

SENATE HEALTH, HUMAN SERVICES AND SENIOR
CITIZENS COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR
SENATE, Nos. 799 and 1399

STATE OF NEW JERSEY

DATED: MARCH 4, 2010

The Senate Health, Human Services and Senior Citizens Committee reports favorably a Senate Committee Substitute for Senate Bill Nos. 799 and 1399.

This substitute provides adult adopted persons, their adult descendants, and adoptive parents and guardians of minors access to an adopted person's original birth certificate and other related documents, with certain restrictions to protect birth parents' privacy.

The substitute amends N.J.S.A.26:8-40.1 to permit an adopted person 18 years of age or older, a direct descendant 18 years of age or older of a deceased adopted person, or the adoptive parent or guardian of an adopted minor to obtain an uncertified, long-form copy of the adopted person's original birth certificate, upon submission of a written, notarized request to the State Registrar. Under current law the only way to obtain an adopted person's original birth certificate is by court order.

N.J.S.A.26:8-40.1 is also amended to eliminate language that allows a court to replace the child's place of birth on the birth certificate with that of the adopting parents' residence. In the case of a foundling, the substitute requires the court to designate the date and place of birth recorded on the original birth certificate. In addition, N.J.S.A.26:8-40.1 is amended to update references to birth certificates involving foreign adoptions, and to direct local registrars of vital statistics to forward the original certificate of birth to the State Registrar when a new one is made.

Access to the original, long-form copy of an adopted person's birth certificate will begin on the thirteenth month after the Department of Health and Senior Services (DHSS) adopts regulations to implement the substitute. The delayed effective date will provide birth parents of persons adopted prior to the date of enactment with a one-time, 12-month period, beginning on the date DHSS adopts its regulations, during which they may submit to the State Registrar a written, notarized request for nondisclosure or make such a request to the State Registrar in person. The request for nondisclosure would prohibit the State Registrar from providing the birth parent's name and home

address, as recorded on the birth certificate, to the adult adopted person or other persons authorized to request the birth certificate. The State Registrar shall acknowledge receipt of the request for nondisclosure and shall enclose with the receipt a family history form requesting medical, cultural, and social history regarding the birth parent. The State Registrar shall require the birth parent to complete the form to the best of the parent's knowledge and return it to the State Registrar within 60 days. The birth parent may update the family history form as necessary. (The family history information will be provided to the adopted person when the person requests a copy of his birth certificate.) Failure of a birth parent to complete the form and return it within 60 days, upon requesting nondisclosure, shall nullify the birth parent's request for nondisclosure.

At any time following the request for nondisclosure, the birth parent may rescind the request and the State Registrar shall provide the identifying information concerning the birth parent to the adopted person or other authorized person, upon request. The State Registrar shall maintain a file of completed requests for nondisclosure or any rescissions thereof, and family history information submitted by birth parents. Upon request for an original certificate, the State Registrar shall determine whether a request for nondisclosure (or rescission) and any family history information regarding the adopted person are on file, and shall match such documents with the adopted person's original certificate of birth file. If a match exists, the request for nondisclosure or rescission, and any family history information shall be retained in the adopted person's original certificate of birth file.

In the case of a child who was surrendered pursuant to the "New Jersey Safe Haven Infant Protection Act," the State Registrar shall deem that the birth parent requested nondisclosure and shall not provide the birth parent's name or home address, if recorded on the child's birth certificate. The Division of Youth and Family Service (DYFS) in the Department of Children and Families is directed to notify the State Registrar when a child is surrendered pursuant to that law to enable the Registrar to identify the certificate of birth in order to deem that the birth parent requested nondisclosure.

If a birth parent has submitted a request for nondisclosure, the State Registrar shall delete identifying information of the birth parent from the uncertified, long form copy of the original certificate of birth and the family history form submitted by the birth parent with the certificate of birth, and provide both the requester.

In the case of birth parents who do not request nondisclosure or whose child was adopted after the substitute's enactment, the substitute provides an opportunity for these birth parents to indicate their preference concerning contact with the adopted person, by filing with the State Registrar a document indicating whether the parent prefers direct contact with the adopted person, contact through the use of an intermediary, or no contact. The birth parent may change his preference at any time by submitting a revised document of contact

preference to the State Registrar.

Further, the substitute provides that when a birth parent submits a document of contact preference to the State Registrar, the birth parent shall be required to also submit family history information. The birth parent whose preference is no contact will be encouraged to update the family history information every 10 years until the birth parent reaches the age of 40, and every five years thereafter. In order to ensure that an adopted person gains access to this family history information, the State Registrar, upon receiving a request for an original long-form birth certificate, would provide the requester with information regarding the birth parent's preference for contact, as well as any family history information that has been submitted to the State Registrar by the birth parent, including any updated information submitted; the substitute authorizes the State Registrar to establish a system to inform authorized requesters in the event that new information is added to an adopted person's certificate of birth file.

During the first 12 months after the adoption by DHSS of regulations when parents who wish to maintain their privacy have the opportunity to request nondisclosure, adopted persons 18 years of age or older, direct descendants 18 years of age or older of an adopted person if the adopted person is deceased, and adoptive parents or guardians of adopted minors, may request that the approved agency that placed the child for adoption or conducted an investigation provide any available nonidentifying family medical history information concerning the adopted person contained in that person's adoption file. Upon receipt of such a request, the approved agency or intermediary shall provide the requester with a detailed summary of any available nonidentifying family medical history information in the person's adoption file. If the requester is unable to obtain this information because the agency or intermediary is unknown, the requester may petition the court that granted the adoption to identify the agency or intermediary, if possible.

The substitute recognizes that family history information, which includes medical, cultural and social history information about an adopted person's birth parent, is important for an adopted person's medical concerns and emotional health. Therefore, the substitute also provides that an adult adopted person or other authorized requester, upon submission of a written request to the adoption agency or intermediary who facilitated the adoption, may obtain any existing family history information concerning the adopted person. However, prior to providing any identifying information about a birth parent or the parent's family, the agency or intermediary, as applicable, shall contact the State Registrar to receive written notification if the birth parent has submitted a request for nondisclosure. If such a request has been submitted, the agency or intermediary shall not disclose any identifying information about the birth parent or the parent's family. The substitute also authorizes an adopted person who was under the custody of DYFS at the time of the person's adoption, to request from

the director of DYFS a statement, based on DYFS's case file, that summarizes the circumstances under which parental rights for the child were terminated.

The substitute directs the State Registrar, through DHSS, to prepare information regarding counseling resources and the use of an intermediary for the purpose of enabling an adopted person to make contact with a birth parent, and to provide this information to any person requesting the original long-form birth certificate or a copy of the document of contact preference, as well as make it available on the department's official website.

The substitute provides that a person, firm, partnership, corporation, association or agency that placed a child for adoption shall not be liable in any civil or criminal action for damages resulting from information provided by the State Registrar pursuant to this substitute. In addition, immunity is provided to an employee, agent or officer of DHSS who is authorized by the Commissioner of Health and Senior Services to disclose information relating to the certification of birth. The immunity would apply to disclosure of information and any error or inaccuracy in the information that is disclosed, after receipt of a written, notarized request submitted in accordance with this substitute.

The substitute requires the Commissioner of Health and Senior Services, in consultation with the Commissioner of Children and Families, to provide to the Legislature, and make available to the public, a report on the development and administration of these initiatives. The report shall include statistical, nonidentifying data regarding:

- the number of uncertified, long-form copies of original birth certificates provided;
- the number of requests for nondisclosure;
- the number of requests submitted by birth parents, through the document of contact preference, for direct contact, contact by an intermediary and no contact; and
- the number of family history forms submitted by birth parents.

The Commissioner of Health and Senior Services, in consultation with the Commissioner of Children and Families, is authorized to adopt rules and regulations establishing:

- the required information and procedures for the request for nondisclosure and the document of contact preference;
- the required information and procedures for the family history form and the form to update family history information; and
- a nominal fee for services provided under this substitute, to meet the costs of implementation.

To expedite the adoption of regulations, the Commissioner of DHSS is authorized to adopt emergency regulations immediately upon filing the regulations with the Office of Administrative Law.

DHSS is to contract with media outlets throughout the country to produce and distribute national public service messages to increase

public awareness of and encourage participation in the initiatives established pursuant to this substitute and to inform the public of the procedures for obtaining a long-form copy of an adopted person's birth certificate, requesting nondisclosure, submitting a document of contact preference, and submitting family history information. In addition, DHSS is to ensure that this information is posted on the State's website.

The provisions of the substitute which give birth parents 12 months to submit requests for nondisclosure, and those which allow for access to nonidentifying medical information, take effect as soon as DHSS adopts the necessary regulations to implement those provisions. Thirteen months following the adoption of the regulations, the provisions concerning birth certificate access, document of contact preference and access to family history information from adoption agencies and attorneys take effect. This will provide one year after the enactment date in order to provide certain birth parents with the opportunity to request nondisclosure.