



Adopted in House on May 19, 2004

09300SB2496ham001

LRB093 20249 LCB 50268 a

1 AMENDMENT TO SENATE BILL 2496

2 AMENDMENT NO. _____. Amend Senate Bill 2496 on page 1, by
3 replacing lines 4 and 5 with the following:

4 "Section 5. The Adoption Act is amended by changing
5 Sections 7, 8 and 18.3a as follows:"; and

6 on page 4, after line 2, by inserting the following:

7 "(750 ILCS 50/8) (from Ch. 40, par. 1510)

8 Sec. 8. Consents to adoption and surrenders for purposes of
9 adoption.

10 (a) Except as hereinafter provided in this Section consents
11 or surrenders shall be required in all cases, unless the person
12 whose consent or surrender would otherwise be required shall be
13 found by the court:

14 (1) to be an unfit person as defined in Section 1 of
15 this Act, by clear and convincing evidence; or

16 (2) not to be the biological or adoptive father of the
17 child; or

18 (3) to have waived his parental rights to the child
19 under Section 12a or 12.1 of this Act; or

20 (4) to be the parent of an adult sought to be adopted;
21 or

22 (5) to be the father of the child as a result of
23 criminal sexual abuse or assault as defined under Article

1 12 of the Criminal Code of 1961, including but not limited
2 to:

3 (i) the father of the child, who is a family member
4 of the mother of the child, and the mother is under the
5 age of 18 at the time of the child's conception. For
6 purposes of this subsection, a "family member" is a
7 parent, step-parent, grandparent, step-grandparent,
8 sibling; or cousin of the first degree, whether by
9 whole blood, half-blood, or adoption, as well as a
10 person who has resided in the household with the mother
11 continuously for at least one year; or

12 (ii) the father of the child, who is at least 5
13 years older than the child's mother, and the mother was
14 under the age of 17 at the time of child's conception,
15 unless the mother and father voluntarily acknowledge
16 the father's paternity of the child by marrying or by
17 establishing the father's paternity by consent of the
18 parties pursuant to the Illinois Parentage Act of 1984
19 or pursuant to a substantially similar statute in
20 another state.

21 A criminal conviction of any offense pursuant to
22 Article 12 of the Criminal Code of 1961 is not required.

23 ~~or~~

24 ~~(6) to have been indicated for child sexual abuse as~~
25 ~~defined in the Abused and Neglected Child Reporting Act~~
26 ~~that involved sexual penetration of the mother; or~~

27 ~~(7) to be at least 5 years older than the mother and~~
28 ~~the mother was under the age 17 at the time of conception~~
29 ~~of the child to be adopted.~~

30 (b) Where consents are required in the case of an adoption
31 of a minor child, the consents of the following persons shall
32 be sufficient:

33 (1) (A) The mother of the minor child; and

34 (B) The father of the minor child, if the father:

1 (i) was married to the mother on the date of
2 birth of the child or within 300 days before the
3 birth of the child, except for a husband or former
4 husband who has been found by a court of competent
5 jurisdiction not to be the biological father of the
6 child; or

7 (ii) is the father of the child under a
8 judgment for adoption, an order of parentage, or an
9 acknowledgment of parentage or paternity pursuant
10 to subsection (a) of Section 5 of the Illinois
11 Parentage Act of 1984; or

12 (iii) in the case of a child placed with the
13 adopting parents less than 6 months after birth,
14 openly lived with the child, the child's
15 biological mother, or both, and held himself out to
16 be the child's biological father during the first
17 30 days following the birth of the child; or

18 (iv) in the case of a child placed with the
19 adopting parents less than 6 months after birth,
20 made a good faith effort to pay a reasonable amount
21 of the expenses related to the birth of the child
22 and to provide a reasonable amount for the
23 financial support of the child before the
24 expiration of 30 days following the birth of the
25 child, provided that the court may consider in its
26 determination all relevant circumstances,
27 including the financial condition of both
28 biological parents; or

29 (v) in the case of a child placed with the
30 adopting parents more than 6 months after birth,
31 has maintained substantial and continuous or
32 repeated contact with the child as manifested by:
33 (I) the payment by the father toward the support of
34 the child of a fair and reasonable sum, according

1 to the father's means, and either (II) the father's
2 visiting the child at least monthly when
3 physically and financially able to do so and not
4 prevented from doing so by the person or authorized
5 agency having lawful custody of the child, or (III)
6 the father's regular communication with the child
7 or with the person or agency having the care or
8 custody of the child, when physically and
9 financially unable to visit the child or prevented
10 from doing so by the person or authorized agency
11 having lawful custody of the child. The subjective
12 intent of the father, whether expressed or
13 otherwise unsupported by evidence of acts
14 specified in this sub-paragraph as manifesting
15 such intent, shall not preclude a determination
16 that the father failed to maintain substantial and
17 continuous or repeated contact with the child; or

18 (vi) in the case of a child placed with the
19 adopting parents more than six months after birth,
20 openly lived with the child for a period of six
21 months within the one year period immediately
22 preceding the placement of the child for adoption
23 and openly held himself out to be the father of the
24 child; or

25 (vii) has timely registered with Putative
26 Father Registry, as provided in Section 12.1 of
27 this Act, and prior to the expiration of 30 days
28 from the date of such registration, commenced
29 legal proceedings to establish paternity under the
30 Illinois Parentage Act of 1984 or under the law of
31 the jurisdiction of the child's birth; or

32 (2) The legal guardian of the person of the child, if
33 there is no surviving parent; or

34 (3) An agency, if the child has been surrendered for

1 adoption to such agency; or

2 (4) Any person or agency having legal custody of a
3 child by court order if the parental rights of the parents
4 have been judicially terminated, and the court having
5 jurisdiction of the guardianship of the child has
6 authorized the consent to the adoption; or

7 (5) The execution and verification of the petition by
8 any petitioner who is also a parent of the child sought to
9 be adopted shall be sufficient evidence of such parent's
10 consent to the adoption.

11 (c) Where surrenders to an agency are required in the case
12 of a placement for adoption of a minor child by an agency, the
13 surrenders of the following persons shall be sufficient:

14 (1) (A) The mother of the minor child; and

15 (B) The father of the minor child, if the father:

16 (i) was married to the mother on the date of
17 birth of the child or within 300 days before the
18 birth of the child, except for a husband or former
19 husband who has been found by a court of competent
20 jurisdiction not to be the biological father of the
21 child; or

22 (ii) is the father of the child under a
23 judgment for adoption, an order of parentage, or an
24 acknowledgment of parentage or paternity pursuant
25 to subsection (a) of Section 5 of the Illinois
26 Parentage Act of 1984; or

27 (iii) in the case of a child placed with the
28 adopting parents less than 6 months after birth,
29 openly lived with the child, the child's
30 biological mother, or both, and held himself out to
31 be the child's biological father during the first
32 30 days following the birth of a child; or

33 (iv) in the case of a child placed with the
34 adopting parents less than 6 months after birth,

1 made a good faith effort to pay a reasonable amount
2 of the expenses related to the birth of the child
3 and to provide a reasonable amount for the
4 financial support of the child before the
5 expiration of 30 days following the birth of the
6 child, provided that the court may consider in its
7 determination all relevant circumstances,
8 including the financial condition of both
9 biological parents; or

10 (v) in the case of a child placed with the
11 adopting parents more than six months after birth,
12 has maintained substantial and continuous or
13 repeated contact with the child as manifested by:

14 (I) the payment by the father toward the support of
15 the child of a fair and reasonable sum, according
16 to the father's means, and either (II) the father's
17 visiting the child at least monthly when
18 physically and financially able to do so and not
19 prevented from doing so by the person or authorized
20 agency having lawful custody of the child or (III)
21 the father's regular communication with the child
22 or with the person or agency having the care or
23 custody of the child, when physically and
24 financially unable to visit the child or prevented
25 from doing so by the person or authorized agency
26 having lawful custody of the child. The subjective
27 intent of the father, whether expressed or
28 otherwise, unsupported by evidence of acts
29 specified in this sub-paragraph as manifesting
30 such intent, shall not preclude a determination
31 that the father failed to maintain substantial and
32 continuous or repeated contact with the child; or

33 (vi) in the case of a child placed with the
34 adopting parents more than six months after birth,

1 openly lived with the child for a period of six
2 months within the one year period immediately
3 preceding the placement of the child for adoption
4 and openly held himself out to be the father of the
5 child; or

6 (vii) has timely registered with the Putative
7 Father Registry, as provided in Section 12.1 of
8 this Act, and prior to the expiration of 30 days
9 from the date of such registration, commenced
10 legal proceedings to establish paternity under the
11 Illinois Parentage Act of 1984, or under the law of
12 the jurisdiction of the child's birth.

13 (d) In making a determination under subparagraphs (b) (1)
14 and (c) (1), no showing shall be required of diligent efforts by
15 a person or agency to encourage the father to perform the acts
16 specified therein.

17 (e) In the case of the adoption of an adult, only the
18 consent of such adult shall be required.

19 (Source: P.A. 93-510, eff. 1-1-04.)

20 (750 ILCS 50/18.3a) (from Ch. 40, par. 1522.3a)

21 Sec. 18.3a. Confidential intermediary.

22 (a) General purposes. Notwithstanding any other provision
23 of this Act, any adopted person 21 years of age or over, any
24 adoptive parent or legal guardian of an adopted person under
25 the age of 21, or any birth parent of an adopted person who is
26 21 years of age or over may petition the court in any county in
27 the State of Illinois for appointment of a confidential
28 intermediary as provided in this Section for the purpose of
29 exchanging medical information with one or more mutually
30 consenting biological relatives, obtaining identifying
31 information about one or more mutually consenting biological
32 relatives, or arranging contact with one or more mutually
33 consenting biological relatives. Additionally, in cases where

1 an adopted or surrendered person is deceased, an adult child of
2 the adopted or surrendered person may file a petition under
3 this Section and in cases where the birth parent is deceased,
4 an adult birth sibling of the adopted person or of the deceased
5 birth parent may file a petition under this Section for the
6 purpose of exchanging medical information with one or more
7 mutually consenting biological relatives, obtaining
8 identifying information about one or more mutually consenting
9 biological relatives, or arranging contact with one or more
10 mutually consenting biological relatives.

11 (b) Petition. Upon petition by an adopted person 21 years
12 of age or over, an adoptive parent or legal guardian of an
13 adopted person under the age of 21, or a birth parent of an
14 adopted person who is 21 years of age or over, the court shall
15 appoint a confidential intermediary. Upon petition by an adult
16 child of an adopted person who is deceased or by an adult birth
17 sibling of an adopted person whose birth parent is deceased or
18 by an adult sibling of a birth parent who is deceased, the
19 court may appoint a confidential intermediary if the court
20 finds that the disclosure is of greater benefit than
21 nondisclosure. The petition shall state which biological
22 relative or relatives are being sought and shall indicate if
23 the petitioner wants to do any one or more of the following:
24 exchange medical information with the biological relative or
25 relatives, obtain identifying information from the biological
26 relative or relatives, or to arrange contact with the
27 biological relative.

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

32 (d) Fees and expenses. The court shall condition the
33 appointment of the confidential intermediary on the
34 petitioner's payment of the intermediary's fees and expenses in

1 advance of the commencement of the work of the confidential
2 intermediary.

3 (e) Eligibility of intermediary. The court may appoint as
4 confidential intermediary either an employee of the Illinois
5 Department of Children and Family Services designated by the
6 Department to serve as such, or any other person certified by
7 the Department as qualified to serve as a confidential
8 intermediary, ~~or any employee of a licensed child welfare~~
9 ~~agency certified by the agency as qualified to serve as a~~
10 ~~confidential intermediary~~. Certification shall be dependent
11 upon the confidential intermediary completing a course of
12 training including, but not limited to, applicable federal and
13 State privacy laws.

14 (f) Confidential Intermediary Council. There shall be
15 established under the Department of Children and Family
16 Services a Confidential Intermediary Advisory Council. One
17 member shall be an attorney representing the Attorney General's
18 Office appointed by the Attorney General. One member shall be a
19 currently certified confidential intermediary appointed by the
20 Director of the Department of Children and Family Services. The
21 Director shall also appoint 5 additional members. When making
22 those appointments, the Director shall consider advocates for
23 adopted persons, adoptive parents, birth parents, lawyers who
24 represent clients in private adoptions, lawyers specializing
25 in privacy law, and representatives of agencies involved in
26 adoptions. The Director shall appoint one of the 7 members as
27 the chairperson. An attorney from the Department of Children
28 and Family Services and the person directly responsible for
29 administering the confidential intermediary program shall
30 serve as ex-officio, non-voting advisors to the Council.
31 Council members shall serve at the discretion of the Director
32 and shall receive no compensation other than reasonable
33 expenses approved by the Director. The Council shall meet no
34 less than twice yearly, and shall make recommendations to the

1 Director regarding the development of rules, procedures, and
2 forms that will ensure efficient and effective operation of the
3 confidential intermediary process, including:

4 (1) Standards for certification for confidential
5 intermediaries.

6 (2) Oversight of methods used to verify that
7 intermediaries are complying with the appropriate laws.

8 (3) Training for confidential intermediaries,
9 including training with respect to federal and State
10 privacy laws.

11 (4) The relationship between confidential
12 intermediaries and the court system, including the
13 development of sample orders defining the scope of the
14 intermediaries' access to information.

15 (5) Any recent violations of policy or procedures by
16 confidential intermediaries and remedial steps, including
17 decertification, to prevent future violations.

18 (g) Access. Subject to the limitations of subsection (i)
19 of this Section, the confidential intermediary shall have
20 access to vital records maintained by the Department of Public
21 Health and its local designees for the maintenance of vital
22 records and all records of the court or any adoption agency,
23 public or private, which relate to the adoption or the identity
24 and location of an adopted person, of an adult child of a
25 deceased adopted person, or of a birth parent, birth sibling,
26 or the sibling of a deceased birth parent. The confidential
27 intermediary shall not have access to any personal health
28 information protected by the Standards for Privacy of
29 Individually Identifiable Health Information adopted by the
30 U.S. Department of Health and Human Services under the Health
31 Insurance Portability and Accountability Act of 1996 unless the
32 confidential intermediary has obtained written consent from
33 the person whose information is being sought or, if that person
34 is a minor child, that person's parent or guardian.

1 Confidential intermediaries shall be authorized to inspect
2 confidential relinquishment and adoption records. The
3 confidential intermediary shall not be authorized to access
4 medical records, financial records, credit records, banking
5 records, home studies, attorney file records, or other personal
6 records. In cases where a birth parent is being sought, an
7 adoption agency shall inform the confidential intermediary of
8 any statement filed pursuant to Section 18.3 indicating a
9 desire of the surrendering birth parent to have identifying
10 information shared or to not have identifying information
11 shared. If there was a clear statement of intent by the
12 sought-after birth parent not to have identifying information
13 shared, the confidential intermediary shall discontinue the
14 search and inform the petitioning party of the sought-after
15 relative's intent. Additional information provided to the
16 confidential intermediary by an adoption agency shall be
17 restricted to the full name, date of birth, place of birth,
18 last known address, and last known telephone number of the
19 sought-after relative or, if applicable, of the children or
20 siblings of the sought-after relative.

21 (h) Adoption agency disclosure of medical information. If
22 the petitioner is an adult adopted person or the adoptive
23 parent of a minor and if the petitioner has signed a written
24 authorization to disclose personal medical information, an
25 adoption agency disclosing information to a confidential
26 intermediary shall disclose available medical information
27 about the adopted person from birth through adoption.

28 (i) Duties of confidential intermediary in conducting a
29 search. In conducting a search under this Section, the
30 confidential intermediary shall first confirm that there is no
31 Denial of Information Exchange on file with the Illinois
32 Adoption Registry. If the petitioner is an adult child of an
33 adopted person who is deceased, the confidential intermediary
34 shall additionally confirm that the adopted person did not file

1 a Denial of Information Exchange with the Illinois Adoption
2 Registry during his or her life. If the petitioner is an adult
3 birth sibling of an adopted person or an adult sibling of a
4 birth parent who is deceased, the confidential intermediary
5 shall additionally confirm that the birth parent did not file a
6 Denial of Information Exchange with the Registry during his or
7 her life. If the confidential intermediary learns that a
8 sought-after birth parent signed a statement indicating his or
9 her intent not to have identifying information shared, and did
10 not later file an Information Exchange Authorization with the
11 Adoption Registry, the confidential intermediary shall
12 discontinue the search and inform the petitioning party of the
13 birth parent's intent.

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

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

29 (1) The sought-after relative may totally reject one or
30 all of the requests for medical information, identifying
31 information or contact. The sought-after relative shall be
32 informed that they can provide a medical questionnaire to
33 be forwarded to the petitioner without releasing any
34 identifying information. The confidential intermediary

1 shall inform the petitioner of the sought-after relative's
2 decision to reject the sharing of information or contact.

3 (2) The sought-after relative may consent to
4 completing a medical questionnaire only. In this case, the
5 confidential intermediary shall provide the questionnaire
6 and ask the sought-after relative to complete it. The
7 confidential intermediary shall forward the completed
8 questionnaire to the petitioner and inform the petitioner
9 of the sought-after relative's desire to not provide any
10 additional information.

11 (3) The sought-after relative may communicate with the
12 petitioner without having his or her identity disclosed. In
13 this case, the confidential intermediary shall arrange the
14 desired communication in a manner that protects the
15 identity of the sought-after relative. The confidential
16 intermediary shall inform the petitioner of the
17 sought-after relative's decision to communicate but not
18 disclose his or her identity.

19 (4) The sought after relative may consent to initiate
20 contact with the petitioner. If both the petitioner and the
21 sought-after relative or relatives are eligible to
22 register with the Illinois Adoption Registry, the
23 confidential intermediary shall provide the necessary
24 application forms and request that the sought-after
25 relative register with the Illinois Adoption Registry. If
26 either the petitioner or the sought-after relative or
27 relatives are ineligible to register with the Illinois
28 Adoption Registry, the confidential intermediary shall
29 obtain written consents from both parties that they wish to
30 disclose their identities to each other and to have contact
31 with each other.

32 (j) Oath. The confidential intermediary shall sign an oath
33 of confidentiality substantially as follows: "I,,
34 being duly sworn, on oath depose and say: As a condition of

1 appointment as a confidential intermediary, I affirm that:

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

5 (2) I recognize that violation of this oath subjects me
6 to civil liability and to a potential finding of contempt
7 of court.

8 SUBSCRIBED AND SWORN to before me, a Notary Public, on (insert
9 date)

10"

11 (k) Sanctions.

12 (1) Any confidential intermediary who improperly
13 discloses confidential information identifying a
14 sought-after relative shall be liable to the sought-after
15 relative for damages and may also be found in contempt of
16 court.

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

23 (3) The Department shall fine any confidential
24 intermediary who improperly discloses confidential
25 information in violation of item (1) or (2) of this
26 subsection (k) an amount up to \$2,000 per improper
27 disclosure. This fine does not affect civil liability under
28 item (2) of this subsection (k). The Department shall
29 deposit all fines and penalties collected under this
30 Section into the Illinois Adoption Registry and Medical
31 Information Fund.

32 (l) Death of person being sought. Notwithstanding any other
33 provision of this Act, if the confidential intermediary
34 discovers that the person being sought has died, he or she

1 shall report this fact to the court, along with a copy of the
2 death certificate.

3 (m) Any confidential information obtained by the
4 confidential intermediary during the course of his or her
5 search shall be kept strictly confidential and shall be used
6 for the purpose of arranging contact between the petitioner and
7 the sought-after birth relative. At the time the case is
8 closed, all identifying information shall be returned to the
9 court for inclusion in the impounded adoption file.

10 (n) If the petitioner is an adopted person 21 years of age
11 or over or the adoptive parent or legal guardian of an adopted
12 person under the age of 21, any non-identifying information, as
13 defined in Section 18.4, that is ascertained during the course
14 of the search may be given in writing to the petitioner before
15 the case is closed.

16 (o) Except as provided in subsection (k) of this Section,
17 no liability shall accrue to the State, any State agency, any
18 judge, any officer or employee of the court, any certified
19 confidential intermediary, or any agency designated to oversee
20 confidential intermediary services for acts, omissions, or
21 efforts made in good faith within the scope of this Section.
22 (Source: P.A. 93-189, eff. 1-1-04.)".