

SENATE
STATE OF MINNESOTA
NINETY-SECOND SESSION

S.F. No. 328

(SENATE AUTHORS: CARLSON)

DATE
01/25/2021

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Introduction and first reading
 Referred to Civil Law and Data Practices Policy

OFFICIAL STATUS

1.1 A bill for an act

1.2 relating to adoption; modifying provisions governing adult adoptee access to their

1.3 own original birth records and other adoption-related information; amending

1.4 Minnesota Statutes 2020, sections 13.10, subdivision 5; 13.465, subdivision 8;

1.5 144.218, subdivisions 1, 2; 144.225, subdivision 2; 144.2252; 259.83, subdivisions

1.6 1, 1a, 1b, by adding a subdivision; 260C.317, subdivision 4; proposing coding for

1.7 new law in Minnesota Statutes, chapter 144; repealing Minnesota Statutes 2020,

1.8 sections 144.212, subdivision 11; 259.83, subdivision 3; 259.89; 260C.637.

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

1.10 Section 1. Minnesota Statutes 2020, section 13.10, subdivision 5, is amended to read:

1.11 Subd. 5. **Adoption records.** Notwithstanding any provision of this or any other chapter,

1.12 adoption records shall be treated as provided in sections 259.53, 259.61, 259.79, and 259.83

1.13 to ~~259.89~~ 259.88.

1.14 Sec. 2. Minnesota Statutes 2020, section 13.465, subdivision 8, is amended to read:

1.15 Subd. 8. **Adoption records.** Various adoption records are classified under section 259.53,

1.16 subdivision 1. Access to the original birth record of a person who has been adopted is

1.17 governed by section ~~259.89~~ 144.2252.

1.18 Sec. 3. Minnesota Statutes 2020, section 144.218, subdivision 1, is amended to read:

1.19 Subdivision 1. **Adoption.** Upon receipt of a certified copy of an order, decree, or

1.20 certificate of adoption, the state registrar shall register a replacement vital record in the new

1.21 name of the adopted person. The original record of birth is ~~confidential~~ private pursuant to

1.22 section 13.02, subdivision ~~3~~ 12, and shall not be disclosed except pursuant to court order

1.23 or section 144.2252. The information contained on the original birth record, except for the

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

2.4 Sec. 4. Minnesota Statutes 2020, section 144.218, subdivision 2, is amended to read:

2.5 Subd. 2. **Adoption of foreign persons.** In proceedings for the adoption of a person who
2.6 was born in a foreign country, the court, upon evidence presented by the commissioner of
2.7 human services from information secured at the port of entry or upon evidence from other
2.8 reliable sources, may make findings of fact as to the date and place of birth and parentage.
2.9 Upon receipt of certified copies of the court findings and the order or decree of adoption,
2.10 a certificate of adoption, or a certified copy of a decree issued under section 259.60, the
2.11 state registrar shall register a birth record in the new name of the adopted person. The
2.12 certified copies of the court findings and the order or decree of adoption, certificate of
2.13 adoption, or decree issued under section 259.60 are ~~confidential~~ private data, pursuant to
2.14 section 13.02, subdivision 3 12, and shall not be disclosed except pursuant to court order
2.15 or section 144.2252. The birth record shall state the place of birth as specifically as possible
2.16 and that the vital record is not evidence of United States citizenship.

2.17 Sec. 5. Minnesota Statutes 2020, section 144.225, subdivision 2, is amended to read:

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

2.25 (1) to a parent or guardian of the child;

2.26 (2) to the child when the child is 16 years of age or older;

2.27 (3) under paragraph (b), (e), or (f); or

2.28 (4) pursuant to a court order. For purposes of this section, a subpoena does not constitute
2.29 a court order.

2.30 (b) ~~Unless the child is adopted,~~ Data pertaining to the birth of a child that are not
2.31 accessible to the public become public data if 100 years have elapsed since the birth of the

3.1 child who is the subject of the data, or as provided under section 13.10, whichever occurs
3.2 first.

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

3.6 (d) The name and address of a mother under paragraph (a) and the child's date of birth
3.7 may be disclosed to the county social services, tribal health department, or public health
3.8 member of a family services collaborative for purposes of providing services under section
3.9 124D.23.

3.10 (e) The commissioner of human services shall have access to birth records for:

3.11 (1) the purposes of administering medical assistance and the MinnesotaCare program;

3.12 (2) child support enforcement purposes; and

3.13 (3) other public health purposes as determined by the commissioner of health.

3.14 (f) Tribal child support programs shall have access to birth records for child support
3.15 enforcement purposes.

3.16 Sec. 6. Minnesota Statutes 2020, section 144.2252, is amended to read:

3.17 **144.2252 ACCESS TO ORIGINAL BIRTH RECORD AFTER ADOPTION.**

3.18 Subdivision 1. Definitions. (a) ~~Whenever an adopted person requests the state registrar~~
3.19 ~~to disclose the information on the adopted person's original birth record, the state registrar~~
3.20 ~~shall act according to section 259.89.~~ For purposes of this section, the following terms have
3.21 the meanings given.

3.22 (b) "Person related to the adopted person" means:

3.23 (1) the spouse, child, or grandchild of an adopted person, if the spouse, child, or
3.24 grandchild is at least 18 years of age; or

3.25 (2) the legal representative of an adopted person.

3.26 The definition under this paragraph only applies when the adopted person is deceased.

3.27 (c) "Original birth record" means a copy of the original birth record for a person who is
3.28 born in Minnesota and whose original birth record was sealed and replaced by a replacement
3.29 birth record after the state registrar received a certified copy of an order, decree, or certificate
3.30 of adoption.

4.1 Subd. 2. Release of original birth record. (a) The state registrar must provide to an
4.2 adopted person who is 18 years of age or older or a person related to the adopted person a
4.3 copy of the adopted person's original birth record and any evidence of the adoption previously
4.4 filed with the state registrar. To receive a copy of an original birth record under this
4.5 subdivision, the adopted person or person related to the adopted person must make the
4.6 request to the state registrar in writing. The copy of the original birth record must clearly
4.7 indicate that it may not be used for identification purposes. All procedures, fees, and waiting
4.8 periods applicable to a nonadopted person's request for a copy of a birth record apply in the
4.9 same manner as requests made under this section.

4.10 (b) If a contact preference form is attached to the original birth record as authorized
4.11 under section 144.2253, the state registrar must provide a copy of the contact preference
4.12 form along with the copy of the adopted person's original birth record.

4.13 ~~(b)~~ (c) The state registrar shall provide a transcript of an adopted person's original birth
4.14 record to an authorized representative of a federally recognized American Indian tribe for
4.15 the sole purpose of determining the adopted person's eligibility for enrollment or membership.
4.16 Information contained in the birth record may not be used to provide the adopted person
4.17 information about the person's birth parents, except as provided in this section or section
4.18 259.83.

4.19 (d) For a replacement birth record issued under section 144.218, subdivision 2, the
4.20 adopted person or a person related to the adopted person may obtain from the state registrar
4.21 certified copies of the order or decree of adoption, certificate of adoption, or decree issued
4.22 under section 259.60, as filed with the state registrar.

4.23 Subd. 3. Adult adoptions. Notwithstanding section 144.218, a person adopted as an
4.24 adult may access the person's birth records that existed before the person's adult adoption.
4.25 Access to the existing birth records shall be the same access that was permitted prior to the
4.26 adult adoption.

4.27 Sec. 7. [144.2253] BIRTH PARENT CONTACT PREFERENCE FORM.

4.28 (a) The commissioner must make available to the public a contact preference form as
4.29 described in paragraph (b).

4.30 (b) The contact preference form must provide the following information to be completed
4.31 at the option of a birth parent:

4.32 (1) "I would like to be contacted."

4.33 (2) "I would prefer to be contacted only through an intermediary."

5.1 (3) "I prefer not to be contacted at this time. If I decide later that I would like to be
 5.2 contacted, I will submit an updated contact preference form to the Minnesota Department
 5.3 of Health."

5.4 (c) If a birth parent of an adopted person submits a completed contact preference form
 5.5 to the commissioner, the commissioner must:

5.6 (1) match the contact preference form to the adopted person's original birth record; and

5.7 (2) attach the contact preference form to the original birth record as required under
 5.8 section 144.2252.

5.9 (d) A contact preference form submitted to the commissioner under this section is private
 5.10 data on an individual as defined in section 13.02, subdivision 12, except that the contact
 5.11 preference form may be released as provided under section 144.2252, subdivision 2.

5.12 **Sec. 8. [144.2254] PREVIOUSLY FILED CONSENTS TO DISCLOSURE AND**
 5.13 **AFFIDAVITS OF NONDISCLOSURE.**

5.14 (a) The commissioner must inform a person applying for an original birth record under
 5.15 section 144.2252 of the existence of an unrevoked consent to disclosure or an affidavit of
 5.16 nondisclosure on file with the department, including the name of the birth parent who filed
 5.17 the consent or affidavit. If a birth parent authorized the release of the birth parent's address
 5.18 on an unrevoked consent to disclosure, the commissioner shall provide the address to the
 5.19 person who requests the original birth record.

5.20 (b) A birth parent's consent to disclosure or affidavit of nondisclosure filed with the
 5.21 commissioner of health expires and has no force or effect beginning on June 30, 2022.

5.22 **Sec. 9. Minnesota Statutes 2020, section 259.83, subdivision 1, is amended to read:**

5.23 **Subdivision 1. **Services provided.**** (a) Agencies shall provide assistance and counseling
 5.24 services upon receiving a request for current information from adoptive parents, birth parents,
 5.25 or adopted persons aged ~~19~~ 18 years of age and ~~over~~ older. The agency shall contact the
 5.26 other adult persons or the adoptive parents of a minor child in a personal and confidential
 5.27 manner to determine whether there is a desire to receive or share information or to have
 5.28 contact. If there is such a desire, the agency shall provide the services requested. The agency
 5.29 shall provide services to adult genetic siblings if there is no known violation of the
 5.30 confidentiality of a birth parent or if the birth parent gives written consent.

5.31 (b) Upon a request for assistance or services from an adoptive parent, birth parent, or
 5.32 an adopted person 18 years of age or older, the agency must inform the person:

6.1 (1) about the right of an adopted person to request and obtain a copy of the adopted
 6.2 person's original birth record at the age and circumstances specified in section 144.2253;
 6.3 and

6.4 (2) about the right of the birth parent named on the adopted person's original birth record
 6.5 to file a contact preference form with the state registrar pursuant to section 144.2253.

6.6 In adoptive placements, the agency must provide in writing to the birth parents listed on
 6.7 the original birth record the information required under this section.

6.8 Sec. 10. Minnesota Statutes 2020, section 259.83, subdivision 1a, is amended to read:

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

6.14 (b) If an adopted person aged ~~19~~ 18 years of age and over older or the adoptive parent
 6.15 requests the agency to contact the adopted person's birth parents to request current
 6.16 nonidentifying social and medical history of the adopted person's birth family, agencies
 6.17 must use the form required under section 259.43 when obtaining the information for the
 6.18 adopted person or adoptive parent.

6.19 Sec. 11. Minnesota Statutes 2020, section 259.83, subdivision 1b, is amended to read:

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

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

7.1 Sec. 12. Minnesota Statutes 2020, section 259.83, is amended by adding a subdivision to
7.2 read:

7.3 Subd. 3a. **Birth parent identifying information.** (a) This subdivision applies to adoptive
7.4 placements where an adopted person does not have a record of live birth registered in this
7.5 state. Upon written request by an adopted person 18 years of age or older, the agency
7.6 responsible for or supervising the placement must provide to the requester the following
7.7 identifying information related to the birth parents listed on that adopted person's original
7.8 birth record:

7.9 (1) each of the birth parent's names;

7.10 (2) each of the birth parent's birthdate and birthplace; and

7.11 (3) the last known address of each birth parent.

7.12 (b) The agency may charge a reasonable fee to the requester for providing the required
7.13 information under paragraph (a).

7.14 (c) The agency, acting in good faith and in a lawful manner in disclosing the identifying
7.15 information under this subdivision, is not civilly liable for such disclosure.

7.16 Sec. 13. Minnesota Statutes 2020, section 260C.317, subdivision 4, is amended to read:

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

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

7.23 ~~(2) the right of the person to file at any time with the state registrar of vital records an~~
7.24 ~~affidavit stating that the information on the original birth record shall not be disclosed as~~
7.25 ~~provided in section 144.2252; and a contact preference form under section 144.2253.~~

7.26 ~~(3) the effect of a failure to file either a consent to disclosure, as defined in section~~
7.27 ~~144.212, subdivision 11, or an affidavit stating that the information on the original birth~~
7.28 ~~record shall not be disclosed.~~

7.29 (b) A parent whose rights are terminated under this section shall retain the ability to
7.30 enter into a contact or communication agreement under section 260C.619 if an agreement
7.31 is determined by the court to be in the best interests of the child. The agreement shall be

8.1 filed with the court at or prior to the time the child is adopted. An order for termination of
8.2 parental rights shall not be conditioned on an agreement under section 260C.619.

8.3 **Sec. 14. ADOPTION LAW CHANGES; PUBLIC AWARENESS CAMPAIGN.**

8.4 (a) The commissioner of human services must, in consultation with licensed child-placing
8.5 agencies, provide information and educational materials to adopted persons and birth parents
8.6 about the changes in law made by this act affecting access to birth records.

8.7 (b) The commissioner of human services must provide notice on the department's website
8.8 about the changes in the law. The commissioner or the commissioner's designee, in
8.9 consultation with licensed child-placement agencies, must coordinate a public awareness
8.10 campaign to advise the public about the changes in law made by this act.

8.11 **Sec. 15. REPEALER.**

8.12 Minnesota Statutes 2020, sections 144.212, subdivision 11; 259.83, subdivision 3;
8.13 259.89; and 260C.637, are repealed.

8.14 **Sec. 16. EFFECTIVE DATE.**

8.15 (a) This act is effective July 1, 2022.

8.16 (b) The commissioner of health shall begin providing contact preference forms under
8.17 section 7 on August 1, 2021.

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

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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;
- (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.

Subd. 6. Determination of eligibility for enrollment or membership in a federally recognized American Indian tribe. The state registrar shall provide a copy 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 in the tribe.

Subd. 7. Adult adoptions. Notwithstanding section 144.218, a person adopted as an adult shall be permitted to access the person's birth records that existed prior to the adult adoption. Access to the existing birth records shall be the same access that was permitted prior to the adult adoption.

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260C.637 ACCESS TO ORIGINAL BIRTH RECORD INFORMATION.

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