

STATE OF OKLAHOMA

1st Session of the 44th Legislature (1993)

HOUSE BILL NO. 1353

By: Seikel

AS INTRODUCED

An Act relating to children; creating a mutual consent voluntary adoption registry; providing for purpose; defining terms; requiring retention of records; providing for confidentiality; making certain actions unlawful; specifying penalty; prohibiting certain actions; providing for promulgation of rules; requiring establishment and maintenance of registries at certain agencies; providing for certain procedures and transfers in certain cases; specifying conditions for use of registry; providing certain restrictions for use; providing for registrations; providing procedures; specifying conditions; requiring certain counseling; providing for release of certain information; providing for operation of the registry; specifying contents; providing for certain processes and procedures for use; requiring for retention of certain information; restricting certain information; authorizing fees; requiring certain information; providing for use; directing costs; providing for codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 60.51 of Title 10, unless there is created a duplication in numbering, reads as follows:

A. Adoption is based upon the legal termination of parental rights and responsibilities of birth parents and the creation of the legal relationship of parent and child between an adoptee and his adoptive parents. These legal and social premises underlying adoption must be maintained. The state recognizes that some adults who were adopted as children have a strong desire to obtain identifying information about their birth parents while other such adult adoptees have no such desire. The state further recognizes that some birth parents have a strong desire to obtain identifying information about their biological children who were surrendered for adoption, while other birth parents have no such desire. The state fully recognizes the right to privacy and confidentiality of:

1. Birth parents whose children were adopted;
2. The adoptees; and
3. The adoptive parents.

B. The purpose of this act is to:

1. Set up a mutual consent voluntary adoption registry where birth parents, adult adoptees, some birth siblings, and some birth grandparents may register their consent to the release of identifying information to each other;

2. Provide for the disclosure of such identifying information to birth parents, their genetic offspring, some birth siblings and some birth grandparents through a social worker employed by a licensed adoption agency, provided each qualified registrant as defined below voluntarily registers on his own; and

3. Provide for the transmission of nonidentifying health and social and genetic history to the adult adoptees, birth parents and other specified persons.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 60.52 of Title 10, unless there is created a duplication in numbering, reads as follows:

As used in this act:

1. "Adoptee" means a person who has been legally adopted in the State of Oklahoma;

2. "Adoption" means the judicial act of creating the relationship of parent and child where it did not exist previously;

3. "Adoptive parent" means an adult who has become a parent of a child through the legal process of adoption;

4. "Adult" means a person twenty-one (21) or more years of age;

5. "Agency" means any public or voluntary organization licensed or approved pursuant to the laws of any jurisdiction within the United States to place children for adoption;

6. "Birth parent" includes:

a. the man or woman deemed or adjudicated under the laws of a jurisdiction of the United States to be the father or mother of genetic origin of a child, and

b. a putative father of the child if his name appears on the original sealed birth certificate of the child or if he has been alleged by the birth mother to be and has in writing acknowledged being the child's biological father. A putative father who has denied or refused to admit paternity shall be deemed not to be a birth parent in the absence of an adjudication under the laws of a jurisdiction of the United States that he is the biological father of the child;

7. "Genetic and social history" means a comprehensive report, when obtainable, on the birth parents, siblings to the birth

parents, if any, other children of either birth parent, if any, and parents of the birth parents, which shall contain the following information:

- a. medical history,
- b. health status,
- c. cause of and age at death,
- d. height, weight, eye and hair color,
- e. ethnic origins,
- f. where appropriate, levels of education and professional achievement, and
- g. religion, if any;

8. "Health history" means a comprehensive report of the child's health status at the time of placement for adoption and medical history, including neonatal, psychological, physiological, and medical care history;

9. "Mutual consent voluntary adoption registry" or "registry" means a place provided for herein where eligible persons as described in Section 8 of this act may indicate their willingness to have their identity and whereabouts disclosed to each other under conditions specified in this act; and

10. "Putative father" means any man not deemed or adjudicated under the laws of a jurisdiction of the United States to be the father of genetic origin of a child and who claims or is alleged to be the father of genetic origin of such child.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 60.53 of Title 10, unless there is created a duplication in numbering, reads as follows:

All records of any adoption finalized in this state shall be maintained for ninety-nine (99) years by the agency, entity, organization or person arranging or facilitating the adoption.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 60.54 of Title 10, unless there is created a duplication in numbering, reads as follows:

A. No person, agency, entity or organization of any kind, including but not limited to any officer or employee of this state and any employee, officer or judge of any court of this state, shall disclose any confidential information relating to adoption except as provided in this act or pursuant to court order. Any employer who knowingly or negligently allows any employee to disclose information in violation of this act shall be subject to the penalties provided in subsection B of this section, together with the employee who made any disclosure prohibited by this act.

B. Any person, agency, entity or organization of any kind who discloses information in violation of this act shall be fined up to Ten Thousand Dollars (\$10,000.00) or imprisoned for a period up to six (6) months or both.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 60.55 of Title 10, unless there is created a duplication in numbering, reads as follows:

A. The information acquired by any registry shall not be disclosed under any sunset or freedom of information legislation, rules or practice.

B. No person, group of persons, or entity, including an agency, may file a class action to force the registry to disclose identifying information.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 60.56 of Title 10, unless there is created a duplication in numbering, reads as follows:

The Commission for Human Services shall promulgate such rules and regulations as are necessary for implementing this act.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 60.57 of Title 10, unless there is created a duplication in numbering, reads as follows:

A. A mutual consent voluntary adoption registry shall be established and maintained by each licensed child-placing agency involved in an adoption. Persons eligible to receive identifying information shall work through the agency involved in the adoption. If that agency has merged or ceased operations, a successor agency which has the files pertaining to adoptions in which the ceased or merged agency was involved shall establish and maintain a mutual consent voluntary adoption registry concerning those adoptions. Any licensed agency may delegate or otherwise contract with another licensed child-placing agency with expertise in post-legal adoption services to establish, maintain and operate the registry for the delegating agency. If an agency ceasing to operate does not transfer adoption records to another licensed agency, it shall provide all records required to be maintained by law to the Department of Human Services.

B. With respect to adoptions arranged through the Department of Human Services or without the involvement of any licensed child-placing agency, the Department of Human Services charged with the responsibility for licensing agencies shall establish and maintain the mutual consent voluntary adoption registry, except that the Department may contract out the functions of establishing and maintaining such registry to a licensed child-placing agency with expertise in providing post-legal adoption services in which case such agency shall establish and maintain the registry that would otherwise be operated by the Department of Human Services.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 60.58 of Title 10, unless there is created a duplication in numbering, reads as follows:

A. Use of a mutual consent voluntary adoption registry for obtaining identifying information about qualified registrants shall be available only to qualified registrants, except that no adult adoptee who has a birth sibling in his adoptive family who is under the age of eighteen (18) or who has a birth sibling in any adoptive placement with whom the adult adoptee has contact, and who is under the age of eighteen (18), may use the registry.

B. No birth parent shall be eligible to use the registry until after his genetic offspring, who was adopted, has reached the age of twenty-one (21).

C. A birth father whose name has appeared in the original sealed birth certificate or who has legitimated or formally acknowledged the child as provided by law or who has signed a voluntary abandonment and release for the child's adoption as provided by state law may register.

D. Any birth parent who in terminating his parental rights used an alias, and this alias is listed in the original sealed birth record, may register if the agency or, in cases where no agency was involved, the organization, entity or person who was involved, certifies to the district court that the individual seeking to register used, as an alias, the name set forth in the original sealed birth certificate.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 60.59 of Title 10, unless there is created a duplication in numbering, reads as follows:

A. The adult adoptee, each birth parent, birth siblings with whom the adult adoptee had a previous relationship, and birth grandparents with whom the adult adoptee had a previous relationship, must voluntarily, on his own, without having been contacted by any employee or agent of the entity operating the registry, place his name in the appropriate registry before any disclosure of identifying information can be made. A qualified

person may register by submitting a notarized affidavit to the appropriate registry stating his name, address, and telephone number and his willingness to be identified solely to the other relevant person who registers. No registration shall be accepted until the prospective registrant submits satisfactory proof of his identity in accordance with regulations specified in Section 6 of this act. The failure of any of the above described persons to file a notarized affidavit with the registry for any reason, including death or disability, shall preclude the disclosure of that person's identifying information to those relevant persons who do register.

B. At the time of mutual registration of two parties and with consent for disclosure from both parties, and before the disclosure of information identifying the parties to each other, each registrant shall participate in counseling with a social worker employed by the entity that operates the registry, except if a birth parent, adult adoptee, qualified birth sibling or qualified birth grandparent is domiciled outside the state, such registrant shall obtain counseling from a social worker employed by a licensed agency in that other state selected by the entity that operates the registry. When an eligible person registers concerning an adoption that was arranged through an agency which has not merged or otherwise ceased operations, and that same agency is not operating the registry, the entity operating the registry shall notify by certified mail the agency which handled the adoption within ten business days after the date of registration.

C. In any case where the identity of the birth father was unknown to the birth mother, or where the administrator learns that one or both of the birth parents or any birth siblings or birth grandparents are deceased, this information shall be shared with the adult adoptee. In such a case, the adoptee will not be able to obtain identifying information concerning that person through the registry, and the adult adoptee will be told of the right to pursue

whatever right otherwise exists by law to petition a court to release the identifying information.

D. 1. Each mutual consent voluntary adoption registry shall be operated under the direction of an administrator. The administrator shall be a trained social worker who has expertise in post-legal adoption services.

2. A person eligible to register may request the administrator to disclose identifying information by filing an affidavit which sets forth the following:

- a. the current name and address of the affiant,
- b. any previous name by which the affiant was known,
- c. the original and adopted names, if known, of the adopted child,
- d. the place and date of birth of the adopted child, and
- e. the name and address of the adoption agency or other entity, organization or person placing the adopted child, if known.

The affiant shall notify the registry of any change in name or location which occurs subsequent to his filing the affidavit. The registry shall have no duty to search for the affiant who fails to register his most recent address.

3. The administrator of the mutual consent voluntary adoption registry shall process each affidavit in an attempt to match the adult adoptee and the birth parents. Such processing may include research from agency records, when available, and when agency records are not available, research from court records to determine conclusively whether the affiants match.

4. The Administrator shall determine that there is a match when the adult adoptee, the birth mother, the birth father, qualified birth siblings, or qualified birth grandparents have each filed affidavits with the mutual consent voluntary adoption registry and

have each received the counseling required in subsection B of Section 9 of this act.

5. When a match has taken place, the mutual consent voluntary adoption registry Administrator shall assign the match and transfer such information as may be necessarily related to the match to the agency, if any, which processed the adoption. If the adoption was processed without resort to an agency, the match shall be referred to the Department of Human Services for assignment.

6. An agency or department receiving an assignment of a match under the provisions of this act shall directly or by contract with a licensed child-placing agency in this state notify all parties through a direct and confidential contact.

E. Any affidavits filed and other information collected shall be retained for at least ten years following the date of registration by any qualified person to which the information pertains. Any qualified person who registers may renew his registration for ten additional years.

F. A mutual consent voluntary adoption registry shall obtain only information necessary for identifying a birth parent, adult adoptee, qualified birth sibling or qualified birth grandparent, and in no event shall such registry obtain information of any kind pertaining to the adoptive parents, the income of anyone, or reasons for adoptive placement.

G. The Department of Human Services or a licensed child-placing agency is authorized to charge a reasonable fee for services provided by the act.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 60.60 of Title 10, unless there is created a duplication in numbering, reads as follows:

A. Prior to placement for adoption, the licensed adoption agency or, where an agency is not involved, the person, entity or organization handling the adoption, shall compile and provide to the

prospective adoptive parents a detailed written health history and genetic and social history of the child which excludes information which would identify birth parents or members of a birth parent's family and is set forth in a document that is separate from any document containing such identifying information.

B. Records containing such nonidentifying information and which are set forth on a document that is separate from any document containing identifying data shall:

1. Be retained by the agency or, when no agency is involved, by the person, entity or organization handling the adoption, for ninety-nine (99) years, and if an agency or person, entity or organization who handled the adoption ceases to function, such agency or intermediary shall transfer records containing such nonidentifying information on the adoptee to the Department of Human Services, except that a licensed agency ceasing operations may transfer such records to another licensed agency within this state, provided the agency transferring the records gives notice of the transfer to the Department of Human Services; and

2. Be available upon request, together with any additional nonidentifying information which may have been added on health or on genetic and social history, but which excludes information identifying any birth parent or member of a birth parent's family, or the adoptee or any adoptive parent of the adoptee, to the following persons only:

- a. the adoptive parents of the child or, in the event of death of the adoptive parents, the child's guardian,
- b. the adoptee upon reaching the age of eighteen,
- c. in the event of the death of the adoptee, the adoptee's spouse if he or she is the legal parent of the adoptee's child or the guardian of any child of the adoptee, or

d. in the event of the death of the adoptee, any progeny of the adoptee who is age eighteen (18) or older.

C. The actual and reasonable cost of providing nonidentifying health history and genetic and social history shall be paid by the person requesting such information.

SECTION 11. This act shall become effective September 1, 1993.

44-1-5680

KSM