

SB2977



103RD GENERAL ASSEMBLY

State of Illinois

2023 and 2024

SB2977

Introduced 1/31/2024, by Sen. Sara Feigenholtz

SYNOPSIS AS INTRODUCED:

750 ILCS 50/18.3a

from Ch. 40, par. 1522.3a

Amends the Adoption Act. Allows any person 21 years of age or over who was relinquished under the Abandoned Newborn Infant Protection Act or who had a birth certificate issued under specified provisions of the Vital Records Act to petition for the appointment of a confidential intermediary. Requires the confidential intermediary to provide such a petitioner with a DNA test kit upon request with no fee. Allows a petitioner to use the remedy in the Adoption Act for a missing or lost original birth certificate to be used for missing or lost birth certificate issued under specified provisions of the Vital Records Act.

LRB103 38259 JRC 68394 b

A BILL FOR

1 AN ACT concerning civil law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Adoption Act is amended by changing Section
5 18.3a as follows:

6 (750 ILCS 50/18.3a) (from Ch. 40, par. 1522.3a)

7 Sec. 18.3a. Confidential intermediary.

8 (a) General purposes. Notwithstanding any other provision
9 of this Act,

10 (1) any adopted or surrendered person 21 years of age
11 or over; or

12 (2) any adoptive parent or legal guardian of an
13 adopted or surrendered person under the age of 21; or

14 (3) any birth parent of an adopted or surrendered
15 person who is 21 years of age or over; or

16 (4) any adult child or adult grandchild of a deceased
17 adopted or surrendered person; or

18 (5) any adoptive parent or surviving spouse of a
19 deceased adopted or surrendered person; or

20 (6) any adult birth sibling of the adult adopted or
21 surrendered person unless the birth parent has checked
22 Option E on the Birth Parent Preference Form or has filed a
23 Denial of Information Exchange with the Registry and is

1 not deceased; or

2 (7) any adult adopted birth sibling of an adult
3 adopted or surrendered person; or

4 (8) any adult birth sibling of the birth parent if the
5 birth parent is deceased; or

6 (9) any birth grandparent; or

7 (10) any person 21 years of age or over who was
8 relinquished pursuant to the Abandoned Newborn Infant
9 Protection Act or who had a birth certificate issued
10 pursuant to Section 13 of the Vital Records Act.

11 may petition the court in any county in the State of Illinois
12 for appointment of a confidential intermediary as provided in
13 this Section for the purpose of exchanging medical information
14 with one or more mutually consenting biological relatives,
15 obtaining identifying information about one or more mutually
16 consenting biological relatives, or arranging contact with one
17 or more mutually consenting biological relatives. The
18 petitioner shall be required to accompany his or her petition
19 with proof of registration with the Illinois Adoption Registry
20 and Medical Information Exchange.

21 (a-5) In addition, any former youth in care as defined in
22 Section 4d of the Children and Family Services Act who was
23 adopted or surrendered may petition the court in any county in
24 the State for appointment of a confidential intermediary as
25 provided in this Section for the purposes of obtaining
26 identifying information or arranging contact with (i) siblings

1 or birth relatives if the former youth in care is between the
2 ages of 18 and 21 or (ii) former foster parents or foster
3 siblings if the former youth in care is over the age of 18. A
4 petitioner under this subsection is not required to register
5 with the Illinois Adoption Registry and Medical Information
6 Exchange.

7 (b) Petition. Upon petition, the court shall appoint a
8 confidential intermediary. The petition shall indicate if the
9 petitioner wants to do any one or more of the following as to
10 the sought-after relative or relatives: exchange medical
11 information with the biological relative or relatives, obtain
12 identifying information from the biological relative or
13 relatives, or to arrange contact with the biological relative.

14 (c) Order. The order appointing the confidential
15 intermediary shall allow that intermediary to conduct a search
16 for the sought-after relative by accessing those records
17 described in subsection (g) of this Section.

18 (d) Fees and expenses. The court shall not condition the
19 appointment of the confidential intermediary on the payment of
20 the intermediary's fees and expenses in advance of the
21 commencement of the work of the confidential intermediary. No
22 fee shall be charged to any petitioner.

23 (d-5) The confidential intermediary shall provide any
24 petitioner under paragraph (a)(10) with a DNA test kit upon
25 request with no fee.

26 (e) Eligibility of intermediary. The court may appoint as

1 confidential intermediary any person certified by the
2 Department of Children and Family Services as qualified to
3 serve as a confidential intermediary. Certification shall be
4 dependent upon the confidential intermediary completing a
5 course of training including, but not limited to, applicable
6 federal and State privacy laws.

7 (f) (Blank).

8 (g) Confidential intermediary access to information.
9 Subject to the limitations of subsection (i) of this Section,
10 the confidential intermediary shall have access to vital
11 records maintained by the Department of Public Health and its
12 local designees for the maintenance of vital records, or a
13 comparable public entity that maintains vital records in
14 another state in accordance with that state's laws, and all
15 records of the court or any adoption agency, public or
16 private, as limited in this Section, which relate to the
17 adoption or the identity and location of an adopted or
18 surrendered person, of an adult child or surviving spouse of a
19 deceased adopted or surrendered person, or of a birth parent,
20 birth sibling, or the sibling of a deceased birth parent. The
21 confidential intermediary shall not have access to any
22 personal health information protected by the Standards for
23 Privacy of Individually Identifiable Health Information
24 adopted by the U.S. Department of Health and Human Services
25 under the Health Insurance Portability and Accountability Act
26 of 1996 unless the confidential intermediary has obtained

1 written consent from the person whose information is being
2 sought by an adult adopted or surrendered person or, if that
3 person is a minor child, that person's parent or guardian.
4 Confidential intermediaries shall be authorized to inspect
5 confidential relinquishment and adoption records. The
6 confidential intermediary shall not be authorized to access
7 medical records, financial records, credit records, banking
8 records, home studies, attorney file records, or other
9 personal records. In cases where a birth parent is being
10 sought, an adoption agency shall inform the confidential
11 intermediary of any statement filed pursuant to Section 18.3,
12 hereinafter referred to as "the 18.3 statement", indicating a
13 desire of the surrendering birth parent to have identifying
14 information shared or to not have identifying information
15 shared. Information provided to the confidential intermediary
16 by an adoption agency shall be restricted to the full name,
17 date of birth, place of birth, last known address, last known
18 telephone number of the sought-after relative or, if
19 applicable, of the children or siblings of the sought-after
20 relative, and the 18.3 statement. If the petitioner is an
21 adult adopted or surrendered person or the adoptive parent of
22 a minor and if the petitioner has signed a written
23 authorization to disclose personal medical information, an
24 adoption agency disclosing information to a confidential
25 intermediary shall disclose available medical information
26 about the adopted or surrendered person from birth through

1 adoption.

2 (h) Missing or lost original birth certificate or birth
3 certificate issued under Section 13 of the Vital Records Act;
4 remedy. Disclosure of information by the confidential
5 intermediary shall be consistent with the public policy and
6 intent of laws granting original birth certificate access as
7 expressed in Section 18.04 of this Act. The confidential
8 intermediary shall comply with the following procedures in
9 disclosing information to the petitioners:

10 (1) If the petitioner is an adult adopted or
11 surrendered person, or the adult child, adult grandchild,
12 or surviving spouse of a deceased adopted or surrendered
13 person, the confidential intermediary shall disclose:

14 (A) identifying information about the birth parent
15 of the adopted person which, in the ordinary course of
16 business, would have been reflected on the original
17 filed certificate of birth, as of the date of birth,
18 only if:

19 (i) the adopted person was born before January
20 1, 1946 and the petitioner has requested a
21 non-certified copy of the adopted person's
22 original birth certificate under Section 18.1 of
23 this Act, and the Illinois Department of Public
24 Health has issued a certification that the
25 original birth certificate was not found, or the
26 petitioner has presented the confidential

1 intermediary with the non-certified copy of the
2 original birth certificate which omits the name of
3 the birth parent;

4 (ii) the adopted person was born after January
5 1, 1946, and the petitioner has requested a
6 non-certified copy of the adopted person's
7 original birth certificate under Section 18.1 of
8 this Act and the Illinois Department of Public
9 Health has issued a certification that the
10 original birth certificate was not found.

11 In providing information pursuant to this
12 subdivision (h)(1)(A), the confidential intermediary
13 shall expressly inform the petitioner in writing that
14 since the identifying information is not from an
15 official original certificate of birth filed pursuant
16 to the Vital Records Act, the confidential
17 intermediary cannot attest to the complete accuracy of
18 the information and the confidential intermediary
19 shall not be liable if the information disclosed is
20 not accurate. Only information from the court files
21 shall be provided to the petitioner in this Section.
22 If the identifying information concerning a birth
23 father is sought by the petitioner, the confidential
24 intermediary shall disclose only the identifying
25 information of the birth father as defined in Section
26 18.06 of this Act;

1 (B) the name of the child welfare agency which had
2 legal custody of the surrendered person or
3 responsibility for placing the surrendered person and
4 any available contact information for such agency;

5 (C) the name of the state in which the surrender
6 occurred or in which the adoption was finalized; and

7 (D) any information for which the sought-after
8 relative has provided his or her consent to disclose
9 under paragraphs (1) through (4) of subsection (i) of
10 this Section.

11 (2) If the petitioner is an adult adopted or
12 surrendered person, or the adoptive parent of an adult
13 adopted or surrendered person under the age of 21, or the
14 adoptive parent of a deceased adopted or surrendered
15 person, the confidential intermediary shall provide, in
16 addition to the information listed in paragraph (1) of
17 this subsection (h):

18 (A) any information which the adoption agency
19 provides pursuant to subsection (i) of this Section
20 pertaining to medical information about the adopted or
21 surrendered person; and

22 (B) any non-identifying information, as defined in
23 Section 18.4 of this Act, that is obtained during the
24 search.

25 (3) If the petitioner is not defined in paragraph (1)
26 or (2) of this subsection, the confidential intermediary

1 shall provide to the petitioner:

2 (A) any information for which the sought-after
3 relative has provided his or her consent under
4 paragraphs (1) through (4) of subsection (i) of this
5 Section;

6 (B) the name of the child welfare agency which had
7 legal custody of the surrendered person or
8 responsibility for placing the surrendered person and
9 any available contact information for such agency; and

10 (C) the name of the state in which the surrender
11 occurred or in which the adoption was finalized.

12 (h-5) Disclosure of information shall be made by the
13 confidential intermediary at any time from the appointment of
14 the confidential intermediary and the court's issuance of an
15 order of dismissal.

16 (i) Duties of confidential intermediary in conducting a
17 search. In conducting a search under this Section, the
18 confidential intermediary shall first determine whether there
19 is a Denial of Information Exchange or a Birth Parent
20 Preference Form with Option E selected or an 18.3 statement
21 referenced in subsection (g) of this Section on file with the
22 Illinois Adoption Registry. If there is a denial, the Birth
23 Parent Preference Form on file with the Registry and the birth
24 parent who completed the form selected Option E, or if there is
25 an 18.3 statement indicating the birth parent's intent not to
26 have identifying information shared and the birth parent did

1 not later file an Information Exchange Authorization with the
2 Registry, the confidential intermediary must discontinue the
3 search unless 5 years or more have elapsed since the execution
4 of the Denial of Information Exchange, Birth Parent Preference
5 Form, or the 18.3 statement. If a birth parent was previously
6 the subject of a search through the State confidential
7 intermediary program, the confidential intermediary shall
8 inform the petitioner of the need to discontinue the search
9 until 10 years or more have elapsed since the initial search
10 was closed. In cases where a birth parent has been the object
11 of 2 searches through the State confidential intermediary
12 program, no subsequent search for the birth parent shall be
13 authorized absent a court order to the contrary.

14 In conducting a search under this Section, the
15 confidential intermediary shall attempt to locate the relative
16 or relatives from whom the petitioner has requested
17 information. If the sought-after relative is deceased or
18 cannot be located after a diligent search, the confidential
19 intermediary may contact other adult relatives of the
20 sought-after relative.

21 The confidential intermediary shall contact a sought-after
22 relative on behalf of the petitioner in a manner that respects
23 the sought-after relative's privacy and shall inform the
24 sought-after relative of the petitioner's request for medical
25 information, identifying information or contact as stated in
26 the petition. Based upon the terms of the petitioner's

1 request, the confidential intermediary shall contact a
2 sought-after relative on behalf of the petitioner and inform
3 the sought-after relative of the following options:

4 (1) The sought-after relative may totally reject one
5 or all of the requests for medical information,
6 identifying information or contact. The sought-after
7 relative shall be informed that they can provide a medical
8 questionnaire to be forwarded to the petitioner without
9 releasing any identifying information. The confidential
10 intermediary shall inform the petitioner of the
11 sought-after relative's decision to reject the sharing of
12 information or contact.

13 (2) The sought-after relative may consent to
14 completing a medical questionnaire only. In this case, the
15 confidential intermediary shall provide the questionnaire
16 and ask the sought-after relative to complete it. The
17 confidential intermediary shall forward the completed
18 questionnaire to the petitioner and inform the petitioner
19 of the sought-after relative's desire to not provide any
20 additional information.

21 (3) The sought-after relative may communicate with the
22 petitioner without having his or her identity disclosed.
23 In this case, the confidential intermediary shall arrange
24 the desired communication in a manner that protects the
25 identity of the sought-after relative. The confidential
26 intermediary shall inform the petitioner of the

1 sought-after relative's decision to communicate but not
2 disclose his or her identity.

3 (4) The sought-after relative may consent to initiate
4 contact with the petitioner. The confidential intermediary
5 shall obtain written consents from both parties that they
6 wish to disclose their identities to each other and to
7 have contact with each other.

8 (j) Oath. The confidential intermediary shall sign an oath
9 of confidentiality substantially as follows: "I,,
10 being duly sworn, on oath depose and say: As a condition of
11 appointment as a confidential intermediary, I affirm that:

12 (1) I will not disclose to the petitioner, directly or
13 indirectly, any confidential information except in a
14 manner consistent with the law.

15 (2) I recognize that violation of this oath subjects
16 me to civil liability and to a potential finding of
17 contempt of court.

18 SUBSCRIBED AND SWORN to before me, a Notary Public, on (insert
19 date)

20"

21 (k) Sanctions.

22 (1) Any confidential intermediary who improperly
23 discloses confidential information identifying a
24 sought-after relative shall be liable to the sought-after
25 relative for damages and may also be found in contempt of
26 court.

1 (2) Any person who learns a sought-after relative's
2 identity, directly or indirectly, through the use of
3 procedures provided in this Section and who improperly
4 discloses information identifying the sought-after
5 relative shall be liable to the sought-after relative for
6 actual damages plus minimum punitive damages of \$10,000.

7 (3) The Department shall fine any confidential
8 intermediary who improperly discloses confidential
9 information in violation of item (1) or (2) of this
10 subsection (k) an amount up to \$2,000 per improper
11 disclosure. This fine does not affect civil liability
12 under item (2) of this subsection (k). The Department
13 shall deposit all fines and penalties collected under this
14 Section into the Illinois Adoption Registry and Medical
15 Information Fund.

16 (1) Death of person being sought. Notwithstanding any
17 other provision of this Act, if the confidential intermediary
18 discovers that the person being sought has died, he or she
19 shall report this fact to the court, along with a copy of the
20 death certificate. If the sought-after relative is a birth
21 parent, the confidential intermediary shall also forward a
22 copy of the birth parent's death certificate, if available, to
23 the Registry for inclusion in the Registry file.

24 (m) Any confidential information obtained by the
25 confidential intermediary during the course of his or her
26 search shall be kept strictly confidential and shall be used

1 for the purpose of arranging contact between the petitioner
2 and the sought-after birth relative. At the time the case is
3 closed, all identifying information shall be returned to the
4 court for inclusion in the impounded adoption file.

5 (n) (Blank).

6 (o) Except as provided in subsection (k) of this Section,
7 no liability shall accrue to the State, any State agency, any
8 judge, any officer or employee of the court, any certified
9 confidential intermediary, or any agency designated to oversee
10 confidential intermediary services for acts, omissions, or
11 efforts made in good faith within the scope of this Section.

12 (p) An adoption agency that has received a request from a
13 confidential intermediary for the full name, date of birth,
14 last known address, or last known telephone number of a
15 sought-after relative pursuant to subsection (g) of Section
16 18.3a, or for medical information regarding a sought-after
17 relative pursuant to subsection (h) of Section 18.3a, must
18 satisfactorily comply with this court order within a period of
19 45 days. The court shall order the adoption agency to
20 reimburse the petitioner in an amount equal to all payments
21 made by the petitioner to the confidential intermediary, and
22 the adoption agency shall be subject to a civil monetary
23 penalty of \$1,000 to be paid to the Department of Children and
24 Family Services. Following the issuance of a court order
25 finding that the adoption agency has not complied with Section
26 18.3, the adoption agency shall be subject to a monetary

1 penalty of \$500 per day for each subsequent day of
2 non-compliance. Proceeds from such fines shall be utilized by
3 the Department of Children and Family Services to subsidize
4 the fees of petitioners as referenced in subsection (d) of
5 this Section.

6 (q) (Blank).

7 Any reimbursements and fines, notwithstanding any
8 reimbursement directly to the petitioner, paid under this
9 subsection are in addition to other remedies a court may
10 otherwise impose by law.

11 The Department of Children and Family Services shall
12 submit reports to the Adoption Registry-Confidential
13 Intermediary Advisory Council by July 1 and January 1 of each
14 year in order to report the penalties assessed and collected
15 under this subsection, the amounts of related deposits into
16 the DCFS Children's Services Fund, and any expenditures from
17 such deposits.

18 (Source: P.A. 102-825, eff. 7-1-23.)