

Date of Hearing: April 18, 2023

ASSEMBLY COMMITTEE ON JUDICIARY
Brian Maienschein, Chair
AB 1302 (Lackey) – As Amended March 16, 2023

SUBJECT: VITAL RECORDS: ADOPTED PERSONS AND ORIGINAL BIRTH CERTIFICATES

KEY ISSUES:

- 1) SHOULD INDIVIDUALS ADOPTED PRIOR TO JANUARY 1, 2025, BE ABLE TO OBTAIN THEIR ORIGINAL UNREDACTED BIRTH CERTIFICATE IF THE BIRTH PARENTS ARE NOTIFIED AND AUTHORIZE THE RELEASE OF THE BIRTH CERTIFICATE?
- 2) SHOULD INDIVIDUALS ADOPTED ON OR AFTER JANUARY 1, 2025, BE ABLE TO OBTAIN THEIR ORIGINAL UNREDACTED BIRTH CERTIFICATE IF THE BIRTH PARENTS ARE NOTIFIED OF THEIR REQUEST TO OBTAIN THE DOCUMENT AND DO NOT OBJECT TO ITS RELEASE?

SYNOPSIS

Currently, when a child born in California is adopted, the State Registrar issues an amended birth certificate showing the names of the adoptive parents, among other information. Only the amended certificate is available for public inspection, unless a judge authorizes otherwise in exceptional circumstances. The original certificate showing the name of the birth parent is sealed, along with other documents in the adoption file. Birth parents must be informed at the time of adoption that they may provide written consent to disclose their name and address when the adoptee is 21 or older. If the adoptee requests it and the birth parent has consented, the State Registrar must release the information. California also maintains a mutual consent registry, through which the Department of Social Services (DSS) or a licensed adoption agency arranges contact between birth parents and adoptees if both parties have consented. Neither DSS nor the adoption agency may solicit that consent.

This bill targets a concern that adult adoptees, unlike most other people, are largely unable to obtain their original birth certificate, and attempts to strike a balance between the understandable desire of some adopted individuals to know more about their backgrounds and histories, and the privacy interests of birth parents. The bill undoubtedly identifies a significant concern, and one that is emotionally fraught. With the latest set of amendments, this bill appears to thread the needle regarding this issue by providing a streamlined and narrowly-tailored procedure for adopted individuals to request their original unredacted birth certificates.

The bill is supported by the California Association of Licensed Investigators and opposed by several organizations whose stated mission is to promote and protect the rights of adult adoptees. Should this bill be approved by this Committee, it would be referred to the Assembly Committee on Health.

SUMMARY: Provides a mechanism by which individuals who were adopted via a closed adoption may obtain their original unredacted birth certificate reflecting their birth parents' identifying information. Specifically, **this bill:**

- 1) Requires, as of January 1, 2025, a superior court to grant an order directing the State Registrar to initiate the process detailed in paragraphs 2) – 5), below, if a verified petition is filed by an adopted person who is 18 years of age or older who was the subject of an adoption occurring prior to January 1, 2025.
- 2) Requires the State Registrar, upon receipt of a valid court order pursuant to 1) above, to provide a notice to each birth parent named on the requester's original birth certificate, informing the birth parent or parents that the adopted person has requested their original and unredacted birth certificate.
- 3) Requires the notice to be sent to the best available address for each birth parent listed on the original birth certificate, and that the notice be sent by certified or registered mail, restricted delivery, and return receipt requested.
- 4) Requires the notice to do all of the following:
 - a) Advise the birth parent regarding the change in the law pursuant to this bill.
 - b) Include a form on which the birth parent may indicate that they authorize a copy of the original and unredacted birth certificate to be provided to the adopted person.
- 5) Requires the State Registrar to provide a subsequent reminder notice to each birth parent 5 months or 150 days after the delivery date of the notice sent subject to 3), above, whichever is sooner, by certified or registered mail, restricted delivery, and return receipt requested.
 - a) Requires the reminder notice to include a form on which the birth parent may indicate that they authorize a copy of the original and unredacted birth certificate to be provided to the adopted person.
- 6) Prohibits the State Registrar from providing a birth certificate pursuant to 2) above if any of the following apply:
 - a) Either notice provided pursuant to 3) or 5) was not received by each birth parent listed on the birth certificate, as indicated by the fact that the State Registrar has not received the return receipt of acknowledgment. If two birth parents are listed on the birth certificate and only one parent has not received either notice, authorizes the State Registrar to release the birth certificate with the information relating to that birth parent redacted, subject to the remaining requirements.
 - b) Each birth parent listed on the certificate has failed to return the form included in the notice. If two birth parents are listed on the birth certificate and only one parent has failed to return the form, authorizes the State Registrar to release the birth certificate with the information relating to that birth parent redacted, subject to the remaining requirements.
- 7) Requires the State Registrar, on and after January 1, 2025, upon receiving notice that adoption proceedings regarding a child have been completed, to provide notice to each birth

parent named on the original birth certificate, informing them that a copy of the original unredacted birth certificate of the adopted child may be requested by the adopted person.

- a) Requires notice provided subject to 7) to be sent to the best available address for each birth parent who is listed on the original birth certificate, sent by certified or registered mail, restricted delivery and return receipt requested.
- 8) Requires a superior court to grant an order directing the State Registrar to initiate the process detailed in 9) – 11) if a verified petition is filed by an adopted person who is 18 years of age or older who was the subject of an adoption occurring on or after January 1, 2025.
 - 9) Requires the State Registrar, upon receipt of a valid court order pursuant to 8) to provide notice to each birth parent named on the original birth certificate of an adopted person informing them that the original unredacted birth certificate of the adopted person shall be provided to the adopted child unless an exception included in 15) applies. Requires the notice to be sent to the best available address for each birth parent, by certified or registered mail, restricted delivery, and return receipt requested.
 - 10) Requires the notice to do both of the following:
 - a) Include a form on which the birth parent may indicate that they refuse to authorize a copy of the original and unredacted birth certificate be provided to the adopted person.
 - b) Advise the birth parent that the original and unredacted birth certificate shall be provided to the adopted person, even absent the birth parents' affirmative authorization, should the birth parent fail to return the form provided within 6 months or 180 days of receipt, whichever is later.
 - 11) Requires the State Registrar to provide a subsequent reminder notice to each birth parent 5 months or 150 days after the delivery date of the notice, whichever is sooner, and that the notice to be sent by certified or registered mail, restricted delivery, and return receipt requested.
 - a) Requires the reminder notice to include a form on which the birth parent may indicate that they refuse to authorize a copy of the original and unredacted birth certificate to be provided to the adopted person.
 - 12) Prohibits the State Registrar from providing a birth certificate if any of the following apply:
 - a) Either notice was not received by each birth parent listed on the birth certificate, as indicated by the fact that the State Registrar has not received the return receipt acknowledgment.
 - i) If two parents are listed on the birth certificate and only one birth parent has not received either notice, allows the State Registrar to release a copy of the birth certificate with information identifying and pertaining to that birth parent redacted. Authorizes the birth certificate to be released absent authorization from either birth parent if the parent has received both notices.

- b) Either parent returns the form included in the notice refusing authorization to release the original and unredacted certificate.
 - i) If two parents are listed on the birth certificate and only one parent has refused authorization, allows the State Registrar to release a copy of the birth certificate with information identifying and pertaining to that birth parent redacted.
- 13) Requires a superior court to grant an order if a verified petition is filed by an adopted person who is 18 years of age or older, directing the State Registrar to provide a copy of the original and unredacted birth certificate to the adopted person if both parents listed on the birth certificate of an adopted person are deceased, as verified by the Office of Vital Records.

EXISTING LAW:

- 1) Provides that, among other rights, all people have an inalienable right to pursue and obtain privacy. (California Constitution, Article I, Section 1.)
- 2) Declares that the right to privacy is a personal and fundamental right protected by the California Constitution and that all individuals have a right of privacy in information pertaining to them. (Civil Code Section 1798.1, the Information Practices Act of 1977.)
- 3) Requires the Department of Social Services (DSS), with respect to adoptions in which the relinquishment for or consent to adoption was signed on or after January 1, 1984, to disclose the identity and address of the adopted person's birth parent to an adopted person 21 years of age or older if the birth parent has indicated consent to the disclosure in writing. (Family Code Section 9203. All further statutory references are to this code unless otherwise noted.)
- 4) Requires DSS, at the time of the adoption, to tell the birth parent that the adopted person, upon reaching age 21, may request the name and address of the birth parent, and DSS must release this information if the birth parent consents in writing. Provides that the birth parents may check a box indicating whether or not they wish their name and address to be disclosed and may update this information at any time. (Section 8818.)
- 5) Under a mutual consent registry, permits DSS or the licensed adoption agency to facilitate contact between an adult adopted person and his or her birth parents if each have filed a written consent with DSS or the agency. (Section 9204.)
- 6) Requires that, in an adoption proceeding, the adoption files are not open to inspection by any person other than the parties to the proceeding and their attorneys and DSS, except upon written authority of the judge of the superior court. Allows a judge to authorize any person to inspect the adoption files only in exceptional circumstances and for good cause approaching the necessitous. (Section 9200.)
- 7) Allows any party to the proceeding to request the court to order the county clerk not to provide documents for inspection or copying to any other person unless the name of the birth parents or any identifying information related to them is redacted. (Section 9200.)
- 8) Requires, unless otherwise requested by the adopting parent, that the State Registrar issue a new birth certificate, bearing the names of the adoptive parents, when an adoption is recorded

for a child born in California and the child's birth certificate is on file with that office. (Health and Safety Code Section 102635.)

- 9) Requires that the new birth certificate supplant any birth certificate previously registered for the child and shall be the only birth certificate open to public inspection. (Health and Safety Code Section 102680.)

FISCAL EFFECT: As currently in print this bill is keyed fiscal.

COMMENTS: Currently, when a child born in California is adopted, the State Registrar issues an amended birth certificate showing the names of the adoptive parents, among other information. Only the amended certificate is available for public inspection, unless a judge authorizes otherwise in exceptional circumstances. The original certificate showing the name of the birth parent is sealed, along with other documents in the adoption file.

Birth parents must be informed at the time of adoption that they may provide written consent to disclose their name and address when the adoptee is 21 years or older. If the adoptee requests it and the birth parent has consented, the State Registrar must release the information. California also maintains a mutual consent registry, through which DSS or a licensed adoption agency arranges contact between birth parents and adoptees if both parties have consented. Neither DSS nor the adoption agency may solicit that consent.

This bill targets a concern that adult adoptees, unlike most other people, are largely unable to obtain their original birth certificate and attempts to strike a balance between the understandable desire of some adult adoptees to know more about their backgrounds and histories, against the privacy interests of birth parents. The bill undoubtedly identifies a significant concern, and one that is emotionally fraught. Changes in this area of the law should be done cautiously and with an acknowledgement that birth parents who have decided to give their child up for adoption may make that personal and difficult decision *because* their identifying information will remain concealed. However, it is equally understandable that an adopted person, who did not play a role in the decision to be adopted, may wish to access information that they may understand to be foundational to their own identity. Also, birth parents may change their minds at some point, after giving up their child for adoption, and may be open to establishing a relationship with their children when they are adults. The Legislature has considered similarly narrowly crafted bills in the past, all aiming to ensure the greatest degree of privacy for birth parents while acknowledging the interests of adopted persons. According to the author:

Assembly Bill 1302 seeks to remedy a longstanding inequity in California by finally providing adult adopted individuals a path through which they can finally begin to access original vital records, something that has always been available to any non-adopted individual. Regardless of their reasons for seeking out these original records, adopted individuals have been denied access to this information for too long, purely as a result of being adopted. That is why more states are introducing and passing bills to change this reality each year – states including Iowa, New York, Oregon, Massachusetts, Colorado, and many more.

It is long overdue that California begins to take heed of these actions across the country and recognize the incredible value these changes have provided for millions of adult adoptees who have finally been afforded answers.

In order to begin the process of aligning California with this growing national norm, AB 1302 takes significant steps to streamline and open the current system for obtaining an original birth certificate, allowing an adult adopted individual, upon filing a verified petition, to access their long form birth certificate, with redactions of birth parent information subject to a birth parent's disclosure preference.

AB 1302 is a significant step in the direction of establishing and respecting important adoptee rights in the state of California.

Privacy issues. This bill has drawn opposition from organizations that say they represent the interests of adult adopted persons. The groups argue that birth parents cannot truly have an expectation of privacy, due to the various ways identifying information about them now can be discovered, including genealogy testing services such as 23andMe. They also identify various court processes that grant access to the original unredacted birth certificate to adoptive parents and adopted individuals, outside of a procedure such as the one considered here. According to these organizations, the sum of these methods is a complete erasure of any expectation of privacy.

However, birth parents still retain a degree of an expectation of privacy. The California Constitution expressly guarantees an inalienable right to pursue and obtain privacy. Since 1935 when California sealed original birth certificates, California state courts have not specifically addressed the birth parent's right to privacy in adoption records. In the event that adoption records become unsealed, the California Supreme Court's decision in *Hill v. National Collegiate Athletic Assn.* (1994) 7 Cal. 4th 1, provides guidance on how to determine and balance privacy rights against other competing factors. *Hill* established a three-prong test to determine a cause of action for violation of the state constitutional right to privacy: (1) a legally protected privacy interest, (2) a reasonable expectation of privacy in the circumstances, and (3) conduct by the defendant constituting a serious invasion of privacy.

For the first element of the *Hill* test, these adoption records could implicate both informational privacy and autonomy privacy. On the one hand, an open records law may not be a "dissemination or misuse" of identifying information since the disclosure is limited to the adult adoptee. On the other hand, these adoption records are kept confidential from the public at large and may contain intimate and personal details as to why the birth parent gave the child up for adoption. Statutory law further codifies the right to informational privacy in the Information Practices Act of 1977.

The second element of the *Hill* test requires the plaintiff to have a reasonable expectation of privacy in the information. Strong arguments exist on both sides. A birth parent may not have a reasonable expectation of privacy since the process is already open in various ways, particularly since the advent of commercial genetic testing kits provided by companies such as 23andMe. Birth records are not sealed at the time of relinquishment, but rather at the time of adoption, and adoptive parents, as parties to the action of adoption, already have a right to view the file and may choose whether to even have a new birth certificate issued and the original sealed. These choices reflect the birth parent's existing lack of privacy in the adoption process.

However, numerous statutory provisions guarantee implied, perhaps even explicit, confidentiality to the birth parent. For example, under existing law, a new, amended birth certificate supplants any previously registered birth certificate and is the only one open to public inspection. Additionally, the state must, at the time of the adoption, inform the birth parent that

the adoptee, upon reaching age 21, may request the name and address of the birth parent, and the DSS must release this information if the birth parent consents in writing. The birth parent is asked to check a box indicating whether or not they wish their name and address to be disclosed and they are also told that they can update this information at any time. A birth parent may also request the court to order the county clerk not to provide documents for inspection or copying to any other person unless the name of the birth parents or any identifying information related to them is redacted.

The third element of the *Hill* test requires a serious invasion of the privacy interest by the defendant. The *Hill* Court stated that an actionable invasion of privacy must be sufficient in “nature, scope, and actual or potential impact to constitute an egregious breach of the social norms underlying the privacy right.” Having relied on the confidentiality guaranteed by the system, birth parents may argue that they face a serious invasion of privacy.

Even if a court finds a protected right to privacy, this right is not absolute and must be balanced against other important interests. The adoptee has an important interest in accessing information about their origins. Nevertheless, while some states have opened their adoption records, many others have struck the balance in favor of the birthparent’s confidentiality. Moreover, a California court may rely upon the unique privacy provision of the California Constitution to strike down an attempt to open adoption records.

As a policy matter, moreover, the continued confidentiality of adoptions is of particular importance. As with every element of reproductive health decision making, the choice to put a child up for adoption is a personal one. Ultimately, one’s choice to pursue adoption, regardless of the reasons behind it, is a decision to terminate, or never initiate, a parental relationship with a biological child. A birth parent may elect to continue with a pregnancy based on the promise of a closed adoption and the knowledge that no other individual, including the child, will know the birth parent’s identity. While some birth parents may later come to change their mind, their initial decision is not one that should be modified without at least alerting the birth parent to its possibility. It is not difficult to imagine that a birth parent who would have otherwise continued with a pregnancy and put the child up for adoption would instead opt to end a pregnancy in order to ensure they do not have any future relationship with a child they did not want to know or raise. Finally, while it is true that DNA testing programs exist, and many people may in fact be able to identify their birth parents through them, their availability does not necessarily lead to the conclusion that the Legislature should lead the way in breaking down the protections that birth parents may rely on. Regardless of their reasons, a birth parent’s decision is one that should be respected and not be easily undone.

This bill modifies existing law in three significant ways.

Delayed implementation. This bill proposes a significant change in existing law. In order to safeguard the expectation of privacy afforded to pregnant people planning on proceeding with adoption, the author has proposed delaying implementation until 2025. By delaying implementation by one year, the bill ensures that individuals who give birth or become pregnant towards the end of 2023 but proceed with an adoption in 2024, who may not be aware of an impending change are able to proceed with their adoption under today’s status quo.

Notice requirements. As previously discussed, the choice to proceed with an adoption is personal, and the confidentiality conferred upon that decision should not be reversed without the birth parent or parents’ knowledge. In order to ensure birth parents are aware of the potential that

their information will be released to the adopted person, the bill establishes notice requirements to the novel procedure put forward by this bill.

Upon receipt of the initial court order to release an original unredacted birth certificate for adoptions that were finalized prior to 2025, the State Registrar would be required to notify each birth parent listed on the certificate that the certificate has been requested. The State Registrar would be required to send the notice via registered or certified mail, with the return receipt requested. Approximately five months after the initial notice is sent, the State Registrar would be required to send a reminder notice, also via registered or certified mail, with return receipt requested. *Both* notices would need to be received by the parents, as evidenced by the return receipt, in order for the original unredacted birth certificate to be released. If either the initial or subsequent notice was not sent or received, the State Registrar would be barred from releasing the certificate.

The bill would also implement an additional notice requirement for adoptions occurring beginning January 2025. Upon receiving confirmation that an adoption has been completed, the State Registrar would be required to notify the birth parents that the adopted person may request a copy of their original unredacted birth certificate. Similarly to the two notice provisions above, the State Registrar would be required to mail a notice to the birth parents at their best known address via registered or certified mail, with the return receipt requested.

Summarized, the procedures proposed by this bill are as follows: for requests for an original unredacted birth certificate of an adoption occurring prior to 2025, the State Registrar would be required to notify the parents of the request twice – once upon receiving the court order, and a second time approximately five months later as a reminder. For requests for an original unredacted birth certificate of an adoption occurring *after* 2025, the State Registrar would have an additional notice requirement before the two noticed above, arising once the office receives notice that an adoption has been completed, alerting the birth parents to the possibility that the adopted person may request an original unredacted birth certificate following the procedures laid out by this bill.

The latest provisions do provide some flexibility, however, by allowing the State Registrar to release the birth certificate reflecting the information of one birth parent *if* that parent has either authorized its release or failed to respond, as detailed further in the following section.

Authorization requirements for adoptions occurring prior to 2025 as compared to those occurring after 2025. Seeking a balance between the desire to ensure the greatest degree of privacy possible to birth parents who elected to proceed with adoption and the interest of the adopted person in their own history, the latest amendments to the bill proposes a distinct approach to authorizations for adoptions occurring prior to 2025 and those occurring on and after January 1, 2025. The reason for this distinction is akin to the reasoning for delaying the bill's implementation – to ensure that people who may get pregnant in 2024, even in its final months, and choose to proceed with their pregnancy are not taken by surprise by the change in the law.

The bill requires *affirmative consent* from the birth parents of an adoption occurring *prior* to 2025. As with the notice requirements, the language provides some flexibility by allowing the State Registrar to release the birth certificate with the information of the consenting parent unredacted, if the other birth parent fails to respond. Conversely, the bill authorizes the State Registrar to release the original unredacted birth certificate of an individual adopted beginning in 2025 *unless the birth parents refuse authorization*. Similarly, the State Registrar would be

authorized to release the certificate if only one parent refuses authorization, as long as their information is redacted.

In sum, the bill *requires affirmative consent* from either or both birth parents in order to release the original unredacted birth certificate of an adoption occurring prior to 2025, but *requires express refusal* from either or both birth parents in order to withhold the certificate.

Finally, the bill authorizes the State Registrar to release a copy of the original unredacted birth certificate if the birth parents are deceased, as confirmed by the Office of Vital Records.

The opposition seeks an all-or-nothing approach to sealed adoption records. This bill has received significant opposition from various “adoptee-rights” organizations. They appear to argue that the any proposed modification that falls short of fully opening adoption records constitutes an infringement of adopted individuals’ rights. Moreover, their position dismisses any privacy interest held by the birth parents.

Assuming the fundamental concern of the opposition lies in the potential inability of an adopted individual to access information regarding their personal background, the concern is valid. However, expecting this Legislature to completely eliminate an expectation of privacy held by adopted parents, as much as the opposition may refute that it exists, is impractical. This bill arguably takes an important, if limited, step towards providing greater access to birth records for adopted individuals.

ARGUMENTS IN OPPOSITION: This bill is supported by the California Association of Licensed Investigators. They write:

AB 1302 takes significant steps to streamline and open the current system for obtaining an original birth certificate, allowing an adult adopted individual, upon filing a verified petition, to access their long form birth certificate, with redactions of birth parent information subject to a birth parent’s disclosure preference.

CALI supports the provisions of this measure that would authorize an adult adopted person – or their direct descendants if they are deceased – to obtain the adopted person’s original birth certificate – or a certified copy if the original cannot be provided – upon filing a verified petition with the superior court in the adopted person’s county of residence or in the county granting the order of adoption

ARGUMENTS IN OPPOSITION: Bastard Nation: The Adoptee Rights Organization, California Open, Concerned United Birthparents, and Adoptee Rights Law Center all write in opposition to the bill. California Open writes:

Cal Open’s position is that adopted persons are parties to their own adoption proceedings, and that, therefore, they should have the same access to their court records as any other party to the proceeding. *See Hubbard v. Superior Court*, 189 Cal. App. 2d 741, 751-752 (1961) construing Family Code § 9200, formerly Civil Code § 229.10; assuming that adoption files should be open to parties and their attorneys, including counsel to adoptees); 10 Witkin, Summary of California Law, 10th ed. (2005), Parent and Child, § 91, p.159 (An adoption proceeding cannot take place unless the court administering the proceeding has jurisdiction over both the adoptive parents and the child); *Adoption of McDonald*, 43 Cal. 2d 447, 461 (1954) (the child in an adoption proceeding is the real party in interest to the proceeding.)

The global consensus for adult adoptee access to their court and vital records file is overwhelming. The professional organizations of those who are licensed to practice adoption have clear policy that it is in the best interest of the adoptee to have unencumbered access to their own records, including the original birth certificate. The science of DNA makes clear that anonymity from one another's familial biological connections is gone, a thing of the past. And so Californians are questioning just WHY a bill such as AB 1302, which seeks to create a state-sanctioned punitive measure upon the privacy right of adoptees, has found its way into our state legislature.

Past Related Legislation. AB 372 (Ma, 2009) would have allowed an adult adoptee access to his or her original birth certificate in cases of medical necessity regarding a serious health condition. In addition, the bill would have provided adoptees age 25 and above with access to their original, unredacted birth certificates unless a birth parent expressly objected. Status: Dead, Asm. Approps.

REGISTERED SUPPORT / OPPOSITION:

Support

California Association of Licensed Investigators, Inc.

Opposition

Adoptee Rights Law Center PLLC
American Adoption Congress
Bastard Nation: the Adoptee Rights Organization
California Open
Concerned United Birthparents
Louisiana Coalition for Adoption Reform
MPower Alliance
Five individuals

Analysis Prepared by: Manuela Boucher-de la Cadena / JUD. / (916) 319-2334