

Introduced by

Senators Hogan, Weber, Van Oosting

Representatives Dobervich, McLeod, S. Olson

1 A BILL for an Act to amend and reenact sections 14-15-16 and 23-02.1-18 of the North Dakota  
2 Century Code, relating to disclosure of information in adoption proceedings and access to birth  
3 records.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1. AMENDMENT.** Section 14-15-16 of the North Dakota Century Code is  
6 amended and reenacted as follows:

7 **14-15-16. Hearings and records in adoption proceedings - Confidential nature -**  
8 **Disclosure of identifying and nonidentifying information - Retroactive operation.**

9 1. The provisions of this section supersede any other law regarding public hearings and  
10 records.

11 2. For purposes of this section:

12 a. ~~"Genetic, "~~genetic parent" includes a man presumed or adjudicated to be the  
13 adopted individual's father under chapter 14-20 and an alleged father when so  
14 indicated in the files of the child-placing agency or the department, but only if  
15 there exists in those files information that corroborates the allegation of paternity,  
16 including the existence of communications between the alleged father and the  
17 child-placing agency, or between the alleged father and the genetic mother or  
18 members of her family, or such other corroborative information as may be  
19 permitted by rules adopted by the department.

20 b. ~~"Notify" means to make a personal and confidential contact with the individual to~~  
21 ~~whom a disclosure of identifying information has been requested. The personal~~  
22 ~~and confidential contact must be made by an employee or agent of the~~  
23 ~~child-placing agency that processed the adoption or by some other licensed~~  
24 ~~child-placing agency designated by the individual initiating the search.~~

- 1           3.   All ~~hearings~~A hearing held in ~~actions~~an action under this chapter must be held in  
2           closed court without admittance of any individual other than an essential officers~~officer~~  
3           of the court, ~~the parties~~a party, ~~their witnesses~~a witness, counsel, ~~individuals~~an  
4           individual who ~~have~~has not previously consented to the adoption but ~~are~~is required to  
5           consent, ~~the parents~~a parent of an adult to be adopted, and ~~representatives of the~~  
6           ~~agencies~~an agency representative present to perform ~~their~~ official duties. Upon a  
7           showing of good cause by the petitioner, the court may prohibit ~~the parents~~a parent of  
8           an adult to be adopted from attending the adoption hearings and proceedings. A  
9           parent of an adult to be adopted who is prohibited by the court from attending the  
10          proceedings may submit relevant testimony or information regarding the petition to the  
11          court in writing.
- 12          4.   All papers; records; and identifying and nonidentifying information relating to an  
13          adopted individual, birth siblings, birth parents, or adoptive parents, whether part of the  
14          permanent record of the court or of a file in the department or in an agency are  
15          confidential and may be disclosed only in accordance with this section. Papers,  
16          records, and information directly pertaining to the adoption must be kept permanently  
17          by the department and agency.
- 18          5.   Nonidentifying information, if known, concerning undisclosed genetic parents must be  
19          ~~furnished~~provided at a reasonable fee to:
- 20           a.   ~~The adoptive parents~~An adoptive parent at the time of adoptive placement or  
21           upon ~~their~~ written request;
- 22           b.   An adopted adult upon written request; or
- 23           c.   A birth parent upon written request.
- 24          6.   The clerk of the appropriate district court, upon request and payment of the proper fee,  
25          shall ~~furnish~~provide a certified copy of the decree of adoption to the ~~adoptive parents,~~  
26          ~~the~~;
- 27           a.   Adoptive parent or guardian of an adopted minor child, ~~or an adopted adult,~~  
28           provided the decree does not disclose the identity of the genetic parents or the  
29           name of the adopted individual before the adoption action; and

- 1           b. Adopted adult, including disclosure of the identity of the genetic parents and the  
2           name of the adopted adult before the adoption action if such identifying  
3           information is included in the decree of adoption.
- 4       7. Before the child reaches adulthood, at the discretion of the child-placing agency; and  
5       with due regard for confidentiality, exchanges of identifying or nonidentifying  
6       information may take place between the genetic parents, adoptive parents, and  
7       adopted child.
- 8       a. Disclosure of a party's identifying information may not occur unless the party  
9       consents to disclosure.
- 10      b. If one parent objects, the identifying information disclosed by the agency may  
11      only relate to the consenting parent or parents.
- 12      8. An adopted individual who is eighteen years of age or older may request the  
13      department to initiate the disclosure of information identifying the adopted individual's  
14      genetic parents or to initiate the disclosure of nonidentifying information not on file with  
15      the department or a child-placing agency.
- 16      9. An adopted individual who is eighteen years of age or older may request the  
17      department to initiate the disclosure of information identifying the adopted individual's  
18      adult genetic sibling.
- 19      10. A genetic parent of an adopted individual, after that individual has reached twenty-one  
20      years of age, may request the department to initiate the disclosure of information  
21      identifying that individual or to initiate the disclosure of nonidentifying information not  
22      on file with the department or a child-placing agency.
- 23      11. An adult genetic sibling of an adopted individual, after that individual has reached  
24      twenty-one years of age, may request the department to initiate disclosure of  
25      information identifying that individual.
- 26      12. An adult child of a deceased adopted individual may request the department to initiate  
27      the disclosure of information identifying the adopted individual's genetic parents or to  
28      initiate the disclosure of nonidentifying information not on file with the department or  
29      child-placing agency.
- 30      13. An adult child of an adopted individual who is still living may not request the  
31      department to initiate disclosure of information identifying the adopted individual's

- 1 genetic parents or to initiate the disclosure of nonidentifying information not on file with  
2 the department or child-placing agency.
- 3 14. The department shall, within ~~five working~~seven days ~~of~~after receipt of a request under  
4 subsection 8, 9, 10, 11, 12, or 13, notify in writing a child-placing agency having  
5 access to the requested information. If the department's records do not identify any  
6 child-placing agency having access to the requested information, the department,  
7 within ~~five working~~seven days after receipt of ~~the~~a request, shall so notify the  
8 requester in writing. The requester may designate a child-placing agency from a list of  
9 ~~such agencies furnished~~provided by the department, ask the department to designate  
10 an agency, or terminate the request.
- 11 15. Within ninety days after receiving notice of a request made under subsection 8, 9, 10,  
12 11, 12, or 13, the child-placing agency shall make:
- 13 a. Make complete and reasonable efforts to notify the individual or individuals with  
14 respect to which a disclosure of identifying information has been requested. The  
15 child-placing agency must certifysecure and compile the requested information;
- 16 b. Certify the results of its efforts to the department within one hundred twenty days  
17 after receipt of the request; and
- 18 c. If applicable, include in the certification a statement of whether an adopted  
19 individual or a genetic sibling knows the identity of a living mutual genetic parent  
20 in accordance with subsection 17.
- 21 16. The child-placing agency may charge a reasonable fee to the requester for the cost of  
22 making a search pursuant to ~~the~~a request. ~~All communications under this subsection~~  
23 ~~are confidential.~~ If the search is not completed within ninety days, additional time may  
24 be requested. Approval of this request must be given by the individual requesting the  
25 search.
- 26 ~~16.~~ The personal and confidential contact must be evidenced by an affidavit of notification  
27 executed by the individual who notified each genetic parent, adopted individual, or  
28 genetic sibling and certifying that each genetic parent, adopted individual, or genetic  
29 sibling contacted was given the following information:
- 30 a. ~~The nature of the identifying information to which the agency has access.~~
- 31 b. ~~The nature of any nonidentifying information requested.~~

- 1           e. The date of the request of the adopted individual, genetic parent, or genetic  
2           sibling.
- 3           d. The right of the genetic parent, adopted individual, or genetic sibling to file,  
4           authorize disclosure or refuse to authorize disclosure.
- 5           e. The effect of a failure of the genetic parent, adopted individual, or genetic sibling  
6           to either authorize disclosure or refuse to authorize disclosure.
- 7        17. An adopted individual, genetic parent, or genetic sibling, with respect to whom a  
8        disclosure of identifying information has been requested, may authorize disclosure,  
9        refuse to authorize disclosure, or take no action. If no action is taken in response to a  
10       request, the child-placing agency must treat that as a refusal to authorize disclosure,  
11       except that it does not preclude disclosure after the individual's death.
- 12       18. If the child-placing agency has been able to locate only one genetic parent who  
13       authorizes disclosure and the other genetic parent cannot be located, the identifying  
14       information must be disclosed to the adopted individual. The information disclosed by  
15       the agency may relate only to the consenting parent.
- 16       19. If the child-placing agency has located both genetic parents and only one genetic  
17       parent authorizes disclosure, the child-placing agency may not disclose identifying  
18       information regarding the consenting parties unless there is a court order authorizing  
19       the disclosure. Upon application to the court by the child-placing agency, the court  
20       shall issue an order authorizing disclosure of information identifying the consenting  
21       parties. The order must include any conditions the court determines sufficient to  
22       reasonably ensure the continued nondisclosure of information identifying the objecting  
23       genetic parent. Conditions placed on the disclosure may include a sworn statement by  
24       the consenting genetic parent to refrain from disclosing to the adopted individual any  
25       information identifying the objecting genetic parent.
- 26       20. The certification of the child-placing agency to the department must include:
- 27       a. A statement of whether it has been able to notify the individual about whom a  
28       disclosure of identifying information was requested and whether a notification  
29       was precluded by the death of the individual.
- 30       b. If a genetic sibling was to be notified at the request of an adopted individual, or if  
31       an adopted individual was to be notified at the request of a genetic sibling, a

1 statement of whether either individual knows the identity of any mutual genetic  
2 parent.

3 e. Assurances that:

4 (1) No disclosure of identifying information has been made with respect to any  
5 adopted individual, genetic parent, or genetic sibling who has not authorized  
6 the disclosure in writing unless the child-placing agency has verified that the  
7 individual has died leaving no unrevoked written refusal to authorize  
8 disclosure.

9 (2) Any disclosure of identifying information that might lawfully be made under  
10 this section was made within ten days after the date of receipt of written  
11 authorization or the date on which the agency verified that the individual had  
12 died.

13 d. Copies of any written authorization of disclosure or refusal to authorize  
14 disclosure.

15 e. A statement that the individual about whom disclosure of identifying information  
16 was requested has neither authorized nor refused to authorize disclosure at the  
17 time of the certification.

18 f. The date of each notification.

19 g. A copy of each affidavit of notification.

20 ~~24.17.~~ The child-placing agency, acting on the request of an adopted individual to disclose  
21 identifying information about a genetic sibling, or acting on the request of a genetic  
22 sibling to disclose identifying information about an adopted individual, must determine  
23 if either individual knows the identity of a living mutual genetic parent. If either  
24 individual knows the identity of a living mutual genetic parent, ~~no disclosure may be~~  
25 ~~made unless that parent is first notified, in the manner provided for in subsection 13.~~  
26 ~~The identifying information released may only relate to the consenting parties~~that  
27 information must be disclosed in accordance with subsection 15.

28 ~~22.18.~~ Upon application to the department by an adult adopted individual or the parent or  
29 guardian of a minor adopted child, the department may investigate or cause to be  
30 investigated facts necessary to determine the adopted individual's eligibility for  
31 enrollment as a member of an Indian tribe.

- 1           a. The department may inquire of any individual or agency, including a licensed  
2           child-placing agency in North Dakota, to assist in the investigation.
- 3           ~~b. All identifying information obtained by the department shall remain confidential.~~
- 4           e. The bureau of Indian affairs or an Indian tribe may be provided sufficient  
5           information obtained from the investigation to determine the eligibility of the  
6           adopted individual for enrollment in an Indian tribe. Before the department's  
7           release of information to the bureau of Indian affairs or an Indian tribe, the  
8           department shall request written assurance from the bureau of Indian affairs or  
9           an Indian tribe that the information provided will remain confidential and will not  
10          be furnished to any unauthorized individual or agency.
- 11          ~~d.c.~~ The procedure used in contacting the genetic parents of the adopted child must  
12          be a personal and confidential contact. Any necessary contact must be made by  
13          an employee or agent of a licensed child-placing agency or the department. The  
14          information requested of the genetic parents must be limited to that information  
15          necessary to make a determination of the adopted individual's eligibility for  
16          enrollment in an Indian tribe.
- 17          e.d. The department or agency may charge a reasonable fee.
- 18    ~~23-19.~~ An individual may not be required to disclose the name or identity of either an adoptive  
19          parent or an adopted individual except:
- 20          a. In accordance with this section;
- 21          b. As authorized in writing by the adoptive parent or the adopted individual; or
- 22          c. Upon order of the court entered in a proceeding brought under subsection ~~24~~20.
- 23    ~~24-20.~~ An adopted individual, a genetic parent, a genetic sibling, or a guardian of any of those  
24          individuals may petition the district court for an order directing the disclosure of  
25          identifying information.
- 26          a. The petitioner shall state that efforts to secure the requested disclosure have  
27          been made under this section or are ~~forbidden~~ prohibited under this section, that  
28          the petitioner has a significant need for the disclosure, and the nature of that  
29          need.
- 30          b. The petition ~~shall~~ must name the department and any child-placing agency that  
31          has received a request under subsection 8, 9, 10, 11, 12, or 13 as respondents.

- 1           c. The respondents must ~~furnish~~provide, to the court, for in camera review, copies  
2           of such records as the respondents may possess that contain requested  
3           identifying information.
- 4           d. The court may determine if individuals about whom the disclosure of identifying  
5           information is requested must be ~~furnished~~provided notice of the proceeding and  
6           may require ~~that~~ the respondents give notice to those individuals. If those  
7           ~~persons~~individuals participate in the proceeding ~~they~~the individuals must be  
8           ~~permitted~~allowed to do so in a manner, to be determined by the court, which  
9           avoids disclosure of identifying information except when disclosure is ordered by  
10          the court.
- 11          e. The court may order disclosure only if the petitioner demonstrates that disclosure  
12          will not result in any substantial harm to the individual about whom identifying  
13          information is sought. The court may not order the disclosure of identifying  
14          information concerning any individual who objects to that disclosure.
- 15 ~~25-21.~~ The provisions of this section governing the release of identifying and nonidentifying  
16          adoptive information apply to ~~adoptions~~an adoption completed before and after July 1,  
17          1979.
- 18 ~~26-22.~~ Any child-placing agency discharging in good faith its responsibilities under this  
19          section is immune from ~~any~~ liability, civil or criminal, that otherwise might result.
- 20 ~~27-23.~~ The department shall ~~make such reasonable~~adopt rules ~~as are necessary~~  
21          to carry out the purposes of this section.

22           **SECTION 2. AMENDMENT.** Section 23-02.1-18 of the North Dakota Century Code is  
23          amended and reenacted as follows:

24           **23-02.1-18. New birth records following adoption, legitimation, and paternity**  
25          **determination.**

- 26          1. The state registrar shall establish a new birth record for ~~a person~~an individual born in  
27          this state when the registrar receives the following:
- 28           a. An adoption report as provided in section 23-02.1-17 or a certified copy of the  
29           decree of adoption together with the information necessary to identify the original  
30           birth record and to establish a new birth record; except that a new birth record



1                   may not be established if so requested by the court decreeing the adoption, the  
2                   adoptive parents, or the adoptive person.

3           b.    A request that a new record be established and such evidence as required by  
4                   rules and regulations proving that ~~such person~~individual has been legitimated or  
5                   that a court of competent jurisdiction has determined the paternity of such  
6                   ~~person~~individual.

7           2.   For a ~~person~~an individual born in a foreign country whose adoptive parents are  
8                   residents of the state of North Dakota at the time of the adoption, the state registrar  
9                   shall prepare a new birth record:

10          a.   In the case of a foreign-born ~~person~~individual adopted in North Dakota, upon  
11                   presentation of a report of adoption as required by section 23-02.1-17.

12          b.   In the case of a foreign-born ~~person~~individual adopted outside the state of North  
13                   Dakota or outside the United States, or in the state of North Dakota prior to  
14                   July 1, 1979, upon presentation of a certified copy of the adoption decree, and:

15                   (1)   A certified copy of the birth record of the adopted ~~person~~individual; or

16                   (2)   An affidavit of an adoptive parent setting forth the true or probable date and  
17                   place of birth and parentage of the adopted ~~person~~individual.

18                   Any certification of a birth record issued under this subsection must be in the same  
19                   form as other certifications of birth records issued in this state except that it must state  
20                   that it does not purport to be evidence of United States citizenship.

21          3.   When a new birth record is established, the actual place and date of birth must be  
22                   shown. The new birth record must be substituted for the original birth record:

23          a.   Thereafter, the original birth record and the evidence of adoption, paternity, or  
24                   legitimation is not subject to inspection except upon ~~order~~:

25                   (1)   Request of the adopted individual who is eighteen years of age or older, the  
26                   state registrar shall provide to the adopted individual a copy of the  
27                   individual's original birth record and any evidence of adoption previously  
28                   filed with the state registrar; or

29                   (2)   Order of a court of competent jurisdiction or as provided by rules and  
30                   regulations.

- 1           b. Upon receipt of a notice of annulment of adoption, the original birth record must  
2           be restored to its place in the files and the new birth record and evidence is not  
3           subject to inspection except upon order;
- 4           (1) Request of the adopted individual who is eighteen years of age or older, the  
5           state registrar shall provide to the adopted individual a copy of the new birth  
6           record and any evidence of adoption previously filed with the state registrar;  
7           or
- 8           (2) Order of a court of competent jurisdiction.
- 9           4. If no birth record is on file for the ~~person~~individual for whom a new birth record is to be  
10          established under this section, an original birth record must be filed with the state  
11          registrar in accordance with the appropriate rules ~~and regulations promulgated~~adopted  
12          by the department of health and human services. The new record is also to be  
13          prepared on the standard forms in use at the time of the adoption, legitimation, or  
14          paternity determination.
- 15          5. When a new birth record is established by the state registrar, all copies of the original  
16          birth record in the custody of any custodian of permanent local records in the state  
17          must be sealed from inspection or forwarded to the state registrar, as the registrar  
18          directs.