

- SUBJECT:** Obtaining noncertified copies of adoption-related birth certificates
- COMMITTEE:** Juvenile Justice and Family Issues — favorable, without amendment.
- VOTE:** 5 ayes — Dutton, Bolton, Farrar, Gonzalez Toureilles, Strama  
0 nays  
4 absent — Eiland, Farias, Hernandez, Vaught
- SENATE VOTE:** On final passage, May 1 — 31-0, on Local and Uncontested Calendar
- WITNESSES:** (*On House companion bill, HB 525 by Goolsby:*)  
For — Nancy Schaefer, TXCARE Texas Coalition for Adoption Resources and Education; Bill Betzen; Darlene Denton; Martha Fralia; Linda R.E.P. Mendoza; Janet Mulcahy; Katy Perkins; (*Registered, but did not testify:* Shirley Dodson, Adoption Knowledge Affiliates; David Gray)  
  
Against — Heidi Bruegel Cox, Texas Family Law Foundation; (*Registered, but did not testify:* Jim Loveless, State Bar of Texas, Family Law Section, Jack Marr, Texas Family Law Foundation; Doug Woodburn, Texas Family Law Foundation; Wendy Burgower; Sherri A. Evans; Diana S. Friedman, P.C.; Christy Bradshaw Schmidt)  
  
On — Geraldine Harris, Department of State Health Services Bureau of Vital Statistics; (*Registered, but did not testify:* Beth Engelking, Department of Family Protective Services)
- BACKGROUND:** Texas has required sealed adoption records since the 1920s. Family Code, sec. 108.005 requires the Department of State Health Services (DSHS) Bureau of Vital Statistics to close its records concerning a child who has been adopted. Sec. 108.009 requires the state registrar to substitute a new birth certificate for the original based on an adoption order.
- DIGEST:** SB 221 would amend Health and Safety Code, ch. 192 to require the state registrar to provide, at the request of a person who was adopted on or after January 1, 2008 — or, if the adopted person was deceased, an adult

descendent, adult sibling, or surviving spouse of the adopted person — a noncertified copy of the person's original birth certificate if:

- the request was made on or after the adopted person turned 18 years of age ;
- a supplementary birth certificate was issued for the adopted person; and
- the person requesting the certificate furnished appropriate proof of the person's identity.

The bill would create a contact preference form on which birth parents could indicate their contact preferences. The form would allow the birth parent to:

- authorize direct contact by the adopted person and release of a noncertified copy of the adopted person's original birth certificate;
- authorize contact by the adopted person only through an intermediary selected by the birth parent but not authorize the release of the noncertified birth certificate;
- not authorize contact by the adopted person but authorize the release of the noncertified birth certificate; or
- not authorize contact by the adopted person and request that a noncertified copy of the adopted person's original birth certificate not be released until after the death of the birth parent.

If a birth parent had filed a contact preference form indicating a preference for the noncertified copy of the adopted person's original birth certificate not to be released, the state registrar would be prohibited from releasing the copy without a court order, regardless of the other birth parent's preference.

If a birth parent had filed a contact preference form to indicate his or her preference that a noncertified copy of the adopted person's original birth certificate not be released until after the death of the birth parent, the state registrar could not release without a court order a noncertified copy of the adopted person's original birth certificate before that birth parent died, regardless of the other birth parent's preference.

The state registrar could — if resources allowed and if a birth parent had not indicated otherwise on a contact preference form — provide on request a noncertified copy of an original birth certificate to a person who was

adopted before January 1, 2008, or an adult descendent, adult sibling, or surviving spouse of a deceased adopted person.

The bill also would allow a birth parent to file an updated medical history and a contact preference form with the state registrar. The state registrar would have to make available the updated medical form and contact preference form in both Spanish and English and on the department's web site. After receiving both completed forms, the state registrar would deliver the updated forms to an adopted person who was authorized to receive a noncertified copy of the adopted person's original birth certificate and could charge the adopted person a reasonable fee for the service.

The state registrar would have to keep statistics on:

- the number of updated medical histories and contact preference forms filed with and delivered by the state registrar; and
- which adoption agency or attorney mediated each adoption for which a contact preference was filed.

SB 221 would require that if a birth parent authorized contact with an intermediary, the state registrar would make the selected intermediary's contact information available to the adopted person on request. If the contact information was not available, the state registrar would notify the birth parent by certified mail, return receipt requested, that the birth parent would have to provide the intermediary's contact information no later than the 90th day after receipt of the notice.

After 90 days had expired, with no response from the birth parent, the state registrar could release a noncertified copy of the adopted person's original birth certificate. If the birth parent could not be located due to lack of current address on file with the state registrar, the state registrar would release a noncertified copy of the adopted person's original birth certificate on the 91st day after the notice was sent by certified mail.

The bill would amend Family Code, ch. 162 to require that the Department of Family Protective Services (DFPS), a licensed child-placing agency, or a person, or other entity placing a child for adoption:

- inform the child's birth parents about the contact preference form and the rights of an adopted child to obtain the noncertified birth certificate copy;
- inform the birth parents of their requirement to provide a completed contact preference form to DFPS or the licensed child-placing agency or other entity placing the child for adoption;
- provide the birth parents with a contact preference form; and
- forward the original completed contact preference form to the state registrar.

A petition for adoption would not be granted until a copy of the birth parent's contact preference form had been filed. However, a court with jurisdiction affecting the parent-child relationship would be able to waive the contact preference form filing requirement if the child's biological parents could not be located or were deceased or the court determined the waiver was in the child's best interest.

The notice and filing requirements under the Family Code would not apply to an adoption by the child's:

- grandparent;
- aunt or uncle by birth, marriage, or prior adoption;
- stepparent; or
- adult sibling.

These provisions in the Family Code would apply only to a suit for adoption filed on or after January 1, 2008. A suit for adoption filed before January 1, 2008, would be governed by the law in effect at the time the suit was filed.

The bill also would require the state registrar to keep statistics on the number of contact preference forms that:

- authorized direct contact by the adopted person and the release of a noncertified copy of the adopted person's original birth certificate;
  - authorized contact only through an intermediary;
  - did not authorize contact but authorized the release of a noncertified copy of the adopted person's original birth certificate;
- or

- did not authorize contact by the adopted person and requested that the adopted person's original birth certificate not be released until after the death of the birth parent.

The state registrar would have to report findings based on these statistics to the Legislature by January 1, 2009.

The state registrar would have to develop the updated history and contact preference form before January 1, 2008. The state registrar could not issue a noncertified copy of an original birth certificate to an adopted person or family member before January 1, 2009.

The bill would take effect September 1, 2007.

**SUPPORTERS  
SAY:**

SB 221 would create a system in Texas to establish conditions for the release of adoption-related information while accounting for the needs of all the affected parties, including people who were adopted, their birth parents, and DSHS.

The bill would provide assistance to many adopted people who currently rely on private investigators, the Internet, and their own financial resources to track down information on their birth parents. Use of the contact preference form would streamline the process of enabling adopted people to communicate with their biological parents, if both parties agreed. At the very least, it would allow more adopted people to access documents with information about where they came from while respecting the privacy of biological parents who expressed a wish not to be identified.

It is very important for adopted children to know about any genetic diseases that run in their biological families. The bill would provide a way for birth parents to update their medical records and forward this vital information to their biological children. In addition, it would require the agency or other entity that placed a child for adoption to notify the birth parents about the requirement to complete and provide contact preference forms with DFPS, which would alleviate concerns about birth parents not being aware of these reporting requirements.

Because the provisions of the bill would apply prospectively, SB 221 would not create a burden on DSHS to provide records from adoptions that took place decades ago. However, it would establish a system going

forward for the department to provide noncertified copies of birth certificates to adopted people and other specified recipients. In addition, SB 221 would allow DSHS to comply with requests for noncertified copies of birth certificates, as resources allowed, from people who were adopted before January 1, 2008, and the fiscal note estimates that DSHS would fill 5,000 requests in fiscal 2009.

OPPONENTS  
SAY:

This bill assumes that a biological parent who did not indicate otherwise on a contact preference form would not object to his or her biological child's receiving a noncertified copy of the person's birth certificate. In many cases, parents who gave up their children for adoption did so under the assumption that this information would remain confidential for life. Additionally, many parents might not know about the existence of contact preference forms or the consequences of failing to file one with the state, especially those who gave their children up for adoption many years ago. The bill should err on the side of non-release to protect the birth parents' confidentiality if the state did not have affirmative evidence that such parents wished to be contacted by their biological children.

OTHER  
OPPONENTS  
SAY:

SB 221 would be much more beneficial to adopted people seeking information if the bill applied retrospectively, rather than prospectively. The bill would require DSHS to release a noncertified copy of a birth certificate only to a person born after January 1, 2008, following the person's 18th birthday. Even though the department could issue a noncertified copy to someone born before that date, it is not certain that DSHS would have the resources to comply with all the requests from adopted people seeking to find out where they came from.

NOTES:

Rep. Goolsby plans to offer a floor amendment to exclude DFPS, as an entity that places children for adoption, from the requirements of notifying the birth parents about the need to complete and submit the contact preference form, providing the form to birth parents, and forwarding the form to the state registrar.

According to the fiscal note, the cost from the vital statistics account to implement the provisions of the bill would be \$328,769 in fiscal 2008, \$166,299 in fiscal 2009, and approximately \$161,000 each year thereafter. DSHS would cover these costs, beginning in fiscal 2009, by charging a \$65 fee for each noncertified copy of a birth certificate it issued. This would generate \$325,000 in fiscal 2009 to accommodate 5,000 requests,

and \$162,500 in each fiscal year thereafter, to accommodate 2,500 requests.

The companion bill, HB 525 by Goolsby, which would require DSHS to provide a noncertified copy of a birth certificate on request to an adopted person, regardless of when the adoption took place, passed the House by 140-0 on May 11 and has been referred to the Senate Jurisprudence Committee.