

2007 DRAFTING REQUEST

Assembly Amendment (AA-AB489)

Received: 10/03/2007

Received By: **gmalaise**

Wanted: **Soon**

Identical to LRB:

For: **John Townsend (608) 266-3156**

By/Representing: **John Flynn**

This file may be shown to any legislator: **NO**

Drafter: **gmalaise**

May Contact:

Addl. Drafters:

Subject: **Children - TPR and adoption**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Townsend@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Disclosure to a birth parent of identifying information about his or her birth child; technical changes

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	gmalaise 10/03/2007	bkraft 10/04/2007		_____			
/1			jfrantze 10/04/2007	_____	mbarman 10/04/2007	mbarman 10/04/2007	

FE Sent For:

<END>

2007 DRAFTING REQUEST

Assembly Amendment (AA-AB489)

Received: 10/03/2007

Received By: **gmalaise**

Wanted: **Soon**

Identical to LRB:

For: **John Townsend (608) 266-3156**

By/Representing: **John Flynn**

This file may be shown to any legislator: **NO**

Drafter: **gmalaise**

May Contact:

Addl. Drafters:

Subject: **Children - TPR and adoption**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Townsend@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Disclosure to a birth parent of identifying information about his or her birth child; technical changes ✓

Instructions:

See Attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	gmalaise	1 bjk 10/4					

FE Sent For:

<END>

Malaise, Gordon

From: Flynn, John
Sent: Thursday, September 27, 2007 1:20 PM
To: Malaise, Gordon
Subject: 2007 AB 489 - DHFS Concerns

Attachments: Updated DHFS Testimony.pdf



Updated DHFS
Testimony.pdf (15...

Gordon:

These are some of the concerns we need to address in this bill. Please give me a call to set up a time to meet and discuss them.

John
Phone: 266-3156

Updated
9/7



DIVISION OF CHILDREN AND FAMILY SERVICES

1 WEST WILSON STREET
P O BOX 8916
MADISON WI 53708-8916

Telephone: 608-267-3905
FAX: 608-266-6836
dhfs.wisconsin.gov

Jim Doyle
Governor

Kevin R. Hayden
Secretary

State of Wisconsin
Department of Health and Family Services

To: Members of the Assembly Committee on Children and Family Law

From: Katie Plona
Legislative Liaison

Date: September 6, 2007

RE: 2007 Assembly Bill 489

Rep. Owens and committee members, thank you for the opportunity to testify today regarding Assembly Bill 489. I am testifying for informational purposes only on behalf of the Department of Health and Family Services.

DHFS supports Rep. Townsend's efforts to help birth parents and birth children who want to reconnect. However, there are some provisions in the bill that raise questions about potentially unintended consequences and concerns we want to bring to your attention.

AB 489 will expand the options for information sharing between birth children and birth parents. However, the bill's increase in access to information must be weighed against the privacy concerns of people who have not consented to a release of their identity. This change will potentially impact the privacy of adoptive parents, biological siblings and birth parents of the birth child who files an affidavit with the Adoption Records Search Program at DHFS.

Three potential scenarios under AB 489:

- A birth mother has her parental rights terminated to several children, and they are placed in the same adoptive home. The oldest child turns 18 years of age and files an affidavit and that child's identify and location is released to the birth parent. That release of identity is very likely to release the identity of all the younger siblings and the adoptive parents.
- The same concerns would apply if the birth child was deceased and his or her identity was released. The adoptive parents may have particularly strong objections to the release of information about their child to a third party, especially with no affidavit from the birth child. The Division also notes that the bill prohibits the Adoption Records Search Program from searching for a birth child, so the Program would not generally have knowledge that an adoptee is deceased.
- A birth child could file an affidavit, and one of his or her birth parents could request the identity of that birth child. The child's identify would then be released to the requesting birth parent, who could potentially release the identity of the other birth parent who did not authorize the release of that information to the child.

Requested Changes

The Department recommends that Section 26 of the bill, which prohibits a birth parent from contacting a birth child who has not filed an affidavit, be broadened to include individuals or entities that are acting on behalf of a birth parent with or without the knowledge of the birth parent.

AB 489 creates a definition of a birth child, which includes a child whose birth parent's parental rights were terminated. The Department recommends changing the current definition of birth parent in s. 48.433(1), Stats., which references s. 48.432(1)(am), Stats., to mirror the new definition of a birth child. The current definition of a birth mother does not limit the definition to the mother whose parental rights were terminated.

As a result, when researching adoption case for a birth father whose parental rights have been terminated, the Program is required to have the birth mother who raised the child sign an affidavit of consent to release her information, even though the adult child has given consent. It is not unusual for the birth child who is reconnecting with his or her birth father not to want to share this information with his or her mother. Our recommendation would eliminate the requirement that the birth mother consent in this case.

Under current law, it is very difficult for adoptees or birth parents to stop private entities that are circumventing the Adoption Records Search Program to locate children or birth parents who do not want to be located. AB 489 creates a penalty for contacting an adopted child outside of the affidavit process. However, the penalty provisions of AB 489 under Section 26(c) do not specify enforcement procedures. The Department would appreciate further guidance on what entity will be responsible for enforcing the fine for violating the requirements of the bill. The Department would also note that the current proposal of a \$5,000 penalty may not be enough to deter private entities from disclosing confidential information or contacting adopted children and adoptive parents outside of the scope of this bill and current law.

Additionally, Section 25 of the bill appears to allow a court to release the identity of a birth child who has not filed an affidavit if good cause is shown. This is because AB 489 makes the birth parent a requester under the statute. The Department recommends that this be clarified not to allow a court to release a birth child's identity without the child's consent.

DHFS also recommends the bill be amended to clarify the author's intent to only authorize the release of the identity and location of the birth child on the affidavit when requested by a birth parent and an affidavit is on file, no other information is to be released.

This concludes my prepared remarks. Thank you again giving me the opportunity to provide the department's feedback on AB 489 to this committee. We look forward to working with committee members and Rep. Townsend on this bill.

If you have any questions for me at this time, I am going to ask Jacy Boldebuck and Judy Ranney from the Adoption Records Service Program to join me to help answer specific questions you may have about how the program works and what experiences they have had.

Malaise, Gordon

From: Flynn, John
Sent: Tuesday, October 02, 2007 11:02 AM
To: Malaise, Gordon
Subject: RE: 2007 AB 489 - DHFS Concerns

Gordon:

DHFS has offered the assistance of one of their attorneys, and the National Council for Adoption has also offered the assistance of one of their attorneys to help us address the concerns outlined in the DHFS testimony.

Katy Plona is the Leg. Liaison at DHFS, and she can put you in touch with the right person there. Her contact info: (608) 266-3262 and PlonaKP@dhfs.state.wi.us

Lee A. Allen is the VP, Communications at the NCFA, and he can put you in touch with one of their attorneys if you would like. Lee's contact info: (703) 299-6633 and lallen@adoptioncouncil.org

John

From: Malaise, Gordon
Sent: Friday, September 28, 2007 2:27 PM
To: Flynn, John
Subject: RE: 2007 AB 489 - DHFS Concerns

John:

I'm going to have to review the attached DHFS testimony carefully before I'll be ready to discuss a possible amendment or substitute amendment. So, maybe we can meet sometime next week.

Gordon

From: Flynn, John
Sent: Thursday, September 27, 2007 1:20 PM
To: Malaise, Gordon
Subject: 2007 AB 489 - DHFS Concerns

<< File: Updated DHFS Testimony.pdf >>

Gordon:

These are some of the concerns we need to address in this bill. Please give me a call to set up a time to meet and discuss them.

John
Phone: 266-3156



State of Wisconsin
2007 - 2008 LEGISLATURE

LRBa07430
GMM.....

Soon ←

golk
bjk

ASSEMBLY AMENDMENT ,
TO 2007 ASSEMBLY BILL 489 ✓

bh ✓
SA ✓
X-ref ✓

D-note

1 At the locations indicated, amend the bill as follows:

2 1. Page 3, line 9: delete lines 9 to 17 and substitute:

3 "SECTION 3g. 48.433 (1) (b) of the statutes is amended to read:

4 ✓ 48.433 (1) (b) "Birth parent" ~~has the meaning given under s. 48.432 (1) (am)~~
5 means a person whose parental rights to his or her birth child have been terminated
6 in this state at any time or who has consented to the adoption of his or her birth child
7 before February 1, 1982.

8 History: 1981 c. 359, 391; 1983 a. 471; 1985 a. 176; 1985 a. 332 s. 251 (1); 1989 a. 31; 1995 a. 27; 2005 a. 343.

8 SECTION 4d. 48.433 (2) of the statutes is amended to read:

9 ✓ 48.433 (2) Any birth parent ~~whose rights have been terminated in this state~~
10 ~~at any time, or who has consented to the adoption of his or her child in this state~~
11 ~~before February 1, 1982, may file with the department, or an agency contracted with~~
12 ~~under sub. (11), an affidavit authorizing the department or agency to provide the his~~
13 or her birth child with his or her a copy of the birth child's original birth certificate

1 and with any other available information about the birth parent's identity and
2 location. An affidavit filed under this subsection may be revoked at any time by
3 notifying the department or agency in writing." ✓

History: 1981 c. 359, 391; 1983 a. 471; 1985 a. 176; 1985 a. 332 s. 251 (1); 1989 a. 31; 1995 a. 27; 2005 a. 343.

4 **2.** Page 5, line 9: after "(3m)" insert "any other information about a birth child
5 who has filed an unrevoked affidavit under sub. (2m) or". ✓

6 **3.** Page 5, line 11: delete "that birth child." and substitute "any birth child of
7 the requester." ✓

8 **4.** Page 7, line 23: delete that line. ✓

9 **5.** Page 8, line 1: delete lines 1 to 3 and substitute:

10 "SECTION 25d. 48.433 (9) of the statutes is amended to read:

11 ✓ 48.433 (9) ~~The requester~~ A requester under sub. (3) may petition the circuit
12 court to order the department or agency designated by the department to disclose any
13 information that may not be disclosed under this section. The court shall grant the
14 petition for good cause shown." ✓

History: 1981 c. 359, 391; 1983 a. 471; 1985 a. 176; 1985 a. 332 s. 251 (1); 1989 a. 31; 1995 a. 27; 2005 a. 343.

15 **6.** Page 8, line 5: after "parent" insert "or person acting on behalf of a birth
16 parent". ✓

17 **7.** Page 8, line 7: after "parent" insert "or person acting on behalf of a birth
18 parent". ✓

19 (END) ✓

D-note

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRBa0743/1dn

GMM:.....

g l bjk

Date

Representative Townsend:

In her testimony the DHFS legislative liaison inquired as to who would be responsible for enforcing forfeiture actions under s. 48.433 (9m) (c), as created by the bill. Section 978.05 (2) requires the district attorney to prosecute state forfeiture actions within the district attorney's prosecutorial unit and ch. 778 specifies the procedures governing forfeiture actions.

Gordon M. Malaise
Senior Legislative Attorney
Phone: (608) 266-9738
E-mail: gordon.malaise@legis.wisconsin.gov

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRBa0743/1dn
GMM:bjk:jf

October 4, 2007

Representative Townsend:

In her testimony the DHFS legislative liaison inquired as to who would be responsible for enforcing forfeiture actions under s. 48.433 (9m) (c), as created by the bill. Section 978.05 (2) requires the district attorney to prosecute state forfeiture actions within the district attorney's prosecutorial unit and ch. 778 specifies the procedures governing forfeiture actions.

Gordon M. Malaise
Senior Legislative Attorney
Phone: (608) 266-9738
E-mail: gordon.malaise@legis.wisconsin.gov