

ACT 80

H.B. NO. 2082

A Bill for an Act Relating to Adoption Records.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. To protect adopted children from the stigma of illegitimacy, states began sealing adoption records in the middle of the twentieth century. Although adoptees were generally allowed to access their own adoption records, states later began limiting adoptees' access to adoption records due to the prevailing idea that adopted children were better off if they were unaware of their adoption. However, current research has illustrated that the secrecy surrounding an adoption has significant negative psychological consequences on an adoptee. Furthermore, cultural changes have largely diminished the stigma surrounding adoption, and recent genetics research has highlighted the importance of genetic history to an individual's medical care.

Although the legislature eased restrictions for some adoptees to access adoption records in 1990, Hawaii's adoption records law continues to condition access to records on birthparent approval, which is a major hurdle for adoptees to overcome. Additionally, it is common for adoptees to pay a search agent approximately \$600 to locate birthparents who have moved since the adoption proceedings.

The legislature finds that countries with open access laws and other states that have restored open access to adoption records have not experienced significant negative consequences that critics predicted would befall birthparents who sought to retain anonymity. Furthermore, the substantial interest that an adoptee has in learning the adoptee's familial history outweighs any vague discomfort that could befall a birthparent.

The purpose of this Act is to provide adoptees of a certain age, adoptive parent, and natural parents unfettered access to the adoptees' adoption records.

SECTION 2. Section 578-15, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Upon the entry of the decree, or upon the later effective date of the decree, or upon the dismissal or discontinuance or other final disposition of the petition, the clerk of the court shall seal all records in the proceedings; provided that upon the written request of the petitioner or petitioners, the court may waive the requirement that the records be sealed. The seal shall not be broken and the records shall not be inspected by any person, including the parties to the proceedings, except:

- (1) Upon order of the family court upon a showing of good cause;
- (2) ~~[For adoptions which occurred prior to January 1, 1991, after]~~ After the adopted individual attains the age of eighteen and upon submission to the family court of a written request for inspection by the adopted individual or the adoptive parents ~~[in accordance with the following:~~
 - ~~(A) Within sixty calendar days after receipt of a request for inspection, the family court, by certified mail with return receipt requested, shall mail to the last known address of each natural parent a notice of the request for inspection of adoption records, a copy of the request for inspection and copies of any accompanying letters, photographs, or other documents submitted in support of the request. The notice shall inform the natural parent that unless an affidavit signed by the natural parent requesting confidentiality is received by the family court within sixty calendar days of the date of receipt of the notice, the natural parent will be deemed to have waived any rights of confidentiality and the records shall be subject to inspection by the adopted individual or the adoptive parent who submitted the request. The notice shall also inform the natural parent that an affidavit requesting confidentiality for a period of ten years may be filed. A blank affidavit to be completed and signed by the natural parent shall be mailed with the notice;~~
 - ~~(B) If the family court has received a return receipt for the notice but an affidavit requesting confidentiality is not received by the family court within sixty calendar days of the date of receipt of the notice, the family court shall allow inspection under this section;~~
 - ~~(C) If the notice is returned as undeliverable to a natural parent, the family court shall designate an agent or agency to conduct a good faith and diligent search to locate the natural parent and to provide the notice and all other documents required under subparagraph (A). The search shall extend over a period not to exceed one hundred eighty calendar days. Contacts with natural parents by a designated agent or agency under this section shall be personal, whenever possible, and confidential. The family court shall provide the designated agent or agency with a copy of the request for inspection and copies of any accompanying letters, photographs, or other documents submitted in support of the request, and the designated agent or agency shall present the copies to the natural parent when contacted. The family court and the designated agent or agency shall ensure that no person other than a natural parent or the agent or agency through which a natural parent obtained assis-~~

- tance for the adoption is informed of the adoptive individual's existence and the relationship to the natural parent;
- (D) ~~If a natural parent cannot be located after the search conducted under subparagraph (C), the family court shall allow inspection under this section;~~
 - (E) ~~If an affidavit requesting confidentiality is received by the family court within sixty calendar days of the date of receipt of the notice provided under subparagraph (A) or (C), the family court shall not allow inspection during the effective period of the affidavit;~~
 - (F) ~~If a ten-year affidavit is filed under subparagraph (E), the natural parent may refile affidavits every ten years thereafter to maintain confidentiality, or the natural parent may file an affidavit effective for the remainder of the natural parent's lifetime. All affidavits subsequent to the initial affidavit may be filed within ninety calendar days before the last effective day of the initial affidavit. If there is no effective affidavit on file with the family court at the time a request for inspection is received by the court, the court shall allow inspection under this paragraph;~~
 - (G) ~~An affidavit requesting confidentiality shall be effective until the last day of the period for which the affidavit was filed, until the natural parent revokes the affidavit, or until the natural parent is deceased, whichever occurs sooner; and~~
 - (H) ~~Where two natural parents are involved and confidentiality is waived under this paragraph by only one natural parent, the inspection of the records shall not include any identifying information concerning the other natural parent;~~
- (3) ~~For adoptions occurring after December 31, 1990, in accordance with the following:~~
- (A) ~~Each natural parent shall be informed of the procedures required under this paragraph if the natural parent desires to maintain confidentiality after the adopted individual attains the age of eighteen;~~
 - (B) ~~Within ninety calendar days before the adopted individual attains the age of eighteen a natural parent may file an affidavit with the family court to request confidentiality and the natural parent may refile affidavits every ten years thereafter to maintain confidentiality or the natural parent may file an affidavit effective for the remainder of the natural parent's lifetime. All affidavits after the initial affidavit may be filed within ninety calendar days before the last effective day of the initial affidavit;~~
 - (C) ~~If a natural parent declines or fails to file an affidavit under subparagraph (B), the family court shall allow inspection of the record by the adopted individual or the adoptive parents at any time after the adopted individual has attained the age of eighteen; and~~
 - (D) ~~Where two natural parents are involved and confidentiality is waived under this paragraph by only one natural parent, the inspection of the records shall not include any identifying information concerning the other natural parent;~~
- (4) ~~For all adoptions, regardless of date of occurrence, after the adopted individual attains the age of eighteen and upon submission to~~

~~the family court of a written request for inspection by a natural parent; provided that the adopted individual shall have the same rights and obligations applicable to natural parents under paragraphs (2) and (3), including rights of notice and opportunity to file affidavits requesting confidentiality.~~

- ~~(5) For all adoptions, regardless of date of occurrence, after];~~
~~(3) After the adopted individual attains the age of eighteen and upon submission [of an affidavit by a natural parent consenting to the inspection of records by the adoptee or an affidavit submitted by an adoptee consenting to the inspection of records] to the family court of a written request for inspection by the natural parents; [provided that where only one natural parent files an affidavit for consent, the inspection of records shall not include any identifying information concerning the other natural parent;~~
~~(6)] (4) Upon request by the adopted individual or the adoptive parents for information contained in the records concerning ethnic background and necessary medical information[; notwithstanding any affidavit requesting confidentiality]; or~~
~~[(7)] (5) Upon request by a natural parent for a copy of the original birth certificate.~~

As used in this subsection, “natural parent” means a biological mother or father, or a legal parent who is not also the biological parent.”

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved June 21, 2016.)