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As Engrossed: H3/2/17
A Bill

HOUSE BILL 1636

By: Representatives Richey, D. Ferguson, Brown

For An Act To Be Entitled

AN ACT TO PROVIDE BIRTH PARENTS WITH THE OPTION TO REDACT THEIR NAMES FROM CERTAIN ADOPTION RECORDS DISCLOSED TO ADOPTEES AND THEIR RELATIVES; TO PROVIDE ADOPTEES AND THEIR RELATIVES WITH ACCESS TO CERTAIN ADOPTION RECORDS; AND FOR OTHER PURPOSES.

Subtitle

TO PROVIDE BIRTH PARENTS WITH THE OPTION TO REDACT THEIR NAMES FROM CERTAIN ADOPTION RECORDS DISCLOSED TO ADOPTEES AND THEIR RELATIVES; AND TO PROVIDE ADOPTEES AND THEIR RELATIVES WITH ACCESS TO CERTAIN ADOPTION RECORDS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code Title 9, Chapter 9, is amended to add an additional subchapter to read as follows:

Subchapter 8 – Adoption Records

9-9-801. Definitions.

As used in this subchapter:

(1) "Adoption file" means a file maintained by the Department of Health that contains an original birth certificate and adoption decree of an adoptee;

(2) "Genetic and social history" has the same meaning as provided under § 9-9-501; and

(3) "Requester" means a person twenty-one (21) years of age or



older who requests an adoption file under § 9-9-803 and is:

(A) The adoptee to whom the adoption file requested pertains; or

(B) The child, surviving spouse, or guardian of any child of a deceased adoptee to whom the adoption file requested pertains.

9-9-802. Birth parent redaction request and contact preference forms.

(a)(1)(A) The Department of Health shall create and make available on its website:

(i) A form that a birth parent may use to have his or her name redacted from the copy of an adoption file that a requester receives under § 9-9-803; and

(ii) A form that a birth parent may use to specify if a requester may contact the birth parent and the preferred manner by which a requester may contact the birth parent.

(B) The department shall make hard copies of the forms required under subdivision (a)(1) of this section available to the public.

(2) The form required under subdivision (a)(1)(A)(i) of this section shall include the following:

(A) Information about the procedures and requirements for a birth parent to have the form:

(i) Placed in the adoption file of the birth parent's offspring so that the birth parent's name is redacted from the copy of the adoption file that a requester receives under section § 9-9-803; and

(ii) Removed from the adoption file of the birth parent's offspring so that the birth parent's name is included in the copy of the adoption file that a requester receives under section § 9-9-803;

(B) The information needed by the department to identify the adoption file of the adoptee named on a form submitted under subdivisions (a)(2)(A)(i) and (ii) of this section;

(C) An attestation by the birth parent that he or she is the birth parent of the adoptee named on the form submitted under subdivisions (a)(2)(A)(i) and (ii) of this section; and

(D) Any other information required by the department.

(3) The form required under subdivision (a)(1)(A)(ii) of this section shall include the following:

(A) Information about the procedures and requirements for a birth parent to have the form:

(i) Placed in the adoption file of the birth parent's offspring; and

(ii) Removed from the adoption file of the birth parent's offspring and replaced with an updated form;

(B) A section in which a birth parent may indicate whether a requester may:

(i) Directly contact the birth parent;

(ii) Contact the birth parent through an intermediary specified by the birth parent; or

(iii) Not contact the birth parent directly or through an intermediary;

(C) The information needed by the department to identify the adoption file of the adoptee named on the form submitted under subdivisions (a)(3)(A)(i) and (ii) of this section;

(D) Notification that a form submitted under subdivisions (a)(3)(A)(i) and (ii) of this section is advisory and unenforceable;

(E) An attestation by the birth parent that he or she is the birth parent of the adoptee named on a form submitted under subdivisions (a)(3)(A)(i) and (ii) of this section; and

(F) Any other information required by the department.

(b) The department shall accept a form submitted under this section if:

(1) The form is notarized;

(2) The birth parent submits satisfactory proof of his or her identity as determined by the rules of the department;

(3)(A) The birth parent completes, corrects, or expands his or her genetic or social history.

(B) A completed, corrected, or expanded genetic or social history under subdivision (b)(3)(A) of this section is required if the birth parent's genetic or social history:

(i) Was not previously compiled; or

(ii) Was compiled but needs to be corrected or expanded; and

(4) A completed form submitted under this section at least

substantially complies with the requirements of this section.

(c) The department shall not accept a form provided under this section that is completed and submitted by a birth parent for another birth parent.

(d) The department shall place a form submitted under this section in the adoption file of the adoptee named on the form if:

(1) The requirements of subsection (b) of this section are substantially met; and

(2) The adoption file concerns the adoptee named on the form.

(e)(1) Upon accepting a form submitted under subdivision (a)(2)(A)(ii) of this section, the department shall remove a form submitted under subdivision (a)(2)(A)(i) of this section from the adoption file of the adoptee named on the form.

(2) Upon accepting an updated form submitted under subdivision (a)(3)(A)(ii) of this section, the department shall remove a form submitted under subdivision (a)(3)(A)(i) of this section from the adoption file and place the updated form in the adoption file.

(f) The department shall maintain an electronic copy and destroy the hard copy of a form removed from an adoption file under subsection (d) of this section.

9-9-803. Access to adoption file.

(a) Beginning one (1) year after the effective date of this act, a requester may submit a written request for a copy of an adoption file from the Department of Health.

(b)(1) A request submitted under this section shall include the requester's address and notarized signature and satisfactory proof of the requester's identity as determined by the department.

(2) If the requester is the child, widow or widower, or guardian of any child of the deceased adoptee to whom the adoption file pertains, the requester shall also provide notarized documentation evidencing the requester's relationship to the adoptee.

(c)(1) Upon receipt of a request made under subsection (a) of this section, the department shall mail the adoption file to the requester at the address provided in the request.

(2) If an adoption file contains a form submitted under § 9-9-802(a)(2)(A)(i), the department shall redact the birth parent's name from the

copy of the adoption file before it is mailed to the requester.

(3) If a form under § 9-9-802(a)(2)(A)(ii) is submitted after a copy of the adoption file is mailed to the requester, the department shall mail the requester another copy of the adoption file with the birth parent's name included in the adoption file within thirty (30) days of the date the form was removed.

(4) Before mailing a requester an adoption file under subdivision (c)(1) of this section, the department shall mark the certified copy of the original birth certificate contained in the adoption file as not intended for official use or similar.

(d) The department shall mail a requester an adoption file by certified mail, return receipt requested.

(e)(1) If an adoption file contains a form submitted under § 9-9-802(a)(3)(A)(i) and (ii), the department shall include the form in the adoption file mailed to a requester.

(2) A form included in the adoption file under this subsection shall be redacted in accordance with subdivision (c)(2) of this section.

(f)(1) The department may charge a requester a fee of one hundred dollars (\$100) for the department's provision of the adoption file requested.

(2) The department may change the amount of the fee charged to a requester under subdivision (f)(1) of this section in accordance with the department's rules.

9-9-804. Immunity.

An officer or employee of the Department of Health who releases any information contained in an adoption file or provides a copy of an adoption file to a requester is not criminally liable or civilly liable in damages to any person for injury, death, or loss allegedly arising from the release of the information or copy if the officer or employee releases the information or copy in accordance with § 9-9-803.

SECTION 2. Arkansas Code § 20-18-305(1), concerning the issuance of certified copies and data from systems of vital statistics, is amended to read as follows:

(1)(A) The State Registrar of Vital Records and other custodians of vital records designated by the state registrar under § 20-18-203(b)(2)

shall upon receipt of written application issue a certified copy of a vital record in his or her custody or a part thereof to the registrant, his or her spouse, child, parent, or guardian or his or her respective authorized designated representative.

(B) A requester as defined in § 9-9-801 is authorized to obtain a certified copy of an adoptee's original certificate of birth.

(C) Others may be authorized to obtain certified copies when they demonstrate that the vital record is needed for the determination or protection of his or her personal or property rights.

(D) The State Board of Health may adopt regulations to further define those who may obtain copies of vital records filed under this chapter;

SECTION 3. Arkansas Code § 20-18-406(b), concerning new certificates of birth for persons born in Arkansas, is amended to read as follows:

(b) When a new certificate of birth is established, the actual city or county, or both, and date of birth shall be shown. The new certificate shall be substituted for the original certificate of birth. Thereafter, the original certificate and the evidence of adoption, paternity determination, or legitimation shall not be subject to inspection except upon order of an Arkansas court of competent jurisdiction or as provided by ~~regulation~~ rule or under § 9-9-803.

/s/Richey

APPROVED: 03/16/2017