



2007 ASSEMBLY BILL 489

August 14, 2007 - Introduced by Representatives TOWNSEND, ALBERS and HAHN, cosponsored by Senator LAZICH. Referred to Committee on Children and Family Law.

1 **AN ACT to amend** 48.433 (title), 48.433 (1) (a), 48.433 (2), 48.433 (3) (intro.),
2 48.433 (3) (a), 48.433 (4), 48.433 (5) (intro.), 48.433 (5) (a), 48.433 (5) (b), 48.433
3 (6) (a), 48.433 (6) (d), 48.433 (7) (a) 3., 48.433 (7) (b), 48.433 (7) (c), 48.433 (7)
4 (d), 48.433 (7) (e), 48.433 (8) (a) (intro.), 48.433 (8) (b), 48.433 (8m), 48.433 (9)
5 and 48.434 (7); and **to create** 48.433 (1) (am), 48.433 (2m), 48.433 (3m), 48.433
6 (5m), 48.433 (8) (c) and 48.433 (9m) of the statutes; **relating to:** the disclosure
7 to a birth parent whose parental rights to his or her birth child were terminated
8 of identifying information about the birth child and providing a penalty.

Analysis by the Legislative Reference Bureau

Current law provides a procedure by which a person whose birth parent's parental rights to that person have been terminated in this state at any time, or who has been adopted in this state before February 1, 1982, (birth child) may request the Department of Health and Family Services (DHFS), or a county department of human services or social services or a child welfare agency that has contracted with DHFS to administer the Adoption Search Program (agency), to provide the birth child, after he or she reaches 18 years of age, with any information that is available to DHFS or the agency regarding the identity and location of his or her birth parents. DHFS or the agency may provide the identity and location of a birth parent only if

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DHFS or the agency has on file unrevoked affidavits from all known birth parents authorizing DHFS or the agency to disclose that information. If DHFS or the agency does not have on file an unrevoked affidavit from each known birth parent, DHFS or the agency must search for each birth parent who has not filed an affidavit. Upon locating a birth parent, DHFS must give the birth parent an opportunity to file an affidavit. If a known birth parent cannot be located, DHFS or the agency may disclose identifying information concerning that birth parent if the other birth parent has filed an unrevoked affidavit. If a birth parent who has not filed an affidavit is known to be deceased, DHFS or the agency may not provide the identity of that birth parent but may provide the identity and location of the other birth parent if the other birth parent has filed an unrevoked affidavit and if one year has elapsed since the death of the birth parent.

This bill establishes a similar procedure by which a birth parent may request DHFS or an agency to provide the birth parent, after his or her birth child reaches 18 years of age, with any information that is available to DHFS or the agency regarding the identity and location of the birth child. DHFS or the agency may provide that information with respect to a birth child only if DHFS or the agency has on file an unrevoked affidavit from the birth child authorizing the disclosure of that information. To file an affidavit, a birth child must be 18 years of age or over. If DHFS or an agency does not have on file an unrevoked affidavit from a birth child, DHFS or the agency may not search for the birth child and may not disclose identifying information concerning the birth child. If a birth child who has not filed an affidavit is known to be deceased, DHFS or the agency must so inform the requester and provide the requester with the identity of that birth child.

The bill also prohibits a birth parent from contacting a birth child who has not filed an unrevoked affidavit and any person from providing such a birth parent with any information about the identity or location of the birth child, except that this prohibition does not apply if, before the birth child reaches 18 years of age, the adoptive parents of the birth child authorized the release of that information to the birth parent. Any person who contacts a birth child in violation of the bill or who provides information to a birth parent in violation of the bill may be required to forfeit not more than \$5,000 for each violation.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 48.433 (title) of the statutes is amended to read:

2 **48.433 (title) Access to identifying information about birth parents and**
3 **birth children.**

4 **SECTION 2.** 48.433 (1) (a) of the statutes is amended to read:

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1 48.433 (1) (a) “Agency” ~~has the meaning given under s. 48.432 (1) (ag)~~ means
2 a county department or a licensed child welfare agency that has contracted with the
3 department under sub. (11) to administer this section.

4 **SECTION 3.** 48.433 (1) (am) of the statutes is created to read:

5 48.433 (1) (am) “Birth child” means a person either of whose birth parent’s
6 parental rights to the person have been terminated in this state at any time or who
7 has been adopted in this state with the consent of his or her birth parent or parents
8 before February 1, 1982.

9 **SECTION 4.** 48.433 (2) of the statutes is amended to read:

10 48.433 (2) Any birth parent whose parental rights to his or her birth child have
11 been terminated in this state at any time, or who has consented to the adoption of
12 his or her birth child in this state before February 1, 1982, may file with the
13 department, or an agency ~~contracted with under sub. (11)~~, an affidavit authorizing
14 the department or agency to provide the birth child with a copy of his or her original
15 birth certificate and with any other available information about the birth parent’s
16 identity and location. An affidavit filed under this subsection may be revoked at any
17 time by notifying the department or agency in writing.

18 **SECTION 5.** 48.433 (2m) of the statutes is created to read:

19 48.433 (2m) Any birth child 18 years of age or over may file with the
20 department or an agency an affidavit authorizing the department or agency to
21 provide his or her birth parent with any available information about the birth child’s
22 identity and location. An affidavit filed under this subsection may be revoked at any
23 time by notifying the department or agency in writing.

24 **SECTION 6.** 48.433 (3) (intro.) of the statutes is amended to read:

ASSEMBLY BILL 489**SECTION 6**

1 48.433 (3) (intro.) Any ~~person~~ birth child 18 years of age or over whose ~~birth~~
2 ~~parent's rights have been terminated in this state or who has been adopted in this~~
3 ~~state with the consent of his or her birth parent or parents before February 1, 1982,~~
4 ~~may request the department, or an agency contracted with under sub. (11), to provide~~
5 ~~the person~~ birth child with all of the following:

6 **SECTION 7.** 48.433 (3) (a) of the statutes is amended to read:

7 48.433 (3) (a) ~~The person's~~ A copy of the birth child's original birth certificate.

8 **SECTION 8.** 48.433 (3m) of the statutes is created to read:

9 48.433 (3m) Any birth parent of a birth child who is 18 years of age or over at
10 the time of the request may request the department or an agency to provide the birth
11 parent with any available information regarding the identity and location of the
12 birth child.

13 **SECTION 9.** 48.433 (4) of the statutes is amended to read:

14 48.433 (4) Before acting on the a request under sub. (3) or (3m), the
15 ~~department, or agency contracted with under sub. (11),~~ shall require the requester
16 to provide adequate identification.

17 **SECTION 10.** 48.433 (5) (intro.) of the statutes is amended to read:

18 48.433 (5) (intro.) The department, or agency ~~contracted with under sub. (11),~~
19 shall disclose the ~~requested~~ information requested under sub. (3) in either of the
20 following circumstances:

21 **SECTION 11.** 48.433 (5) (a) of the statutes is amended to read:

22 48.433 (5) (a) The department, or agency ~~contracted with under sub. (11),~~ has
23 on file unrevoked affidavits filed under sub. (2) from both birth parents.

24 **SECTION 12.** 48.433 (5) (b) of the statutes is amended to read:

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1 48.433 (5) (b) One of the birth parents was unknown at the time of the
2 proceeding for termination of parental rights or the consent to adoption and the
3 known birth parent has filed an unrevoked affidavit under sub. (2).

4 **SECTION 13.** 48.433 (5m) of the statutes is created to read:

5 48.433 (5m) The department or agency shall disclose to a birth parent who
6 requests information under sub. (3m) any available information concerning the
7 identity and location of any of the requester's birth children who has filed an
8 unrevoked affidavit under sub. (2m). The department or agency may not disclose to
9 a birth parent who requests information under sub. (3m) any information concerning
10 the identity and location of any birth child of the requester who has not filed an
11 unrevoked affidavit under sub. (2m) and may not search for that birth child.

12 **SECTION 14.** 48.433 (6) (a) of the statutes is amended to read:

13 48.433 (6) (a) If the department, or agency ~~contracted with under sub. (11),~~ does
14 not have on file an unrevoked affidavit under sub. (2) from each known birth parent,
15 it the department or agency shall, within 3 months after the date of the original
16 request under sub. (3), undertake a diligent search for each birth parent who has not
17 filed an affidavit under sub. (2). The search shall be completed within 6 months after
18 the date of the request, unless the search falls within one of the exceptions
19 established by the department by rule. If any information has been provided under
20 sub. (5), the department or agency is not required to conduct a search.

21 **SECTION 15.** 48.433 (6) (d) of the statutes is amended to read:

22 48.433 (6) (d) The department, or agency ~~contracted with under sub. (11),~~ shall
23 charge the requester a reasonable fee for the cost of the search. When the
24 department or agency determines that the fee will exceed \$100 for either birth
25 parent, it the department or agency shall notify the requester. No fee in excess of

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1 \$100 per birth parent may be charged unless the requester, after receiving
2 notification under this paragraph, has given consent to proceed with the search.

3 **SECTION 16.** 48.433 (7) (a) 3. of the statutes is amended to read:

4 48.433 (7) (a) 3. The fact that the birth parent ~~has the right to~~ may file with
5 the department the affidavit under sub. (2).

6 **SECTION 17.** 48.433 (7) (b) of the statutes is amended to read:

7 48.433 (7) (b) Within 3 working days after contacting a birth parent, the
8 department, or agency ~~contracted with under sub. (11),~~ shall send the birth parent
9 a written copy of the information specified under par. (a) and a blank copy of the
10 affidavit under sub. (2).

11 **SECTION 18.** 48.433 (7) (c) of the statutes is amended to read:

12 48.433 (7) (c) If the birth parent files the affidavit under sub. (2), the
13 department, or agency ~~contracted with under sub. (11),~~ shall disclose the requested
14 information if permitted under sub. (5).

15 **SECTION 19.** 48.433 (7) (d) of the statutes is amended to read:

16 48.433 (7) (d) If the department or an agency has contacted a birth parent
17 under this subsection, and the birth parent does not file the affidavit under sub. (2),
18 the department or agency may not disclose the requested information.

19 **SECTION 20.** 48.433 (7) (e) of the statutes is amended to read:

20 48.433 (7) (e) If, after a search under this subsection, a known birth parent
21 cannot be located, the department, or agency ~~contracted with under sub. (11),~~ may
22 disclose the requested information if the other birth parent has filed an unrevoked
23 affidavit under sub. (2).

24 **SECTION 21.** 48.433 (8) (a) (intro.) of the statutes is amended to read:

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1 48.433 (8) (a) (intro.) If a birth parent is known to be dead deceased and has
2 not filed an unrevoked affidavit under sub. (2), the department, or agency ~~contracted~~
3 ~~with under sub. (11)~~, shall so inform the requester. The department or agency may
4 not provide the requester with a copy of his or her original birth certificate or with
5 the identity of that birth parent, but shall provide the requester with any available
6 information ~~it~~ that the department or agency has on file regarding the identity and
7 location of the other birth parent if both of the following conditions exist:

8 **SECTION 22.** 48.433 (8) (b) of the statutes is amended to read:

9 48.433 (8) (b) If a birth parent is known to be dead deceased, the department,
10 or agency ~~contracted with under sub. (11)~~, in addition to the information provided
11 under par. (a), shall provide the requester with any nonidentifying social history
12 information about the deceased birth parent that is on file with the department or
13 agency.

14 **SECTION 23.** 48.433 (8) (c) of the statutes is created to read:

15 48.433 (8) (c) If a birth child is known to be deceased, the department or agency
16 shall so inform the requester and shall provide the requester with the identity of that
17 birth child.

18 **SECTION 24.** 48.433 (8m) of the statutes is amended to read:

19 48.433 (8m) If the department, or agency ~~contracted with under sub. (11)~~, may
20 not disclose the information requested under ~~this section, it~~ sub. (3), the department
21 or agency shall provide the requester with any nonidentifying social history
22 information about either of the birth parents that it has on file.

23 **SECTION 25.** 48.433 (9) of the statutes is amended to read:

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1 48.433 (9) The requester may petition the circuit court to order the department
2 or agency designated by the department to disclose any information that may not be
3 disclosed under this section. The court shall grant the petition for good cause shown.

4 **SECTION 26.** 48.433 (9m) of the statutes is created to read:

5 48.433 (9m) (a) Subject to par. (b), no birth parent may contact a birth child who
6 has not filed an unrevoked affidavit under sub. (2m) and no person may provide such
7 a birth parent with any information about the identity or location of the birth child.

8 (b) Paragraph (a) does not apply if, before the birth child reaches 18 years of
9 age, the adoptive parents of the birth child authorize under s. 48.434 (3) or otherwise
10 the release of the information specified in par. (a) to the birth parent.

11 (c) Subject to sub. (10), any person who violates par. (a) may be required to
12 forfeit not more than \$5,000 for each violation.

13 **SECTION 27.** 48.434 (7) of the statutes is amended to read:

14 48.434 (7) This section does not apply if the adopted child is ~~21~~ 18 years of age
15 or over.

16 **SECTION 28. Nonstatutory provisions.**

17 (1) NOTICE TO BIRTH CHILDREN. The department of health and family services
18 shall, no later than 3 months after the effective date of this subsection, publish in the
19 official state newspaper designated under section 985.04 of the statutes a notice
20 informing birth children, as defined in section 48.433 (1) (am) of the statutes, as
21 created by this act, of their right to file with that department or an agency, as defined
22 in section 48.433 (1) (a) of the statutes, as affected by this act, under section 48.433
23 (2m) of the statutes, as created by this act, an affidavit authorizing the disclosure to
24 their birth parents, as defined in section 48.433 (1) (b) of the statutes, of information
25 about their identity and location.

ASSEMBLY BILL 489**SECTION 29. Fiscal changes.**

(1) BIRTH CHILD AFFIDAVIT REGISTRY. In the schedule under section 20.005 (3) of the statutes for the appropriation to the department of health and family services under section 20.435 (3) (a) of the statutes, as affected by the acts of 2007, the dollar amount is increased by \$37,500 for fiscal year 2007-08 and the dollar amount is increased by \$37,500 for fiscal year 2008-09 to increase the authorized FTE positions for the department by 1.0 GPR office associate position for the purpose of administering the birth child affidavit registry created under this act.

SECTION 30. Initial applicability.

(1) ACCESS TO IDENTIFYING INFORMATION ABOUT ADOPTIVE PARENTS AND BIRTH PARENTS. The treatment of section 48.434 (7) of the statutes first applies to requests for access to identifying information about adoptive parents or birth parents that are received by an agency under section 48.434 (5) or (6) of the statutes on the effective date of this subsection.

SECTION 31. Effective date.

(1) BIRTH CHILD AFFIDAVIT REGISTRY. This act takes effect on the day after publication, or on the 2nd day after publication of the 2007-09 biennial budget act, whichever is later.

(END)