



State of Wisconsin
1997 - 1998 LEGISLATURE

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**ASSEMBLY SUBSTITUTE AMENDMENT 1,
TO 1997 ASSEMBLY BILL 53**

October 30, 1997 – Offered by COMMITTEE ON CHILDREN AND FAMILIES.

1 **AN ACT to amend** 20.435 (3) (jj), 48.427 (6) (a), 48.78 (2) (a), 48.93 (1d) and 69.15
2 (6) (b); and **to create** 48.434 of the statutes; **relating to:** disclosure of
3 identifying information about birth siblings, granting rule-making authority
4 and making an appropriation.

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

5 **SECTION 1.** 20.435 (3) (jj) of the statutes is amended to read:
6 20.435 (3) (jj) (title) *Searches for birth parents and birth siblings and adoption*
7 *record information; foreign adoptions.* The amounts in the schedule for paying the
8 cost of searches for birth parents under ss. 48.432 (4) and 48.433 (6), for paying the
9 cost of searches for birth siblings and birth parents under s. 48.434 (6) and for paying
10 the costs of reviewing, certifying and approving foreign adoption documents under
11 s. 48.838 (2) and (3). All moneys received as fees paid by persons requesting a search
12 under s. 48.432 (3) (c) or (4), 48.433 (6), 48.434 (6) or 48.93 (1r) and paid by persons

1 for the review, certification and approval of foreign adoption documents under s.
2 48.838 (2) and (3) shall be credited to this appropriation.

3 **SECTION 2.** 48.427 (6) (a) of the statutes is amended to read:

4 48.427 (6) (a) Inform each birth parent, as defined under s. 48.432 (1) (am),
5 whose rights have been terminated of the provisions of ss. 48.432 and, 48.433 and
6 48.434.

7 **SECTION 3.** 48.434 of the statutes is created to read:

8 **48.434 Access to identifying information about siblings.** (1) In this
9 section:

10 (a) "Agency" has the meaning given under s. 48.432 (1) (ag).

11 (b) "Birth parent" means either the mother designated on a birth sibling's
12 original birth certificate or the adjudicated father of a birth sibling or, if the birth
13 sibling has no adjudicated father, the husband of the mother at the time the birth
14 sibling is conceived or born, or when the parents of the birth sibling intermarry under
15 s. 767.60.

16 (c) "Birth sibling" means a brother or sister by birth or a half brother or half
17 sister by birth.

18 **(2)** (a) Any birth sibling 21 years of age or over with respect to whom the
19 parental rights of one or both of his or her birth parents have been terminated in this
20 state at any time, or who was adopted in this state with the consent of one or both
21 of his or her birth parents before February 1, 1982, may file with the department or
22 agency contracted with under sub. (11) an affidavit authorizing the department or
23 agency to provide any available information about the birth sibling's identity and
24 location to any person who requests that information and who meets all of the
25 following criteria:

1 1. The person is a brother or sister by birth or a half brother or half sister by
2 birth of the birth sibling.

3 2. The person is 21 years of age or over at the time of the request.

4 (b) An affidavit filed under par. (a) may be revoked at any time by notifying the
5 department or agency in writing.

6 **(2m)** (a) Any birth parent whose parental rights to his or her child have been
7 terminated in this state at any time, or who has consented to the adoption of his or
8 her child in this state before February 1, 1982, may file with the department or
9 agency contracted with under sub. (11) an affidavit authorizing the department or
10 agency to provide any available information about the identity and location of that
11 child to any person who requests that information and who meets all of the following
12 criteria:

13 1. The person is a brother or sister by birth or a half brother or half sister by
14 birth of the child.

15 2. The person is 21 years of age or over at the time of the request.

16 (b) An affidavit filed under par. (a) may be revoked at any time by notifying the
17 department or agency in writing.

18 **(3)** Any person 21 years of age or over may request the department or agency
19 contracted with under sub. (11) to provide the person with any available information
20 about the identity and location of any of that person's birth siblings who meets all
21 of the following criteria:

22 (a) The birth sibling is 21 years of age or over at the time of the request.

23 (b) The parental rights to the birth sibling of one or both of the birth parents
24 of the birth sibling have been terminated in this state at any time or one or both of

1 the birth parents of the birth sibling consented to the adoption of the birth sibling
2 in this state before February 1, 1982.

3 (4) Before acting on the request, the department or agency contracted with
4 under sub. (11) shall require the requester to provide adequate identification.

5 (5) The department or agency contracted with under sub. (11) shall disclose to
6 the requester any information available concerning the identity and location of any
7 of the requester's birth siblings who meets the criteria specified under sub. (3) (a) and
8 (b) and who has filed an unrevoked affidavit under sub. (2) under the following
9 circumstances:

10 (a) 1. If both birth parents of the birth sibling who is the subject of the request
11 have had their parental rights to the birth sibling terminated in this state at any time
12 or have consented to the adoption of the birth sibling in this state before February
13 1, 1982, and are known to be alive, the department or agency contracted with under
14 sub. (11) has on file unrevoked affidavits under sub. (2m) from both of those birth
15 parents.

16 2. If both birth parents of the birth sibling who is the subject of the request have
17 had their parental rights to the birth sibling terminated in this state at any time or
18 have consented to the adoption of the birth sibling in this state before February 1,
19 1982, and one of those birth parents is known to be alive and the other of those birth
20 parents was unknown at the time of the proceeding for termination of parental rights
21 or consent to adoption, the department or agency contracted with under sub. (11) has
22 on file an unrevoked affidavit under sub. (2m) from the known birth parent of that
23 birth sibling.

24 3. If one birth parent of the birth sibling who is the subject of the request has
25 had his or her parental rights to the birth sibling terminated in this state at any time

1 or has consented to the adoption of the birth sibling in this state before February 1,
2 1982, and is known to be alive, and the other birth parent of the birth sibling has not
3 had his or her parental rights to the birth sibling terminated in this state at any time
4 or did not consent to the adoption of the birth sibling in this state before February
5 1, 1982, the department or agency contracted with under sub. (11) has on file an
6 unrevoked affidavit under sub. (2m) from the birth parent who has had those
7 parental rights terminated or who consented to that adoption.

8 (b) 1. If both birth parents of the birth sibling who is the subject of the request
9 have had their parental rights to the birth sibling terminated in this state at any time
10 or have consented to the adoption of the birth sibling in this state before February
11 1, 1982, and are known to be deceased, the department or agency contracted with
12 under sub. (11) has on file unrevoked affidavits under sub. (2m) or s. 48.433 (2) from
13 both of those birth parents.

14 2. If both birth parents of the birth sibling who is the subject of the request have
15 had their parental rights to the birth sibling terminated in this state at any time or
16 have consented to the adoption of the birth sibling in this state before February 1,
17 1982, and one of those birth parents is known to be deceased and the other of those
18 birth parents was unknown at the time of the proceeding for termination of parental
19 rights or consent to adoption, the department or agency contracted with under sub.
20 (11) has on file an unrevoked affidavit under sub. (2m) or s. 48.433 (2) from the known
21 birth parent of that birth sibling.

22 3. If one birth parent of the birth sibling who is the subject of the request has
23 had his or her parental rights to the birth sibling terminated in this state at any time
24 or has consented to the adoption of the birth sibling in this state before February 1,
25 1982, and is known to be deceased, and the other birth parent of the birth sibling has

1 not had his or her parental rights to the birth sibling terminated in this state at any
2 time or did not consent to the adoption of the birth sibling in this state before
3 February 1, 1982, the department or agency contracted with under sub. (11) has on
4 file an unrevoked affidavit under sub. (2m) or s. 48.433 (2) from the birth parent who
5 had had those parental rights terminated or who consented to that adoption.

6 (c) If one birth parent of the birth sibling who is the subject of the request has
7 had his or her parental rights to the birth sibling terminated in this state at any time
8 or has consented to the adoption of the birth sibling in this state before February 1,
9 1982, and is known to be alive and the other birth parent of that birth sibling has had
10 his or her parental rights to the birth sibling terminated in this state at any time or
11 has consented to the adoption of the birth sibling in this state before February 1,
12 1982, and is known to be deceased, the department or agency contracted with under
13 sub. (11) has on file an unrevoked affidavit filed under sub. (2m) from the birth parent
14 who is known to be alive and has on file an unrevoked affidavit filed under sub. (2m)
15 or s. 48.433 (2) from the birth parent who is known to be deceased.

16 (d) If one birth parent of the birth sibling who is the subject of the request has
17 not had his or her parental rights to the birth sibling terminated in this state at any
18 time or did not consent to the adoption of the birth sibling in this state before
19 February 1, 1982, and the other birth parent was unknown at the time of the
20 proceeding for termination of parental rights or consent to adoption, the department
21 or agency contracted with under sub. (11) shall disclose the requested information.

22 (6) (a) If the department or agency contracted with under sub. (11) does not
23 have on file an unrevoked affidavit under sub. (2) from each of the requester's known
24 birth siblings who meet the criteria specified under sub. (3) (a) and (b) and an
25 unrevoked affidavit under sub. (2m) from each birth parent of each of those birth

1 siblings who has had his or her parental rights to any of those birth siblings
2 terminated in this state at any time or who has consented to the adoption of any of
3 those birth siblings in this state before February 1, 1982, the department or agency
4 shall, within 3 months after the date of the original request, undertake a diligent
5 search for each birth sibling who meets the criteria specified under sub. (3) (a) and
6 (b) and who has not filed an unrevoked affidavit under sub. (2) and for each birth
7 parent of each of those birth siblings who has had his or her parental rights to any
8 of those birth siblings terminated in this state at any time or who has consented to
9 the adoption of any of those birth siblings in this state before February 1, 1982, and
10 who has not filed an unrevoked affidavit under sub. (2m). The search shall be
11 completed within 6 months after the date of the request, unless the search falls
12 within one of the exceptions established by the department by rule. If any
13 information has been provided under sub. (5) about a particular birth sibling, the
14 department or agency is not required to conduct a search for that birth sibling or for
15 the birth parents of that birth sibling.

16 (b) Employees of the department and any agency conducting a search under this
17 subsection may not inform any person other than the birth sibling or birth parent
18 who is the subject of the search of the purpose of the search.

19 (c) The department or agency conducting the search shall charge the requester
20 a reasonable fee for the cost of the search. When the department or agency
21 determines that the fee will exceed \$100 for any birth sibling or birth parent, the
22 department or agency shall notify the requester. No fee in excess of \$100 per birth
23 sibling or birth parent may be charged unless the requester, after receiving
24 notification under this paragraph, has given consent to proceed with the search.

1 (7) (a) The department or agency conducting the search shall, upon locating a
2 birth sibling or birth parent, make at least one verbal contact and notify the birth
3 sibling or birth parent of all of the following:

4 1. The nature of the information requested.

5 2. The date of the request.

6 3. The fact that the birth sibling has the right to file with the department or
7 agency the affidavit under sub. (2) or that the birth parent has the right to file with
8 the department or agency the affidavit under sub. (2m).

9 (b) Within 3 working days after contacting a birth sibling or birth parent, the
10 department or agency conducting the search shall send the birth sibling or birth
11 parent a written copy of the information specified under par. (a) and a blank copy of
12 the affidavit.

13 (c) If the birth sibling or birth parent files the affidavit, the department or
14 agency conducting the search shall disclose the requested information if permitted
15 under sub. (5).

16 (d) If the department or agency conducting the search has contacted a birth
17 sibling or birth parent under this subsection, and the birth sibling or birth parent
18 does not file the affidavit, the department or agency may not disclose the requested
19 information regarding that birth sibling.

20 (e) If, after a search under sub. (6) (a), a known birth sibling or a known birth
21 parent cannot be located, the department or agency conducting the search may not
22 disclose the requested information regarding that birth sibling.

23 (f) The department or agency conducting a search under sub. (6) (a) may not
24 contact a birth sibling or a birth parent again on behalf of the same requester until
25 at least 12 months after the date of the previous contact. Further contacts with a

1 birth sibling or a birth parent under this subsection on behalf of the same requester
2 may be made only if 5 years have elapsed since the date of the last contact.

3 **(8)** If a birth sibling is known to be deceased and has not filed an unrevoked
4 affidavit under sub. (2), the department or agency contracted with under sub. (11)
5 shall so inform the requester and shall disclose the requested information as
6 permitted under sub. (5) (a) 1., 2. or 3., (b) 1., 2. or 3., (c) or (d), whichever is applicable.

7 **(8m)** If the department or agency contracted with under sub. (11) may not
8 disclose the information requested under sub. (3), the department or agency shall
9 provide the requester with any nonidentifying social history information about any
10 of the requester's birth siblings that the department or agency has on file.

11 **(9)** The requester may petition the circuit court to order the department or
12 agency contracted with under sub. (11) to disclose any information that may not be
13 disclosed under this section. The court shall grant the petition for good cause shown.

14 **(10)** Any person, including this state or any political subdivision of this state,
15 who participates in good faith in any requirement of this section shall have immunity
16 from any liability, civil or criminal, that results from that person's actions. In any
17 proceeding, civil or criminal, the good faith of any person participating in the
18 requirements of this section shall be presumed.

19 **(11)** The department shall promulgate rules to implement this section and may
20 contract with an agency to administer this section.

21 **SECTION 4.** 48.78 (2) (a) of the statutes is amended to read:

22 48.78 **(2)** (a) No agency may make available for inspection or disclose the
23 contents of any record kept or information received about an individual in its care
24 or legal custody, except as provided under s. 48.371, 48.38 (5) (b) or (d), 48.432,
25 48.433, 48.434, 48.93 or 48.981 (7) or by order of the court.

1 **SECTION 5.** 48.93 (1d) of the statutes, as affected by 1997 Wisconsin Act 27, is
2 amended to read:

3 48.93 **(1d)** All records and papers pertaining to an adoption proceeding shall
4 be kept in a separate locked file and may not be disclosed except under sub. (1g) or
5 (1r), s. 46.03 (29), 48.432, 48.433, 48.434, 48.48 (17) (a) 9. or 48.57 (1) (j), or by order
6 of the court for good cause shown.

7 **SECTION 6.** 69.15 (6) (b) of the statutes is amended to read:

8 69.15 **(6)** (b) The state registrar shall register a new certificate created under
9 this section and shall impound the original certificate or the certificate registered
10 under sub. (5) and all correspondence, affidavits, court orders and other related
11 materials and prohibit access except by court order or except by the state registrar
12 for processing purposes or except when authorized under ~~ss. s.~~ 48.432 and 48.433
13 or 48.434. The state registrar shall send a copy of any new certificate registered
14 under this section to the local registrar who filed the original of the replaced
15 certificate. Upon receipt of the copy, the local registrar shall destroy his or her copy
16 of the replaced certificate and file the new certificate.

17 **SECTION 7. Nonstatutory provisions; health and family services.**

18 (1) The authorized FTE positions for the department of health and family
19 services are increased by 1.0 PR position, to be funded from the appropriation under
20 section 20.435 (3) (jj) of the statutes, as affected by this act, for the purpose of
21 performing searches for birth siblings, as defined in section 48.434 (1) (c) of the
22 statutes, as created by this act, and birth parents, as defined in section 48.434 (1) (b)
23 of the statutes, as created by this act, under section 48.434 (6) of the statutes, as
24 created by this act.

25 **SECTION 8. Initial applicability.**

1 (1) The treatment of section 48.434 of the statutes first applies to requests for
2 access to identifying information about birth siblings, as defined in section 48.434
3 (1) (c) of the statutes, as created by this act, that are received by the department of
4 health and family services on the effective date of this subsection.

5 **SECTION 9. Effective date.**

6 (1) This act takes effect on January 1, 1998, or on the day after publication,
7 whichever is later.

8 (END)