

Regular Session, 2008

ACT No. 583

HOUSE BILL NO. 444

BY REPRESENTATIVES TEMPLET, ARMES, ARNOLD, BOBBY BADON, BILLIOT, HENRY BURNS, FOIL, GISCLAIR, HENRY, HINES, HUTTER, MICHAEL JACKSON, LEGER, LIGI, LOPINTO, LORUSSO, MORRELL, PETERSON, POPE, GARY SMITH, JANE SMITH, TALBOT, TUCKER, WADDELL, WILLMOTT, AND WOOTON

(On Recommendation of the Louisiana State Law Institute)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

AN ACT

To amend and reenact Children's Code Articles 1122(F)(introductory paragraph) and (G)(introductory paragraph), 1123(B) and (C), 1124, 1125, 1126, 1127, 1127.1, 1137(D), 1172, 1173(A)(2), 1185, 1186(A) and (B), 1188, 1189, 1190(A) and (C), 1191, 1192, 1269.1, 1269.2(B), 1269.6, 1270(A) and (C), 1272(C) and (D), and 1276 and to enact Children's Code Articles 1122(B)(12), (13), and (14), (F)(18), (19), and (20), (G)(18) and (19), and (H), 1123(D), 1190(D), 1269.1.1, and 1270(F), relative to the adoption of children; to provide for the act of surrender; to provide for the statement of family history; to provide for the age of a child eligible for adoption; to provide for the validity of continued contact agreements; to provide for the preplacement home study; to provide for counseling; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Children's Code Articles 1122(F)(introductory paragraph) and (G)(introductory paragraph), 1123(B) and (C), 1124, 1125, 1126, 1127, 1127.1, 1137(D), 1172, 1173(A)(2), 1185, 1186(A) and (B), 1188, 1189, 1190(A) and (C), 1191, 1192, 1269.1, 1269.2(B), 1269.6, 1270(A) and (C), 1272(C) and (D), and 1276 are hereby amended and reenacted and Children's Code Articles 1122(B)(12), (13), and (14), (F)(18), (19), and (20), (G)(18) and (19), and (H), 1123(D), 1190(D), 1269.1.1, and 1270(F) are hereby enacted to read as follows:

Art. 1122. Contents of surrender; form

* * *

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33

Race			
Ethnicity/ Nationality			
Native American/Tribal Affiliation, if applicable			
Other			
Yes	No	Diseases/conditions	If yes, <ul style="list-style-type: none"> • state relationship to child [biological parent (mother or father), sibling (full or half), grandparent (paternal or maternal), great grandparent (paternal or maternal), aunt/uncle/cousin (paternal or maternal)]; • state specific condition; • age of onset; • treatment (medication, surgery, etc.); and • outcome.
		Cancer	
		Heart disease	
		Stroke	
		High blood pressure	
		Diabetes	
		Kidney disease	
		Liver disease	
		Digestive disorders	
		Respiratory disorders	
		Blood disease (sickle cell, hemophilia, etc.)	
		Glandular disturbances (thyroid, adrenal, growth, etc.)	
		Neurological & muscular disorders (multiple sclerosis, muscular dystrophy, Tay-Sachs, etc.)	
		Arthritis	
		Epilepsy, seizures, convulsions	
		Allergies (drugs, food, other)	

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

		Asthma	
		Vision problems/blindness	
		Hearing problems/deafness	
		Speech disorders	
		Dental problems/braces	
		Birth defects (cleft palate, missing digit, club foot, etc.)	
		Curvature of spine	
		Headaches/migraines	
		Alcoholism	
		Substance abuse	
		Eating disorders/obesity	
		Mental illness (schizophrenia, bipolar, depressive, etc.)	
		Mental retardation–non-injury (PKU, Down's Syndrome, etc.)	
		Learning disabilities (ADD, ADHD, etc.)	
		Multiple births	
		Miscarriages, stillbirths, neonatal deaths	
		SIDS	
		Rh Factor	
		HIV (birth mother only)	
		Venereal disease during pregnancy (birth mother only)	
		Other: specify	
		Other: specify	
		Other: specify	

24 Are the parents of the child biologically related to each other? Yes _____ No _____

25 If yes what is the biological relationship? _____

26 Has the minor child had the following immunizations?

27	YES	NO		YES	NO
28	()	()	Birth-2 mo. Hepatitis (Hep) B	()	() 12-15 mo. Hib, MMR # 1
29	()	()	1 – 4 mo. Hep B	()	() 12-18 mo. Var (chickenpox)
30	()	()	2 mo. DTaP, IPV, Hib,	()	() 15-18 mo. DTaP

1 information required for the Statement of Family History, the agency or person shall
 2 document by affidavit the good faith efforts made to obtain such information and that
 3 such efforts were unproductive.

4 Art. 1127. Request for disclosure of nonidentifying medical records or genetic
 5 information

6 A. Any ~~child surrendered to an agency~~ adopted person, or if still a minor, his
 7 legal representative on his behalf, or a surrendering biological parent, may, upon
 8 written request ~~to an agency~~, obtain nonidentifying medical or genetic information
 9 from the agency, firm, or lawyer without the necessity of filing a ~~petition~~ motion for
 10 disclosure ~~from the agency~~ as required by the provisions of Chapter 5 of Title XII
 11 of this Code.

12 B. Upon such a written request, the agency, firm, or lawyer shall make a
 13 good faith effort to review and abstract nonidentifying genetic or medical
 14 information from all available records and sources that are similar in content to the
 15 Statement of Family History.

16 C. Such nonidentifying medical or genetic information shall be made
 17 available for a reasonable charge.

18 D. For the purposes of this Article, an "agency, firm, or lawyer" shall include
 19 an agency ~~or institution~~, firm, or lawyer that is no longer licensed ~~or authorized~~ by
 20 the state for the placement of children for adoption, but was licensed or authorized
 21 by the state to perform such service at the time the child was surrendered ~~to the~~
 22 ~~agency or institution~~.

23 Art. 1127.1. Maintenance of medical report; transfer of adoption records

24 A. After adoptive placement of the child, the agency, firm, or lawyer
 25 facilitating the surrender or person to whom a surrender is made shall have a
 26 continuing duty to maintain these records and supplement them if additional
 27 nonidentifying medical or genetic information is received about the adopted ~~child~~
 28 person or a ~~surrendering his~~ biological parent relatives.

1 social worker, licensed professional counselor, licensed psychologist, ~~or~~ licensed
2 psychiatrist, or licensed marriage and family therapist, to conduct a preplacement
3 home study for the purpose of obtaining a certification for adoption.

4 Art. 1173. Preplacement home study; requirements

5 A. The department shall promulgate rules and regulations for
6 preplacement home studies in private adoptions in accordance with the
7 Administrative Procedure Act and after official review and approval of the
8 Louisiana Advisory Committee on Licensing of Child Day Care Facilities and
9 Child-Placing Agencies as provided in R.S. 46:1406 et seq., which rules and
10 regulations shall not be inconsistent with the following:

11 * * *

12 (2) Such study shall be conducted by a social worker in the employ of
13 a licensed adoption agency, a licensed social worker, ~~or~~ a licensed professional
14 counselor, licensed psychologist, ~~or~~ licensed psychiatrist, or licensed marriage
15 and family therapist, except that a prospective adoptive parent who is domiciled
16 outside the state shall obtain a preplacement home study in accordance with the
17 provisions of Chapter 2 of Title XVI.

18 * * *

19 Art. 1185. Confidential ~~reports~~ records

20 No one except the judge presiding in the case, his successor, or a curator ad
21 hoc, as provided for in Article 1191, shall have access to the confidential ~~reports~~
22 ~~rendered to~~ records of the court pursuant to this Title. Following final disposition
23 of an adoption case, ~~all confidential~~ the reports submitted by the department to the
24 judge shall be retained in the court's confidential adoption record.

25 Art. 1186. Confidential adoption records; disclosure

26 A. All adoption records shall be retained in confidential files, and it shall be
27 unlawful for anyone except the biological or adopting parent to disclose any
28 identifying information concerning any individual adoption case, except upon order

1 of the court, after giving proper notice as required in Article 1190 or as otherwise
2 authorized by this Code, or for purposes directly connected with an adoption
3 agency's responsibilities in relation to adoption work as permitted by its rules and
4 regulations.

5 B. If the agency, firm, or lawyer ceases to do business in this state, it shall
6 transfer its adoption records to the ~~State~~ Department of Social Services or another
7 transferee approved by the department. Thereafter, the transferee shall ensure the
8 preservation and confidentiality of records required by Paragraph A of this Article
9 and assumes responsibility for providing nonidentifying information as required by
10 Articles 1127 and 1127.1.

11 * * *

12 Art. 1188. ~~Petitions~~ Motion for disclosure

13 A. An adopted ~~child~~ person or, if still a minor, his legal representative on his
14 behalf may file a ~~petition~~ motion for disclosure of information pertaining to his
15 adoption pursuant to Article 1189. The action shall be styled: "In re the Adoption of
16 _____".

17 B. A biological sibling or descendant of an adopted person, or if still a
18 minor, his legal representative on his behalf, may file a motion for disclosure
19 pursuant to Article 1189.

20 C. This action and the limited medical exception provision of Article 1127
21 shall be the exclusive means for gaining access to records of adoptions whether
22 maintained by this court, some other court, an adoption agency, any state agency, or
23 private individual, notwithstanding provisions of law to the contrary.

24 Art. 1189. Grounds for disclosure

25 ~~The petition~~ A motion for disclosure ~~must~~ shall show compelling necessity
26 overriding the general policy of confidentiality for adoption records by
27 ~~demonstrating~~ alleging any of the following:

1 his findings ~~within thirty days of the date of his acceptance of his appointments in~~
2 accordance with Article 1191.

3 Art. 1191. Duties of a curator ad hoc

4 ~~A.~~ Upon appointment, the curator ad hoc shall be responsible for:

5 (1) Securing all records pertaining to the petitioner's request through
6 subpoenas duces tecum or other discovery process, if necessary.

7 (2) Reviewing all records pertaining to the adoption.

8 (3) Reporting to the court any objections to disclosure which he may have
9 received from a custodian of records.

10 (4) ~~After the records review is completed,~~ Reporting his findings to the court
11 within thirty days of the date of his acceptance of appointment or within an earlier
12 time as ordered by the court due to exigent circumstances, recommending the
13 granting or denial of the ~~petitioner's~~ mover's request of the mover, and particularizing the
14 necessary scope of any disclosure order for the court's consideration.

15 ~~B. A person proceeding in forma pauperis shall receive the services of the~~
16 ~~curator ad hoc without having to pay the curator's fees. However, in all cases, the~~
17 ~~curator shall be entitled to a reasonable fee for his services, and the court shall fix the~~
18 ~~fee commensurate with the services performed.~~

19 Art. 1192. Orders of disclosure

20 After a hearing ~~the petitioner,~~ the court may order disclosure to the extent
21 necessary to satisfy the ~~petitioner's~~ mover's demonstrated ground for disclosure.
22 Insofar as possible, an order disclosing information from the court's own records or
23 any records obtained by the curator ad hoc shall contain nonidentifying information
24 about the biological family. If the court determines that identifying information ~~must~~
25 shall be disclosed, the court may release such information to the person requiring it
26 and order that the confidentiality be maintained without disclosure to the ~~petitioner~~
27 mover.

28 * * *

1 Art. 1269.1. Continuing post-adoption contact; foster child adoptions

2 A. In an agency adoption in which the department is the custodian of the
 3 child, the court may approve an agreement ~~providing~~ executed in conformity with
 4 the requirements of this Chapter that provides for continuing contact between the
 5 child to be adopted and his grandparent, sibling, and any parent whose consent or
 6 relinquishment is required for the adoption of the person, if both of the following
 7 conditions are met:

8 (1) The child has an established, significant relationship with that person to
 9 the extent that its loss would cause substantial harm to the child.

10 (2) The preservation of the relationship would otherwise be in the best
 11 interest of the child.

12 B. If there is no parental relationship that meets the requirements of
 13 Paragraph A of this Article, the court may approve an agreement ~~providing~~, executed
 14 in conformity with the requirements of this Chapter, that provides for continuing
 15 contact between the child to be adopted and any other relative ~~by blood, adoption,~~
 16 ~~or affinity~~ or foster parent whose relationship with the child meets those
 17 requirements.

18 C. When adoption is approved by the court as the permanent plan for the
 19 child, the department shall inform any parent, grandparent, sibling, or any other
 20 relative ~~by blood, adoption, or affinity~~ or foster parent who meets the requirements
 21 of Paragraph A or B of this Article of the possibility of post-adoption contact with
 22 the child upon agreement with the adoptive parents in accordance with the provisions
 23 of this Chapter.

24 Art. 1269.1.1. Continuing contact agreements; voluntary

25 Agreements for continuing contact by certain biological relatives or foster
 26 parents with an adopted child after an adoption do not violate any public policy of
 27 this state, provided the adopting parents and biological relative or foster parent
 28 voluntarily execute the agreement in conformity with the requirements of this
 29 Chapter.

1 Art. 1269.2. Continuing contact agreement; parties; required declarations

2 * * *

3 B. ~~On behalf of the child who is to be adopted,~~ In an agency adoption in
4 which the department is the custodian of the child, the department; and counsel for
5 the child shall report to the court approval or objection to the agreement and the
6 child's wishes concerning continuing contact. The court-appointed special advocate
7 (CASA) for the child, if any, may also submit recommendations to the court
8 regarding a proposed agreement.

9 * * *

10 Art. 1269.6. Agreements confected after final decree

11 The adoptive parent and ~~the grandparent, sibling, and any parent whose~~
12 ~~consent or relinquishment is required for the child's adoption, or any other relative~~
13 ~~by blood adoption, or affinity~~ any relative or foster parent who may be permitted
14 continuing contact by Article 1269.1(B) may enter into an agreement regarding
15 communication or contact after entry of a final decree of adoption. Any such
16 agreement shall be enforceable only if filed with the court and approved in
17 accordance with this Chapter.

18 * * *

19 Art. 1270. Legislative findings; purpose; release of information

20 A. Adoption is based upon the legal termination of parental rights and
21 responsibilities of birth parents and the creation of such a relationship of parent and
22 child between an ~~adopter~~ adopted person and his adoptive parents. These legal and
23 social premises underlying adoption ~~must~~ shall be maintained. The legislature
24 recognizes that some adults who were adopted as children have a strong interest in
25 identifying information about their birth parents or biological siblings, or both, while
26 other such adult ~~adoptees~~ adopted persons have no such interest. The legislature
27 further recognizes that some birth parents and biological siblings have a strong
28 interest in identifying information about their biological children or siblings who
29 were surrendered for adoption, while others have no such interest. The legislature

1 fully recognizes the right to privacy and confidentiality of birth parents whose
2 children were adopted, of siblings, and of ~~the adoptees~~ adopted persons, as well as
3 that of the adoptive family.

4 * * *

5 C. The use of the registry shall be limited to the adopted person who is at
6 least eighteen years of age, the biological mother, the biological father, parents or
7 siblings of a deceased biological parent, an adoptive parent of a minor or deceased
8 adopted person, and any biological sibling who is at least eighteen years of age.

9 * * *

10 F. The registry shall confirm for an adopted person the fact of his adoption
11 and identify the court in which the adoption was finalized and the agency, firm, or
12 lawyer facilitating the adoption when that information is known by the department.
13 To receive this information, the adopted person shall be eighteen years of age or
14 older, submit the request in writing, and provide proof of identity.

15 * * *

16 Art. 1272. Matching; verification by original documents; mandatory counseling

17 * * *

18 C. If doubt exists that the adopted person registered and the biological
19 parents or biological sibling registered are indeed biologically related, the office of
20 community services shall advise the parties to ~~petition~~ file a motion with the court
21 having jurisdiction to open the sealed adoption record for verification. Such
22 verification shall be a compelling reason, within the meaning of Article 1189, to
23 open the adoption records for the limited purpose of verification.

24 D. Each party shall participate in not less than one hour of counseling with
25 a licensed clinical social worker, a social worker ~~employed by~~ acting in the employ
26 of a licensed adoption agency, or a licensed professional counselor, a licensed
27 psychologist, a licensed psychiatrist, or a licensed marriage and family therapist
28 before they will be put into contact with one another. ~~An adopted person, a~~
29 ~~biological parent, or a biological sibling who is domiciled outside the state may~~

