



SENATE, No. 959

By Ms. Fargo, a petition (accompanied by bill, Senate, No. 959) of Susan C. Fargo, John A. Lepper, Kathleen M. Teahan, William M. Greene, Jr. and other members of the General Court for legislation to further regulate access to birth certificates. The Judiciary

The Commonwealth of Massachusetts

In the Year Two Thousand and Five.

AN ACT FURTHER REGULATING ACCESS TO BIRTH CERTIFICATES

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1.

Chapter 46 of the General Laws is hereby amended by inserting after section 2A, the following new sections:-

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Deleted: as appearing in the 2000 Official Edition,

Section 2B. Notwithstanding the provisions of this chapter as amended by chapter 546 of the acts of 1974, any adoption finalized in the commonwealth hereafter the approval of this act shall be subject to the following:-

(a) Upon written application by an adopted person 21 years of age or older and born in the commonwealth, or an adoptive parent of an adopted person under 21 years of age and born in the commonwealth, the state registrar shall issue to such applicant a non-certified copy of the unaltered, original and un-amended certificate of birth of the adopted person, with procedures, filing fees, and waiting periods identical to those imposed upon non-adopted citizens of the commonwealth, pursuant to section 2A.

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(b) The state registrar shall prescribe and, upon request, shall make available to a birth parent, who elects to register information on a child offered by him or her for adoption, a contact preference form on which the birth parent may state a preference regarding contact by an adopted person who is the natural child of the birth parent. Upon such a request, the registrar shall also provide the birth parent with an updated medical history form, which shall be prescribed by the department of public health, and which shall be completed and returned along with the completed contact preference form by the birth parent to the registrar. The contact preference form shall provide the birth parent with the following options from which the birth parent shall select one:

- (1) I would like to be contacted. I have completed a contact preference form and an updated medical history form, and am filing them with the state registrar as set forth in this form.
 - (2) I would prefer to be contacted only through an intermediary. I have completed a contact preference form and an updated medical history form, and am filing them with the state registrar as set forth in this form.
 - (3) I prefer not to be contacted at this time. If I later decide that I would like to be contacted, I will re-register with the state registrar. I have completed a contact preference form and an updated medical history form, and am filing them with the state registrar as set forth in this form.
- (c) When the state registrar receives a completed contact preference form and a completed medical history form from a birth parent, the state registrar shall match the contact preference form and the updated medical history form with the adopted person's sealed birth certificate. The contact preference form and the updated medical history form shall then be attached to the adopted person's sealed birth certificate.

(d) Only a person authorized by the state registrar to process an application made under subsection (a) may process a contact preference form and an updated medical history form.

Section 2C. Any adoption finalized in the commonwealth prior to the approval of this act shall be subject to the following:-

(a) Upon satisfaction of the following provisions and upon written application by an adopted person 21 years of age or older and born in the commonwealth, or an adoptive parent of an adopted person under 21 years of age and born in the commonwealth, the state registrar shall issue to such applicant a non-certified copy of the unaltered, original and un-amended certificate of birth of the adopted person, with procedures, filing fees, and waiting periods identical to those imposed upon non-adopted citizens of the commonwealth, pursuant to section 2A.

1. The adoption agency that facilitated the placement shall be contacted first to determine if an authorization to release identity, and in what manner, has been left with the agency.

2. If a release is on file in the adoption record, or if the adoption record was amended at anytime, or if other information is in the record to reflect the birth parent(s) wish to be contacted or not by the adopted person, it shall be honored and made known to the adopted person seeking access to his or her original birth certificate.

3. If a release is not on file in the adoption record, the adopted person may request that the agency seek to contact the birth parent(s) to inform the birth parent(s) of the adopted person's request for his or her original birth certificate under seal according to section thirteen of this chapter as amended by chapter 546 of the Acts of 1974.

4. If the agency is unable or unwilling to provide this service the adopted person shall retain the right to petition the court to provide an order allowing another agency or guardian ad litem to provide this service.

5. If a birth parent(s) opposes release of the adopted person's original birth certificate, the petitioning party shall retain the right to petition the court for access.

6. If a reasonable effort to contact the birth parent(s) fails to locate the birth parent(s) within six months, the petitioning party shall retain the right to petition the court for access.

7. Upon review by the court, an adopted person may be granted access to his or her original birth certificate.

8. In the case of medical necessity the above requests should be given priority and as in all cases an adopted person may petition the court for access and shall have a decision rendered within ninety days.

SECTION 2.

This act shall take effect six months after its passage.

Deleted: SECTION 2. ¶

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The fifteenth paragraph [Paragraph (h)] of section 13 of chapter 46 of the General Laws is hereby amended in the eighth sentence by striking out the words: "Except as provided in the following two sentences"; and by striking out the eleventh and twelfth sentences. ¶

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DRAFT WORKING DOCUMENT
RELATIVE TO S.959, AN ACT FURTHER
REGULATING ACCESS TO BIRTH CERTIFICATES



During the January 25, 2006, Executive Session of the Joint Committee on Children and Families, S.959, An Act Further Regulating Access to Birth Certificates, was held in committee.

S.959, pending amendment, would allow adult adopted persons age 18 and older, or adoptive parents of minors, access to the adopted person's original, unaltered birth certificate.

A 1974 law sealed adopted persons' original birth certificates with access granted only by a court order.

Senator Karen Spilka expressed reservations with S.959's retroactivity. She believes that since 1974, the promise of anonymity was implied to birth mothers, and S.959 breaks that implied promise. She has suggested amending the bill to change the law going forward.

Considering the bill's history, it is to their credit that the two chairwomen of the committee are willing to attempt to work this out. Both Senator Spilka and Representative Shirley Owens-Hicks accepted The Home for Little Wanderers offer to convene members of the ABC coalition that have supported this bill for several years and discuss what if anything are acceptable and appropriate compromises.

The Home would offer all parties the following suggestions (as well as invite others to submit their own) for consideration as a potential compromise version of S.959:

1. Raise to 21, the age at which an adopted person can access an original birth certificate.
2. Make the change effective going forward.
3. In place of retroactivity, require outreach to the birth parent(s) accordingly:
 - The adoption agency that facilitated the placement shall be contacted first to determine if an authorization to release identity (and in what manner) has been left with the agency.
 - If a release is on file in the adoption record, or if the adoption record was amended at anytime, or if other information is in the record to reflect the birth parent(s) wish to be contacted or not by the adopted person, it shall be honored and made known to the adopted person seeking access to his or her original birth certificate.
 - If a release is not on file in the adoption record, the adopted person may request that the agency seek to contact the birth parent(s) to inform the birth parent(s) of the adopted person's request for his or her original birth certificate under seal according to Section 13 of Chapter 46 of the MGL as amended by Chapter 546 of the Acts of 1974.



- If the agency is unable or unwilling to provide this service the adopted person shall retain the right to petition the court to provide an order allowing another agency or guardian ad litem to provide this service.
- If a birth parent(s) opposes release of the adopted person's original birth certificate, the petitioning party shall retain the right to petition the court for access.
- If a reasonable effort to contact the birth parent(s) fails to locate the birth parent(s) within six months, the petitioning party shall retain the right to petition the court for access.
- Upon review by the court, an adopted person may be granted access to his or her original birth certificate.
- In the case of medical necessity the above requests should be given priority and as in all cases an adopted person may petition the court for access and shall have a decision rendered within ninety days.

**AN ACT RELATIVE TO BIRTH CERTIFICATES OF CERTAIN
ADOPTED CHILDREN**

BIRTH CERTIFICATES OF CERTAIN ADOPTED CHILDREN

Subsection (g) of section 13 of chapter 46 of the General Laws, as appearing in the 2004 Official Edition, is hereby amended by adding the following sentence:-

If a child who was in the custody of the department of social services is adopted and the adopting parents surrender the child to the department, such child shall have the right to change his birth certificate back to his biological name.

Massachusetts House of Representatives Bill Summary

Bill No: S 2664

Title: An Act Relative To Birth Certificates Of Certain Adopted Children

Sponsor: Sen. Creem

Committee: Children and Families

Hearing Date: Poll 8/21/06

Similar Matters:

Prior History:

Current Law: M.G.L. c. 46, § 13(g); Registry of births, Correction of records. The Town Clerk or State Registrar corrects a birth certificate with information sent from the court when a child is adopted. After that, an affidavit is required to add information.

M.G.L. c. 210, § 12; Domestic Relations, Change of names. Probate Court hears a petition for a name change. The change is granted unless it is inconsistent with public interests.

M.G.L. c. 231; Pleading and Practice. Any person who is 18 years old is considered to be of full legal capacity unless legally incapacitated.

Summary: This bill allows a child who was in DSS custody and was adopted but has now returned to DSS custody due to a disrupted adoption, to have the right to change his or her birth certificate back to his/her biological name.

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SUMMARIES ARE PREPARED BY STAFF FOR RESEARCH PURPOSES ONLY, AND DO NOT REPRESENT THE OPINIONS OF BILL SPONSORS AND/OR MEMBERS OF THE COMMITTEE ON LOCAL AFFAIRS. SUMMARIES DO NOT REFLECT THE COMMITTEE'S RECOMMENDATION, OR ANY SUBSEQUENT CHANGES OR AMENDMENTS.

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S.2664 An Act Relative To Birth Certificates Of Certain Adopted Children

Mrs. Owens-Hicks moves to amend S.2664 by inserting after the last sentence of the bill the following:-

The department shall assist the child in this process.