



1995 ASSEMBLY BILL 984

March 6, 1996 – Introduced by Representatives FREESE, MUSSER, WILDER, SERATTI and GUNDERSON. Referred to 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.

Analysis by the Legislative Reference Bureau

Current law provides a procedure by which a person whose birth parent's rights have been terminated, or who has been adopted, in this state may require the department of health and social services (DHSS) or an agency such as a county department of human services or social services or a child welfare agency that has contracted with DHSS to administer the adoption search program (agency) to provide the person, after the person reaches 21 years of age, with any information that is available to DHSS or the agency regarding the identity and location of the person's birth parents. DHSS or the agency may provide the identity and location of a birth parent only if DHSS or the agency has on file an unrevoked affidavit from the birth parent authorizing DHSS or the agency to disclose that information. If DHSS or the agency does not have on file an unrevoked affidavit from each known birth parent, DHSS or the agency must search for each birth parent who has not filed an affidavit. Upon locating a birth parent, DHSS must give the birth parent an opportunity to file an affidavit. If a known birth parent cannot be located, DHSS 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, DHSS 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 person may require the department of health and family services (DHFS) (the new name for DHSS effective

July 1, 1996) or an agency to provide the person, after the person reaches 18 years of age, with any information that is available to DHFS or the agency regarding the identity and location of the person's brothers, sisters, half brothers and half sisters by birth (birth siblings). DHFS or the agency may provide that information with respect to a birth sibling only if DHFS or the agency has on file an unrevoked affidavit from that birth sibling. To file an affidavit, a birth sibling must be 18 years of age or over and must have been adopted or have had his or her birth parent's rights over him or her terminated. An affidavit may authorize the disclosure of identifying information only to a fellow birth sibling who is 18 years of age or over and who was alive at the time of the termination of parental rights over, or the adoption of, the authorizing birth sibling.

If DHFS or an agency does not have on file unrevoked affidavits from each birth sibling, DHFS or the agency must search for each birth sibling who has not filed an affidavit. Upon locating a birth sibling, DHFS or the agency must give that birth sibling an opportunity to file an affidavit. If a known birth sibling cannot be located, DHFS or the agency may not disclose identifying information concerning that birth sibling. If a birth sibling 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 sibling.

For further information see the *state and local* 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.** 20.435 (3) (jj) of the statutes, as affected by 1995 Wisconsin Act 27,
2 is amended to read:
3 20.435 (3) (jj) (title) *Searches for birth parents and birth siblings and adoption*
4 *record information; foreign adoptions.* The amounts in the schedule for paying the
5 cost of searches for birth parents under ss. 48.432 (4) and 48.433 (6), for paying the
6 cost of searches for birth siblings under s. 48.434 (6) and for paying the costs of
7 reviewing, certifying and approving foreign adoption documents under s. 48.838 (2)
8 and (3). All moneys received as fees paid by persons requesting a search under s.
9 48.432 (3) (c) or (4), 48.433 (6), 48.434 (6) or 48.93 (1r) and paid by persons for the
10 review, certification and approval of foreign adoption documents under s. 48.838 (2)
11 and (3) shall be credited to this appropriation.

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

2 48.427 **(6)** (a) Inform each birth parent, as defined under s. 48.432 (1) (am),
3 whose rights have been terminated of the provisions of ss. 48.432 ~~and~~, 48.433 and
4 48.434.

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

6 **48.434 Access to identifying information about siblings.** (1) In this
7 section:

8 (a) “Agency” has the meaning given under s. 48.432 (1) (ag).

9 (b) “Birth parent” has the meaning given under s. 48.432 (1) (am).

10 (c) “Birth sibling” means a brother or sister by birth or a half brother or half
11 sister by birth.

12 **(2)** (a) Any birth sibling 18 years of age or older whose birth parent’s rights have
13 been terminated in this state at any time, or who was adopted in this state with the
14 consent of his or her birth parent or parents before February 1, 1982, may file with
15 the department or agency contracted with under sub. (11) an affidavit authorizing
16 the department or agency to provide any available information about the birth
17 sibling’s identity and location to any person who requests that information and who
18 meets all of the following criteria:

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

21 2. The person is 18 years of age or older at the time of the request.

22 3. The person was alive at the time that the birth parent’s rights over the birth
23 sibling were terminated or at the time that the birth sibling was adopted.

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

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

5 (a) The birth sibling is 18 years of age or older at the time of the request.

6 (b) The birth parent's rights over the birth sibling have been terminated in this
7 state at any time or the birth parent or parents consented to the adoption of the birth
8 sibling in this state before February 1, 1982.

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

11 **(5)** The department or agency contracted with under sub. (11) shall disclose to
12 the requester any information available concerning the identity and location of any
13 of the requester's birth siblings who meets the criteria specified under sub. (3) and
14 who has filed an unrevoked affidavit under sub. (2).

15 **(6)** (a) If the department or agency contracted with under sub. (11) does not
16 have on file an affidavit from each of the requester's known birth siblings who meet
17 the criteria specified under sub. (3), it shall, within 3 months after the date of the
18 original request, undertake a diligent search for each birth sibling who meets the
19 criteria specified under sub. (3) and who has not filed an affidavit under sub. (2). The
20 search shall be completed within 6 months after the date of the request, unless the
21 search falls within one of the exceptions established by the department by rule. If
22 any information has been provided under sub. (5) about a particular birth sibling, the
23 department or agency is not required to conduct a search for that birth sibling.

1 (b) Employes of the department and any agency conducting a search under this
2 subsection may not inform any person other than the birth sibling who is the subject
3 of the search the purpose of the search.

4 (c) The department or agency conducting the search shall charge the requester
5 a reasonable fee for the cost of the search. When the department or agency
6 determines that the fee will exceed \$100 for any birth sibling, it shall notify the
7 requester. No fee in excess of \$100 per birth sibling may be charged unless the
8 requester, after receiving notification under this paragraph, has given consent to
9 proceed with the search.

10 **(7)** (a) The department or agency conducting the search shall, upon locating a
11 birth sibling, make at least one verbal contact and notify him or her of the following:

- 12 1. The nature of the information requested.
13 2. The date of the request.
14 3. The fact that the birth sibling has the right to file with the department the
15 affidavit under sub. (2).

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

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

21 (d) If the department or agency conducting the search has contacted a birth
22 sibling under this subsection, and the birth sibling does not file the affidavit, the
23 department or agency may not disclose the requested information.

1 (e) If, after a search under this subsection, a known birth sibling cannot be
2 located, the department or agency conducting the search may not disclose the
3 requested information regarding that birth sibling.

4 (f) The department or agency conducting a search under par. (6) (a) may not
5 contact a birth sibling again on behalf of the same requester until at least 12 months
6 after the date of the previous contact. Further contacts with a birth sibling under
7 this subsection on behalf of the same requester may be made only if 5 years have
8 elapsed since the date of the last contact.

9 (8) If a birth sibling is known to be deceased, the department or agency
10 contracted with under sub. (11) shall so inform the requester and shall provide the
11 requester with the identity of that birth sibling.

12 (8m) If the department or agency contracted with under sub. (11) may not
13 disclose the information requested under sub. (3), it shall provide the requester with
14 any nonidentifying social history information about any of the requester's birth
15 siblings that it has on file.

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

19 (10) Any person, including this state or any political subdivision of this state,
20 who participates in good faith in any requirement of this section shall have immunity
21 from any liability, civil or criminal, that results from that person's actions. In any
22 proceeding, civil or criminal, the good faith of any person participating in the
23 requirements of this section shall be presumed.

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

1 **SECTION 4.** 48.78 (2) (a) of the statutes, as affected by 1995 Wisconsin Act 77,
2 is amended to read:

3 48.78 **(2)** (a) No agency may make available for inspection or disclose the
4 contents of any record kept or information received about an individual in its care
5 or legal custody, except as provided under s. 48.371, 48.38 (5) (b) or (d), 48.432,
6 48.433, 48.434, 48.93 or 48.981 (7) or by order of the court.

7 **SECTION 5.** 48.93 (1d) of the statutes is amended to read:

8 48.93 **(1d)** All records and papers pertaining to an adoption proceeding shall
9 be kept in a separate locked file and may not be disclosed except under sub. (1g) or
10 (1r), s. 46.03 (29), 48.432, 48.433, 48.434 or 48.57 (1) (j), or by order of the court for
11 good cause shown.

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

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

22 **SECTION 7. Nonstatutory provisions; health and social services.**

23 (1) The authorized FTE positions for the department of health and social
24 services are increased by 1.0 PR position, to be funded from the appropriation under
25 section 20.435 (3) (jj) of the statutes, as affected by this act, for the purpose of

1 performing searches for birth siblings, as defined in section 48.434 (1) (c) of the
2 statutes, as created by this act, under section 48.434 (6) of the statutes, as created
3 by this act.

4 **SECTION 8. Initial applicability.**

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

9 **SECTION 9. Effective date.**

10 (1) This act takes effect on July 1, 1996, or on the day after publication,
11 whichever is later.

12 (END)