



## 2005 ASSEMBLY BILL 1025

February 16, 2006 - Introduced by Representatives GUNDRUM, TOWNSEND, KRAWCZYK, ALBERS, AINSWORTH, HAHN, WOOD and NASS, cosponsored by Senators LAZICH and GROTHMAN. Referred to Committee on 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) and 48.433  
5           (9); and **to create** 48.433 (1) (am), 48.433 (2m), 48.433 (3m), 48.433 (5m), 48.433  
6           (8) (c) and 48.433 (9m) of the statutes; **relating to:** the disclosure to a birth  
7           parent whose parental rights to his or her birth child were terminated of  
8           identifying information about the birth child and providing a penalty.

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### *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 21 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 an unrevoked affidavit from the birth parent 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 21 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 21 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 a person from providing such a birth parent with any information about the identity or location of the birth child, except that that prohibition does not apply if, before the birth child reaches 21 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 and local* fiscal estimate, which will be printed as an appendix to this bill.

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*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 21 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 1025****SECTION 6**

1           48.433 (3) (intro.) Any ~~person~~ birth child 21 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 A copy of the person'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 21 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:

