



## 95TH GENERAL ASSEMBLY

### State of Illinois

2007 and 2008

**HB4623**

by Rep. Sara Feigenholtz

#### SYNOPSIS AS INTRODUCED:

750 ILCS 50/18.3a

from Ch. 40, par. 1522.3a

Amends the Adoption Act. Provides that a confidential intermediary has access to vital records maintained by the Department of Public Health and its designees or another state's comparable public entity (instead of the Department of Public Health and its designees) and all court or adoption agency records which relate to an adoption, a surrendered person, or relatives of the parties involved in the adoption or surrender. Provides that the confidential intermediary may provide an eligible petitioner with information about the agency that had legal custody of or responsibility for the surrendered person. Provides that the confidential intermediary may inform petitioners of the state in which the surrender or the adoption occurred. Provides that if the petitioner is an adult who was adopted or surrendered or the adoptive parent or guardian of an adopted or surrendered person under the age of 21, any non-identifying information learned during the search may be given to the petitioner at any time during the search before the case is closed (instead of before the case is closed).

LRB095 15988 AJ0 42000 b

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, any adopted or surrendered person 21 years of age  
10 or over, any adoptive parent or legal guardian of an adopted or  
11 surrendered person under the age of 21, or any birth parent of  
12 an adopted or surrendered person who is 21 years of age or over  
13 may petition the court in any county in the State of Illinois  
14 for appointment of a confidential intermediary as provided in  
15 this Section for the purpose of exchanging medical information  
16 with one or more mutually consenting biological relatives,  
17 obtaining identifying information about one or more mutually  
18 consenting biological relatives, or arranging contact with one  
19 or more mutually consenting biological relatives.  
20 Additionally, in cases where an adopted or surrendered person  
21 is deceased, an adult child of the adopted or surrendered  
22 person or his or her adoptive parents or surviving spouse may  
23 file a petition under this Section and in cases where the birth

1 parent is deceased, an adult birth sibling of the adopted or  
2 surrendered person or of the deceased birth parent may file a  
3 petition under this Section for the purpose of exchanging  
4 medical information with one or more mutually consenting  
5 biological relatives of the adopted or surrendered person,  
6 obtaining identifying information about one or more mutually  
7 consenting biological relatives of the adopted or surrendered  
8 person, or arranging contact with one or more mutually  
9 consenting biological relatives of the adopted or surrendered  
10 person. Beginning January 1, 2006, any adopted or surrendered  
11 person 21 years of age or over; any adoptive parent or legal  
12 guardian of an adopted or surrendered person under the age of  
13 21; any birth parent, birth sibling, birth aunt, or birth uncle  
14 of an adopted or surrendered person over the age of 21; any  
15 surviving child, adoptive parent, or surviving spouse of a  
16 deceased adopted or surrendered person who wishes to petition  
17 the court for the appointment of a confidential intermediary  
18 shall be required to accompany their petition with proof of  
19 registration with the Illinois Adoption Registry and Medical  
20 Information Exchange.

21 (b) Petition. Upon petition by an adopted or surrendered  
22 person 21 years of age or over, an adoptive parent or legal  
23 guardian of an adopted or surrendered person under the age of  
24 21, or a birth parent of an adopted or surrendered person who  
25 is 21 years of age or over, the court shall appoint a  
26 confidential intermediary. Upon petition by an adult child,

1 adoptive parent or surviving spouse of an adopted or  
2 surrendered person who is deceased, by an adult birth sibling  
3 of an adopted or surrendered person whose common birth parent  
4 is deceased and whose adopted or surrendered birth sibling is  
5 21 years of age or over, or by an adult sibling of a birth  
6 parent who is deceased, and whose surrendered child is 21 years  
7 of age or over, the court may appoint a confidential  
8 intermediary if the court finds that the disclosure is of  
9 greater benefit than nondisclosure. The petition shall state  
10 which biological relative or relatives are being sought and  
11 shall indicate if the petitioner wants to do any one or more of  
12 the following: exchange medical information with the  
13 biological relative or relatives, obtain identifying  
14 information from the biological relative or relatives, or to  
15 arrange contact with the biological relative.

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

20 (d) Fees and expenses. The court shall condition the  
21 appointment of the confidential intermediary on the  
22 petitioner's payment of the intermediary's fees and expenses in  
23 advance of the commencement of the work of the confidential  
24 intermediary.

25 (e) Eligibility of intermediary. The court may appoint as  
26 confidential intermediary any person certified by the

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

6 (f) Confidential Intermediary Council. There shall be  
7 established under the Department of Children and Family  
8 Services a Confidential Intermediary Advisory Council. One  
9 member shall be an attorney representing the Attorney General's  
10 Office appointed by the Attorney General. One member shall be a  
11 currently certified confidential intermediary appointed by the  
12 Director of the Department of Children and Family Services. The  
13 Director shall also appoint 5 additional members. When making  
14 those appointments, the Director shall consider advocates for  
15 adopted persons, adoptive parents, birth parents, lawyers who  
16 represent clients in private adoptions, lawyers specializing  
17 in privacy law, and representatives of agencies involved in  
18 adoptions. The Director shall appoint one of the 7 members as  
19 the chairperson. An attorney from the Department of Children  
20 and Family Services and the person directly responsible for  
21 administering the confidential intermediary program shall  
22 serve as ex-officio, non-voting advisors to the Council.  
23 Council members shall serve at the discretion of the Director  
24 and shall receive no compensation other than reasonable  
25 expenses approved by the Director. The Council shall meet no  
26 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 or a comparable public entity that maintains vital  
23 records in another state in accordance with that state's laws  
24 and all records of the court or any adoption agency, public or  
25 private, as limited in this Section, which relate to the  
26 adoption or the identity and location of an adopted or

1 surrendered person, of an adult child or surviving spouse of a  
2 deceased adopted or surrendered person, or of a birth parent,  
3 birth sibling, or the sibling of a deceased birth parent. The  
4 confidential intermediary shall not have access to any personal  
5 health information protected by the Standards for Privacy of  
6 Individually Identifiable Health Information adopted by the  
7 U.S. Department of Health and Human Services under the Health  
8 Insurance Portability and Accountability Act of 1996 unless the  
9 confidential intermediary has obtained written consent from  
10 the person whose information is being sought or, if that person  
11 is a minor child, that person's parent or guardian.  
12 Confidential intermediaries shall be authorized to inspect  
13 confidential relinquishment and adoption records. The  
14 confidential intermediary shall not be authorized to access  
15 medical records, financial records, credit records, banking  
16 records, home studies, attorney file records, or other personal  
17 records. In cases where a birth parent is being sought, an  
18 adoption agency shall inform the confidential intermediary of  
19 any statement filed pursuant to Section 18.3, hereinafter  
20 referred to as "the 18.3 statement", indicating a desire of the  
21 surrendering birth parent to have identifying information  
22 shared or to not have identifying information shared. If there  
23 was a clear statement of intent by the sought-after birth  
24 parent not to have identifying information shared, the  
25 confidential intermediary shall discontinue the search and  
26 inform the petitioning party of the sought-after relative's

1 intent. Information provided to the confidential intermediary  
2 by an adoption agency shall be restricted to the full name,  
3 date of birth, place of birth, last known address, last known  
4 telephone number of the sought-after relative or, if  
5 applicable, of the children or siblings of the sought-after  
6 relative, and the 18.3 statement.

7 (h) Adoption agency disclosure of medical information. If  
8 the petitioner is an adult adopted or surrendered person or the  
9 adoptive parent of a minor and if the petitioner has signed a  
10 written authorization to disclose personal medical  
11 information, an adoption agency disclosing information to a  
12 confidential intermediary shall disclose available medical  
13 information about the adopted or surrendered person from birth  
14 through adoption.

15 (i) Duties of confidential intermediary in conducting a  
16 search. In conducting a search under this Section, the  
17 confidential intermediary shall first confirm that there is no  
18 Denial of Information Exchange on file with the Illinois  
19 Adoption Registry. If the petitioner is an adult child of an  
20 adopted or surrendered person who is deceased, the confidential  
21 intermediary shall additionally confirm that the adopted or  
22 surrendered person did not file a Denial of Information  
23 Exchange with the Illinois Adoption Registry during his or her  
24 life. If the petitioner is an adult birth sibling of an adopted  
25 or surrendered person or an adult sibling of a birth parent who  
26 is deceased, the confidential intermediary shall additionally



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

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

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

- 25 (1) The sought-after relative may totally reject one or  
26 all of the requests for medical information, identifying

1 information or contact. The sought-after relative shall be  
2 informed that they can provide a medical questionnaire to  
3 be forwarded to the petitioner without releasing any  
4 identifying information. The confidential intermediary  
5 shall inform the petitioner of the sought-after relative's  
6 decision to reject the sharing of information or contact.

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

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

23 (4) The sought after relative may consent to initiate  
24 contact with the petitioner. If both the petitioner and the  
25 sought-after relative or relatives are eligible to  
26 register with the Illinois Adoption Registry, the

1 confidential intermediary shall provide the necessary  
 2 application forms and request that the sought-after  
 3 relative register with the Illinois Adoption Registry. If  
 4 either the petitioner or the sought-after relative or  
 5 relatives are ineligible to register with the Illinois  
 6 Adoption Registry, the confidential intermediary shall  
 7 obtain written consents from both parties that they wish to  
 8 disclose their identities to each other and to have contact  
 9 with each other.

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

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

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

20 SUBSCRIBED AND SWORN to before me, a Notary Public, on (insert  
 21 date)

22 ....."

23 (k) Sanctions.

24 (1) Any confidential intermediary who improperly  
 25 discloses confidential information identifying a  
 26 sought-after relative shall be liable to the sought-after

1 relative for damages and may also be found in contempt of  
2 court.

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

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

18 (1) Death of person being sought. Notwithstanding any other  
19 provision of this Act, if the confidential intermediary  
20 discovers that the person being sought has died, he or she  
21 shall report this fact to the court, along with a copy of the  
22 death certificate.

23 (m) Any confidential information obtained by the  
24 confidential intermediary during the course of his or her  
25 search shall be kept strictly confidential and shall be used  
26 for the purpose of arranging contact between the petitioner and

1 the sought-after birth relative. At the time the case is  
2 closed, all identifying information shall be returned to the  
3 court for inclusion in the impounded adoption file.

4 (n) If the petitioner is an adopted or surrendered person  
5 21 years of age or over or the adoptive parent or legal  
6 guardian of an adopted or surrendered person under the age of  
7 21, any non-identifying information, as defined in Section  
8 18.4, that is ascertained during the course of the search may  
9 be given in writing to the petitioner at any time during the  
10 search before the case is closed.

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

17 (p) An adoption agency that has received a request from a  
18 confidential intermediary for the full name, date of birth,  
19 last known address, or last known telephone number of a  
20 sought-after relative pursuant to subsection (g) of Section  
21 18.3, or for medical information regarding a sought-after  
22 relative pursuant to subsection (h) of Section 18.3, must  
23 satisfactorily comply with this court order within a period of  
24 45 days. The court shall order the adoption agency to reimburse  
25 the petitioner in an amount equal to all payments made by the  
26 petitioner to the confidential intermediary, and the adoption

1 agency shall be subject to a civil monetary penalty of \$1,000  
2 to be paid to the Department of Children and Family Services.  
3 Following the issuance of a court order finding that the  
4 adoption agency has not complied with Section 18.3, the  
5 adoption agency shall be subject to a monetary penalty of \$500  
6 per day for each subsequent day of non-compliance.Proceeds from  
7 such fines shall be utilized by the Department of Children and  
8 Family Services to subsidize the fees of petitioners as  
9 referenced in subsection (d) of this Section.

10 (g) Provide information to eligible petitioner. The  
11 confidential intermediary may provide to eligible petitioners  
12 as described in subsections (a) and (b) of this Section, the  
13 name of the child welfare agency which had legal custody of the  
14 surrendered person or responsibility for placing the  
15 surrendered person and any available contact information for  
16 such agency. In addition, the confidential intermediary may  
17 provide to such petitioners the name of the state in which the  
18 surrender occurred or in which the adoption was finalized.

19 Any reimbursements and fines, notwithstanding any  
20 reimbursement directly to the petitioner, paid under this  
21 subsection are in addition to other remedies a court may  
22 otherwise impose by law.

23 ~~Proceeds from the penalties paid to the Department of~~  
24 ~~Children and Family Services shall be deposited into the DCFS~~  
25 ~~Children's Services Fund.~~ The Department of Children and Family  
26 Services shall submit reports to the Confidential Intermediary

1 Advisory Council by July 1 and January 1 of each year in order  
2 to report the penalties assessed and collected under this  
3 subsection, the amounts of related deposits into the DCFS  
4 Children's Services Fund, and any expenditures from such  
5 deposits.

6 (Source: P.A. 93-189, eff. 1-1-04; 94-173, eff. 1-1-06;  
7 94-1010, eff. 10-1-06.)