

Introduced by Assembly Member Quackenbush

March 7, 1991

An act to amend Sections 222.15, 224.73, 229.10, 229.40, and 1798.24 of, and to add Section 229.42 to, the Civil Code, and to amend Section 10439 of the Health and Safety Code, relating to adoptions.

LEGISLATIVE COUNSEL'S DIGEST

AB 1444, as introduced, Quackenbush. Adoption: adoptees.

(1) Existing law generally prohibits state agencies from disclosing any personal information in a manner that would link the information disclosed to the individual to whom it pertains unless the disclosure of the information is as specified. With respect to the disclosure of personal information to an adopted person, that information is limited to general background information pertaining to the adopted person's natural parents and may not include or reveal the identity of the natural parents. However, existing law authorizes, in adoptions in which the relinquishment for or consent to adoption was signed on or after January 1, 1984, a person who has been adopted and who attains the age of 21 years to request that the State Department of Social Services or the licensed adoption agency that joined in the petition for his or her adoption disclose the name and address of his or her birth parent and also authorizes a birth parent of a person who has been adopted and who has attained the age of 21 years to request the disclosure of the adopted name of the adoptee and his or her most current address. The birth parent or the adoptee must consent to the disclosure of this information.

This bill would revise existing law with respect to access to

adoption information as it applies to adoptees who have attained the age of 18 years. More specifically, this bill would provide that for all adoptions, regardless of when they occurred, the department or licensed adoption agency shall furnish certain identifying information and an uncertified copy of the original birth certificate upon request of an adoptee who has attained the age of 18 years without the necessity of the birth parent consenting to the disclosure of this information. However, if the identifying information on the original birth certificate is not available in the adoption file, neither the department nor licensed adoption agency would be obligated to search for that information, but the department would be required to provide an affidavit authorizing the adoptee to obtain an uncertified copy of his or her birth certificate from the State Department of Health Services. The bill would require the department to process these requests for information within existing staff resources as time permits. The bill would require the department, and would permit licensed adoption agencies, to charge unspecified fees for this service. The bill would also make related changes. Because the bill would mandate new and increased duties on licensed county adoption agencies, it would create a state-mandated local program.

(2) Existing law provides that certain documents filed in an adoption proceeding are not open to inspection except by the parties, their attorneys, and the State Department of Social Services, except upon the written authority of the judge of the superior court.

This bill would authorize, upon request, an adoptee who has attained the age of 18 years, to receive a copy of these documents.

(3) Existing law provides procedures for the amendment of birth records after adoption, including the issuance of a new birth certificate and an amended birth certificate and the transmittal and sealing of the original birth certificate. The records and information specified in these procedures, other than the newly issued birth certificate, are available only upon court order, as specified.

This bill would require the State Department of Health Services to make specified records available, upon request, to

certain adoptees who have attained the age of 18 years. The bill would authorize the State Department of Health Services to charge fees for this service.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates which do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that this bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to those statutory procedures and, if the statewide cost does not exceed \$1,000,000, shall be made from the State Mandates Claims Fund.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 222.15 of the Civil Code is
2 amended to read:

3 222.15. (a) The department shall adopt a statement
4 to be presented to the birth parents at the time the
5 relinquishment is signed and to prospective adoptive
6 parents at the time of the home study which shall, in a
7 clear and concise manner, in words calculated to assure
8 the confidence of the birth parent in the integrity of the
9 adoption process, communicate to the birth parent of a
10 child who is the subject of an adoption petition all of the
11 following facts:

12 (1) It is in the best interest of the child that the birth
13 parent keep the department or the licensed adoption
14 agency to whom the child was relinquished for adoption
15 informed of any health problems that the parent
16 develops that could affect the child.

17 (2) It is extremely important that the birth parent
18 keep his or her address current with the department or

1 the licensed adoption agency to whom the child was
2 relinquished for adoption in order to permit a response
3 to any inquiries to the department or licensed adoption
4 agency concerning medical or social history.

5 (3) Section 229.40 of the Civil Code authorizes a
6 person who has been adopted and who attains the age of
7 ~~21~~ to request the department or the licensed adoption
8 agency that joined in the petition for his or her adoption
9 to disclose the name and address of his or her birth
10 parent. Consequently, it is of the utmost importance that
11 the birth parent indicate whether or not he or she wishes
12 his or her name and address to be so disclosed by
13 checking the appropriate box provided on the form.

14 (4) The birth parent may change his or her decision as
15 to whether or not he or she wishes his or her name and
16 address disclosed, at any time, by sending a notarized
17 letter to that effect, by certified mail, return receipt
18 requested, to the department or to the licensed adoption
19 agency that joined in the petition for adoption.

20 (5) The relinquishment will be filed in the office of
21 the county clerk of the county in which the adoption
22 takes place. The file is not open to inspection by any
23 persons other than the parties to the adoption
24 proceedings, their attorneys, and the department, except
25 upon order of the judge of the superior court and except
26 as specified under Section 229.42.

27 (b) The department shall adopt a form to be signed by
28 the birth parents at the time the relinquishment is signed
29 which shall provide as follows:

30
31 "Section 229.40 of the Civil Code authorizes a person
32 who has been adopted and who attains the age of ~~21~~ 18
33 years to petition the State Department of Social Services
34 or the licensed adoption agency that joined in the
35 petition for his or her adoption to obtain the name and
36 address of his or her birth parent a complete and
37 undeleted copy of his or her adoption file. Indicate by
38 checking one of the boxes below whether or not you wish
39 your name and address to be so disclosed:

- 1 YES
2 NO
3 UNCERTAIN AT THIS TIME; WILL NOTIFY
4 AGENCY AT LATER DATE"

5
6 SEC. 2. Section 224.73 of the Civil Code is amended
7 to read:

8 224.73. (a) The department shall adopt a statement
9 to be presented to the birth parents at the time the
10 consent to adoption is signed and to prospective adoptive
11 parents at the time of the home study which shall, in a
12 clear and concise manner, in words calculated to assure
13 the confidence of the birth parents in the integrity of the
14 adoption process, communicate to the birth parent of a
15 child who is the subject of an adoption petition all of the
16 following facts:

17 (1) It is in the best interest of the child that the birth
18 parents keep the department informed of any health
19 problems that the parent develops that could affect the
20 child.

21 (2) It is extremely important that the birth parent
22 keep his or her address current with the department in
23 order to permit a response to any inquiries to the
24 department or licensed adoption agency concerning
25 medical or social history.

26 (3) Section 229.40 of the Civil Code authorizes a
27 person who has been adopted and who attains the age of
28 ~~21~~ to petition the department to obtain the name and
29 address of his or her birth parents. Consequently, it is of
30 the utmost importance that the birth parent indicate
31 whether or not he or she wishes his or her name and
32 address to be so disclosed by checking the appropriate
33 box provided on the form.

34 (4) The birth parent may change his or her decision as
35 to whether or not he or she wishes his or her name and
36 address disclosed, at any time, by sending a notarized
37 letter to that effect, by certified mail, return receipt
38 requested, to the department.

39 (5) The consent will be filed in the office of the county
40 clerk of the county in which the adoption takes place. The

1 file is not open to inspection by any persons other than
2 the parties to the adoption proceedings, their attorneys,
3 and the department, except upon order of the judge of
4 the superior court.

5 (b) The department shall adopt a form to be signed by
6 the birth parents at the time the consent to adoption is
7 signed which shall provide as follows:
8

9 "Section 229.40 of the Civil Code authorizes a person
10 who has been adopted and who attains the age of ~~21~~ 18
11 years to petition the State Department of Social Services
12 or the licensed adoption agency that joined in the
13 petition for his or her adoption to obtain ~~the name and~~
14 ~~address of his or her birth parents a complete and~~
15 ~~undeleted copy of his or her adoption file. Indicate by~~
16 ~~checking one of the boxes below whether or not you wish~~
17 ~~your name and address to be so disclosed:~~

- 18 YES
- 19 NO
- 20 UNCERTAIN AT THIS TIME; WILL NOTIFY
- 21 AGENCY AT LATER DATE"

22
23 SEC. 3. Section 229.10 of the Civil Code is amended
24 to read:

25 229.10. The petition, relinquishment or consent
26 agreement, order, report to the court from any
27 investigating agency, and any power of attorney and
28 deposition filed in the office of the county clerk pursuant
29 to this chapter shall not be open to inspection by any
30 other than the parties to the action, *an adoptee who has*
31 *attained the age of 18 years*, and their attorneys and the
32 department, except upon the written authority of the
33 judge of the superior court. A judge of the superior court
34 shall not authorize anyone *other than those persons*
35 *specified in Section 229.42*, to inspect the petition,
36 relinquishment or consent, agreement, order, report to
37 the court from any investigating agency, or power of
38 attorney or deposition or any portion of *any such those*
39 *court documents except in exceptional circumstances*
40 *and for good cause approaching the necessitous. The*

1 petitioner may be required to pay the expenses for
2 preparing the copies of the documents to be inspected.

3 Upon written request of any party to the action and
4 upon the order of any judge of the superior court, the
5 county clerk shall not provide any documents referred to
6 in this section for inspection or copying to any ~~other~~
7 person *not specified in Section 229.42*, unless the name of
8 the birth parents of the child or any information tending
9 to identify the birth parents of the child is deleted from
10 the documents or copies thereof.

11 Upon the request of the adoptive parents or the child,
12 a county clerk may issue a certificate of adoption which
13 states the date and place of adoption, the birth date of the
14 child, the name of the adoptive parents, and the name
15 which the child has taken. Unless the child has been
16 adopted by a stepparent, the certificate shall not state the
17 name of the birth parents of the child.

18 SEC. 4. Section 229.40 of the Civil Code is amended
19 to read:

20 229.40. (a) The department or a licensed adoption
21 agency shall, (1) upon request of a person who has been
22 adopted pursuant to this chapter and who has attained
23 the age of ~~21~~ 18 years, disclose the identity of the birth
24 parent or parents of the person and the most current
25 address of the birth parent or parents as shown in the
26 records of the department or licensed adoption agency;
27 *if the birth parent or parents have indicated consent to*
28 *the disclosure in writing and provide the adoptee with an*
29 *uncertified copy of the original birth certificate. If a copy*
30 *of the original birth certificate is not available in the*
31 *adoption record, the department or licensed adoption*
32 *agency shall complete an affidavit which authorizes the*
33 *adult adopted child to obtain an uncertified copy of his or*
34 *her original birth certificate from the State Department*
35 *of Health Services pursuant to Section 10439 of the*
36 *Health and Safety Code; and (2) upon request of the*
37 *birth parent of a person who has been adopted pursuant*
38 *to this chapter and who has attained the age of 21 years,*
39 *disclose the adopted name of the adoptee and his or her*
40 *most current address as shown in the records of the*

1 department or licensed adoption agency if the adult
 2 adoptee has indicated in writing, pursuant to the
 3 registration program developed by the department, that
 4 he or she wishes his or her name and address to be
 5 disclosed. The department or licensed adoption agency
 6 also shall disclose the identity of a birth parent and his or
 7 her most current address as shown in the records of the
 8 department or licensed adoption agency upon the
 9 request of the adoptive parent of a person under the age
 10 of 21 years who has been adopted pursuant to this
 11 chapter, upon the finding by the department or licensed
 12 adoption agency that a medical necessity or other
 13 extraordinary circumstances justify the disclosure.

14 The form of the request required by this section shall
 15 be prescribed by the department, shall provide for an
 16 affidavit to be executed by the requester that to the best
 17 of his or her knowledge he or she is an adoptee; that he
 18 or she is the birth parent of an adoptee; or that he or she
 19 is the adoptive parent of an adoptee. The department
 20 may adopt regulations requiring any additional means of
 21 identification from a requester as it deems necessary. The
 22 request shall advise an adoptee that if he or she so
 23 consents, his or her adoptive parents will be notified of
 24 the filing of the request prior to the release of the name
 25 and address of his or her birth parent.

26 This subdivision shall not be applicable if a birth parent
 27 or an adoptee has indicated that he or she does not wish
 28 his or her name or address to be disclosed.

29 The department shall either respond to a request for
 30 information pursuant to this section or forward the
 31 request to a licensed adoption agency pursuant to
 32 subdivision (b) within 20 working days of its receipt of
 33 the request.

34 The provisions of this subdivision *applicable to*
 35 *requests for information made by birth parents and*
 36 *adoptive parents* shall apply only to those adoptions in
 37 which the relinquishment for or consent to adoption was
 38 signed on or after January 1, 1984.

39 (b) The department may forward requests for
 40 information pursuant to this section to any licensed

1 adoption agency that was a party to the adoption.

2 (c) Notwithstanding any other provision of law, the
 3 department shall announce the availability of the present
 4 method of arranging contact among an adult adoptee, his
 5 or her birth parent, and any living adoptive parent
 6 authorized by Section 229.50 utilizing a means of
 7 communication appropriate to effectively inform the
 8 public effectively.

9 (d) The department or licensed adoption agency may
 10 charge a reasonable fee, in an amount established by the
 11 department by regulation to cover the costs of processing
 12 requests for information generated pursuant to
 13 subdivision (a). The revenue resulting from the fees so
 14 charged shall be utilized by the department or licensed
 15 adoption agency to increase existing staff as needed to
 16 process these requests. Fees received by the department
 17 shall be deposited in the Adoption Information Fund.
 18 This revenue shall be in addition to any other funds
 19 appropriated in support of the state adoption program.

20 The department or licensed adoption agency shall
 21 waive the fees authorized by this section for any person
 22 who is receiving public assistance pursuant to Part 3
 23 (commencing with Section 11000) of Division 9 of the
 24 Welfare and Institutions Code.

25 SEC. 5. Section 229.42 is added to the Civil Code, to
 26 read:

27 229.42. (a) (1) Notwithstanding any other provision
 28 of law, the State Department of Social Services or a
 29 licensed adoption agency shall furnish upon request of an
 30 adoptee who has attained the age of 18 years identifying
 31 information on a form prescribed by the department. If
 32 the identifying information on the form prescribed by
 33 the department is not available in the adoption file, the
 34 department or licensed adoption agency shall not be
 35 obligated to search for that information. This information
 36 shall include, but not be limited to, the following:

37 (A) The name of the birth mother or father and any
 38 other name by which either may be known.

39 (B) The date of birth of the adoptee.

40 (C) The place of birth of the adoptee, including the

1 name of the hospital.
 2 (D) Whether or not a birth parent has married and
 3 so, the married name of the birth parent.
 4 (E) The names of other children, if any, of the birth
 5 parent.
 6 (2) The form of the request required by this section
 7 shall be prescribed by the State Department of Social
 8 Services and shall provide for an affidavit to be executed
 9 by the requester that to the best of his or her knowledge
 10 he or she is an adoptee. The department may adopt
 11 regulations requiring such additional means of
 12 identification from a requester as it deems necessary.
 13 The department shall either respond to a request for
 14 information pursuant to this section or forward the
 15 request to a licensed adoption agency pursuant to
 16 subdivision (c).
 17 (b) Upon request of an adoptee who has attained the
 18 age of 18 years, a county clerk may issue to the adoptee
 19 a copy of any document referred to in Section 229.40.
 20 (c) The department may forward requests for
 21 information pursuant to this section to any licensed
 22 adoption agency that was a party to the adoption.
 23 (d) The State Department of Social Services shall
 24 charge a fee of _____ dollars (\$____), and a
 25 licensed adoption agency may charge a reasonable fee, in
 26 an amount established by the department by regulation,
 27 to defray the costs of processing requests for information
 28 pursuant to subdivision (a) of this section or Section
 29 229.40.
 30 The department or licensed adoption agency shall
 31 waive the fees authorized by this section for any person
 32 who is receiving public assistance pursuant to Part 3
 33 (commencing with Section 11000) of Division 9 of the
 34 Welfare and Institutions Code.
 35 (e) The State Department of Social Services shall
 36 process requests for information submitted pursuant to
 37 subdivision (a) of this section or Section 229.40 with
 38 existing staff resources as time permits.
 39 SEC. 6. Section 1798.24 of the Civil Code is amended
 40 to read:

1 1798.24. No agency may disclose any personal
 2 information in a manner that would link the information
 3 disclosed to the individual to whom it pertains unless the
 4 disclosure of the information is:
 5 (a) To the individual to whom the information
 6 pertains.
 7 (b) With the prior written voluntary consent of the
 8 individual to whom the record pertains, but only if such
 9 consent has been obtained not more than 30 days before
 10 the disclosure, or in the time limit agreed to by the
 11 individual in the written consent.
 12 (c) To the duly appointed guardian or conservator of
 13 the individual or a person representing the individual
 14 provided that it can be proven with reasonable certainty
 15 through the possession of agency forms, documents or
 16 correspondence that such person is the authorized
 17 representative of the individual to whom the information
 18 pertains.
 19 (d) To those officers, employees, attorneys, agents, or
 20 volunteers of the agency which has custody of the
 21 information if the disclosure is relevant and necessary in
 22 the ordinary course of the performance of their official
 23 duties and is related to the purpose for which the
 24 information was acquired.
 25 (e) To a person, or to another agency where the
 26 transfer is necessary for the transferee agency to perform
 27 its constitutional or statutory duties, and the use is
 28 compatible with a purpose for which the information was
 29 collected and the use or transfer is listed in the notice
 30 provided pursuant to Section 1798.9 or accounted for in
 31 accordance with Section 1798.25. With respect to
 32 information transferred from a law enforcement or
 33 regulatory agency, or information transferred to another
 34 law enforcement or regulatory agency, a use is
 35 compatible if the use of the information requested is
 36 needed in an investigation of unlawful activity under the
 37 jurisdiction of the requesting agency or for licensing,
 38 certification, or regulatory purposes by that agency.
 39 (f) To a governmental entity when required by state
 40 or federal law.

1 (g) Pursuant to the California Public Records Act
2 Chapter 3.5 (commencing with Section 6250) of Division
3 7 of Title 1 of the Government Code.

4 (h) To a person who has provided the agency with
5 advance adequate written assurance that the information
6 will be used solely for statistical research or reporting
7 purposes, but only if the information to be disclosed is in
8 a form that will not identify any individual.

9 (i) Pursuant to a determination by the agency which
10 maintains information that compelling circumstances
11 exist which affect the health or safety of an individual, if
12 upon the disclosure notification is transmitted to the
13 individual to whom the information pertains at his or her
14 last known address. Disclosure shall not be made if it is in
15 conflict with other state or federal law.

16 (j) To the State Archives of the State of California as
17 a record which has sufficient historical or other value to
18 warrant its continued preservation by the California state
19 government, or for evaluation by the Director of General
20 Services or his or her designee to determine whether the
21 record has further administrative, legal, or fiscal value.

22 (k) To any person pursuant to a subpoena, court order
23 or other compulsory legal process if, before the
24 disclosure, the agency reasonably attempts to notify the
25 individual to whom the record pertains, and if the
26 notification is not prohibited by law.

27 (l) To any person pursuant to a search warrant.

28 (m) Pursuant to Article 3 (commencing with Section
29 1800) of Chapter 1 of Division 2 of the Vehicle Code.

30 (n) For the sole purpose of verifying and paying
31 government health care service claims made pursuant to
32 Division 9 (commencing with Section 10000) of the
33 Welfare and Institutions Code.

34 (o) To a law enforcement or regulatory agency when
35 required for an investigation of unlawful activity or for
36 licensing, certification, or regulatory purposes, unless the
37 disclosure is otherwise prohibited by law.

38 (p) To another person or governmental organization
39 to the extent necessary to obtain information from the
40 person or governmental organization as necessary for an

1 investigation by the agency of a failure to comply with a
2 specific state law which the agency is responsible for
3 enforcing.

4 (q) To the Office of Information Practices when the
5 transfer is necessary for that office to investigate a
6 complaint it has received regarding an alleged violation
7 of this chapter or to perform its mediation functions,
8 provided that the Office of Information Practices has
9 received the written voluntary consent of the individual
10 to whom the information pertains for such a transfer.

11 (r) To an adopted person ~~and is limited to general~~
12 ~~background information pertaining to the adopted~~
13 ~~person's natural parents, provided that the information~~
14 ~~does not include or reveal the identity of the natural~~
15 ~~parents who has attained the age of 18 years.~~

16 (s) To a child or a grandchild of an adopted person and
17 disclosure is limited to medically necessary information
18 pertaining to the adopted person's ~~natural birth~~ parents.
19 However the information, or the process for obtaining
20 the information, shall not include or reveal the identity
21 of the ~~natural birth~~ parents. The State Department of
22 Social Services shall adopt regulations governing the
23 release of information pursuant to this subdivision by July
24 1, 1985. The regulations shall require licensed adoption
25 agencies to provide the same services provided by the
26 department as established by this subdivision.

27 (t) To a committee of the Legislature or to a Member
28 of the Legislature, or his or her staff when authorized in
29 writing by the member, where such member has
30 permission to obtain the information from the individual
31 to whom it pertains or where the member provides
32 reasonable assurance that he or she is acting in behalf of
33 the individual.

34 (u) To the University of California or a nonprofit
35 educational institution conducting scientific research,
36 provided the request for information includes assurances
37 of the need for personal information, procedures for
38 protecting the confidentiality of the information and
39 assurances that the personal identity of the subject shall
40 not be further disclosed in individually identifiable form.

1 (v) To an insurer if authorized by Chapter 5
2 (commencing with Section 10900) of Division 4 of the
3 Vehicle Code.

4 This article shall not be construed to require the
5 disclosure of personal information to the individual to
6 whom the information pertains when that information
7 may otherwise be withheld as set forth in Section 1798.40

8 SEC. 7. Section 10439 of the Health and Safety Code
9 is amended to read:

10 10439. ~~All~~ (a) Except as specified in subdivision (b),
11 all records and information specified in this article, other
12 than the newly issued birth certificate, shall be available
13 only upon the order of the superior court of the county
14 of residence of the adopted child or the superior court of
15 the county granting the order of adoption.

16 No such order shall be granted by the superior court
17 unless a verified petition setting forth facts showing the
18 necessity of such an order has been presented to the court
19 and good and compelling cause is shown for the granting
20 of the order. The clerk of the superior court shall send a
21 copy of the petition to the State Department of Social
22 Services and the department shall send a copy of all
23 records and information it has concerning the adopted
24 person with the name and address of the ~~natural birth~~
25 parents removed to the court. The court must review
26 these records before making an order and the order
27 should so state. ~~If the petition is by or on behalf of an~~
28 ~~adopted child who has attained majority, these facts shall~~
29 ~~be given great weight, but the granting of any petition is~~
30 ~~solely within the sound discretion of the court.~~

31 The name and address of the ~~natural birth~~ parents shall
32 be given to the petitioner only if he or she can
33 demonstrate that ~~such~~ the name and address, or either
34 of them, are necessary to assist him or her in establishing
35 a legal right.

36 (b) (1) Upon request, the State Registrar shall make
37 available to an adoptee who has attained the age of 18
38 years, an uncertified, copy of his or her original record of
39 birth, without an order of the superior court.

40 (2) The form of request required by this subdivision

1 shall be prescribed by the State Department of Health
2 Services and shall provide for a notarized affidavit to be
3 executed by the requester that to the best of his or her
4 knowledge, he or she is an adoptee.

5 (3) The State Department of Health Services may
6 establish a fee to defray the cost of providing information
7 or records pursuant to this subdivision. The amount of the
8 fee shall not exceed _____ dollars (\$_____) in the
9 1991-92 fiscal year, but this amount may thereafter be
10 adjusted by the state department for inflation.

11 SEC. 8. Notwithstanding Section 17610 of the
12 Government Code, if the Commission on State Mandates
13 determines that this act contains costs mandated by the
14 state, reimbursement to local agencies and school
15 districts for those costs shall be made pursuant to Part 7
16 (commencing with Section 17500) of Division 4 of Title
17 2 of the Government Code. If the statewide cost of the
18 claim for reimbursement does not exceed one million
19 dollars (\$1,000,000), reimbursement shall be made from
20 the State Mandates Claims Fund. Notwithstanding
21 Section 17580 of the Government Code, unless otherwise
22 specified in this act, the provisions of this act shall become
23 operative on the same date that the act takes effect
24 pursuant to the California Constitution.

O