984, chapter 422 may contain provisions establishing procedures and entitlements to medical, developmental, child care, or other social services for the child under state law, even though the child and the adoptive parents are in a state other than the one responsible for or providing the services or funds to pay part of or all of the costs.

Subd. 5. **Medical assistance; duties of the commissioner of human services.** The commissioner of human services shall:

(a) Issue a medical assistance identification card to any child with special needs

who is a resident in this state and the subject of an adoption assistance agreement with another state when a certified copy of the adoption assistance agreement obtained from the adoption assistance state has been filed with the commissioner. The adoptive parents shall be required at least annually to show that the agreement is still in force or has been renewed.

(b) Consider the holder of a medical assistance identification card under this subdivision as any other recipient of medical assistance under chapter 256B; process and make payment on claims for the recipient in the same manner as for other recipients of medical assistance.

(c) Provide coverage and benefits for a child who is in another state and who is covered by an adoption assistance agreement made by the commissioner for the coverage or benefits, if any, which is not provided by the resident state. The adoptive parents acting for the child may submit evidence of payment for services or benefit amounts not payable in the resident state and shall be reimbursed. However, there shall be no reimbursement for services or benefit amounts covered under any insurance or other third party medical contract or arrangement held by the child or the adoptive parents.

(d) Publish emergency and permanent rules implementing this subdivision. Such rules shall include procedures to be followed in obtaining prior approvals for services which are required for the assistance.

**Subd. 6. Penalties for false claims.** Any person who submits a claim or makes a statement for payment or reimbursement for services or benefits under subdivision 5 which the maker or claimant knows or should know to be false, misleading, or fraudulent is guilty of perjury. That person shall also be subject to a fine of not more than \$5,000 or imprisonment for not more than three years, or both.

**Subd. 7. Federal participation.** Consistent with federal law, the commissioner shall, in connection with the administration of Laws 1984, chapter 422 and any compact under Laws 1984, chapter 422, include in any state plan made under the Adoption Assistance and Child Welfare Act of 1980, Titles IV(e) and XIX of the Social Security Act, and any other applicable federal laws, the provision of adoption assistance and medical assistance for which the federal government pays some or all of the cost. The commissioner shall apply for and administer all relevant aid in accordance with state and federal law.

**History:** 1984 c 422 s 2; 1984 c 628 art 3 s 11; 1984 c 640 s 32; 1984 c 654 art 5 s 58

## 259.45 STATE ADOPTION EXCHANGE.

Subdivision 1. The commissioner of human services shall establish an adoption exchange, which shall include but not be limited to a book, updated monthly, that contains a photograph and description of each child who has been legally freed for adoption. The exchange service shall be available to all authorized child placing agencies whose purpose is to assist in the adoptive placement of children, and the exchange book shall be distributed to all such agencies.

Subd. 2. All authorized child placing agencies shall send to the state adoption exchange, within 60 days of the time a child becomes free for adoption, a recent photograph and description of each child in its care who has been legally freed for adoption by the termination of parental rights, and for whom no adoptive home has been found.

Subd. 3. Changes in the status of a child listed in the state adoption exchange shall be reported by the authorized child placing agency to the exchange within ten working days after the change occurs.

Subd. 4. Children remaining registered for 12 months shall have their photographs and written descriptions updated by the authorized child-placing agency within ten working days of the expiration of the 12 months, and every 12 months thereafter.

Subd. 5. A child's registration shall be withdrawn when the exchange service has

been notified in writing by the authorized child-placing agency that the child has been adopted, has become 14 years old and will not consent to an adoption plan, or has died.

Subd. 6. The exchange service shall semiannually check the status of listed children for whom inquiries have been received. Periodic checks shall be made by the service to determine the progress toward adoption of those children and the status of children registered but never listed in the exchange book because of placement in an adoptive home prior to or at the time of registration.

Subd. 7. An authorized child placing agency may voluntarily refer any child legally freed for adoption to the exchange service; or the exchange service may determine that the recruitment of an adoptive family through the exchange book is appropriate for a child not registered with the service and require the child to be registered with the exchange service within ten working days.

Subd. 8. Deferral of the listing of a child with the state adoption exchange shall be only for one or more of the following reasons: (a) the child is in an adoptive placement but is not legally adopted; (b) the child's foster parents or other individuals are now considering adoption; (c) diagnostic study or testing is required to clarify the child's problem and provide an adequate description; (d) the child is currently in a hospital and continuing need for daily professional care will not permit placement in a family setting; or (e) the child is 14 years of age or older and will not consent to an adoption plan. Approval of a request to defer listing for any of the reasons specified in clause (b) or (c) shall be valid for a period not to exceed 90 days, with no subsequent deferrals for those reasons.

Subd. 9. The commissioner of human services shall make rules as necessary to administer this section and shall employ necessary staff to carry out the purposes of this section.

**History:** 1980 c 614 s 132; 1984 c 654 art 5 s 58; 1986 c 444

#### **259.455 FAMILY RECRUITMENT.**

Each authorized child placing agency shall make special efforts to recruit an adoptive family from among the child's relatives, except as authorized in section 259.28, subdivision 2, and among families of the same minority racial or minority ethnic heritage. Special efforts include contacting and working with community organizations and religious organizations, utilizing local media and other local resources, and conducting outreach activities. The agency may accept any gifts, grants, offers of services, and other contributions to use in making special recruitment efforts.

**History:** 1983 c 278 s 11

#### **259.46 ADOPTION RECORDS.**

Subdivision 1. **Content.** The adoption records of the commissioner, the commissioner's agents and licensed child placing agencies shall contain copies of all relevant legal documents, responsibly collected genetic, medical and social history of the child and the child's genetic parents, the child's placement record, copies of all pertinent agreements, contracts, and correspondence relevant to the adoption, and copies of all reports and recommendations made to the court. Identifying information contained in the adoption record shall be confidential and shall be disclosed only pursuant to section 259.31.

Subd. 2. **Use.** Each adoption record shall constitute the permanent record upon which court action is based and agency services are administered.

Subd. 3. **Retention.** All adoption records shall be retained on a permanent basis under a protected record system which ensures confidentiality and lasting preservation.

**History:** 1982 c 584 s 2; 1986 c 444

#### **259.47 POSTADOPTION SERVICES.**

Subdivision 1. **Services provided.** Agencies shall provide assistance and counsel-

ing services upon receiving a request for current information from adoptive parents, genetic parents, or adopted persons aged 19 years and over. The agency shall contact the other adult persons or the adoptive parents of a minor child in a personal and confidential manner to determine whether there is a desire to receive or share information or to have contact. If there is such a desire, the agency shall provide the services requested. The agency shall provide services to adult genetic siblings if there is no known violation of the confidentiality of a genetic parent or if the genetic parent gives written consent.

**Subd. 2. Health information.** When the agency receives information about a medical or genetic condition which has affected or may affect the physical or mental health of genetically related persons, the agency shall make a diligent effort to contact those persons in order to transmit the health information.

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

(a) That the genetic parent has been informed of the right of the adopted person at the age specified in section 259.49 to request from the agency the name, last known address, birthdate and birthplace of the genetic parents named on the adopted person's original birth certificate;

(b) That each genetic 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 genetic parent, and that parent only, to the adopted person;

(c) That if the genetic parent does not file an affidavit objecting to release of information before the adopted person reaches the age specified in section 259.49, 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 pursuant to section 259.31 for release of identifying information about a genetic parent;

(e) That the genetic parent shall then have the opportunity to present evidence to the court that nondisclosure of identifying information is of greater benefit to the genetic parent than disclosure to the adopted person; and

(f) That any objection filed by the genetic parent shall become invalid when withdrawn by the genetic parent or when the genetic parent dies. Upon receipt of a death certificate for the genetic parent, the agency shall release the identifying information to the adopted person if requested.

**Subd. 4. Confidentiality.** Agencies shall provide adoptive parents, genetic parents and adult siblings, and adopted persons aged 19 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.

**Subd. 5. Charges.** Agencies may require a reasonable expense reimbursement for providing services required in this section.

**History:** 1982 c 584 s 3; 1986 c 444

## 259.48 RULES.

The commissioner of human services shall make rules as necessary to administer sections 259.46 and 259.47.

**History:** 1982 c 584 s 4; 1984 c 654 art 5 s 58

## 259.49 ACCESS TO ADOPTION RECORDS.

**Subdivision 1. Request.** An adopted person who is 21 years of age or over may request the commissioner of health to disclose the information on the adopted person's original birth certificate. The commissioner of health shall, within five days of receipt of the request, notify the commissioner of human services 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 shall make complete and reasonable efforts to notify each parent identified on the original birth certificate of the adopted person. The commissioner 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 genetic parents named on the original birth certificate of the adopted person. The contact shall not be by mail and 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. 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:

- (a) The nature of the information requested by the adopted person;
- (b) The date of the request of the adopted person;
- (c) The right of the parent to file, within 120 days of receipt of the notice, an affidavit with the commissioner of health stating that the information on the original birth certificate should not be disclosed;
- (d) The right of the parent to file a consent to disclosure with the commissioner of health at any time; and
- (e) 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 certificate 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 certificate 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 certificate pursuant to section 259.31, 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 certificate has at any time filed with the commissioner of health an unrevoked affidavit stating that the information on the original birth certificate 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 certifies to the commissioner of health notification of each parent identified on the original birth certificate pursuant to subdivision 2, the commissioner of health shall disclose the information requested by the adopted person 121 days after the date of the latest notice to either parent. This disclosure will occur if, at any time during the 121 days both of the parents identified on the original birth certificate 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.

**Subd. 5. Death of parent.** Notwithstanding the provisions of subdivisions 3 and 4, if a parent named on the original birth certificate of an adopted person has died, and at any time prior to the death the parent has filed an unrevoked affidavit with the

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commissioner of health stating that the information on the original birth certificate should not be disclosed, the adopted person may petition the court of original jurisdiction of the adoption proceeding for disclosure of the original birth certificate pursuant to section 259.31. 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.

**History:** 1981 c 311 s 39; 1982 c 545 s 24; 1982 c 584 s 5; 1984 c 654 art 5 s 58; 1986 c 444