

AN ACT concerning adoption.

**Be it enacted by the People of the State of Illinois,
represented in the General Assembly:**

Section 5. The Adoption Compensation Prohibition Act is amended by changing Sections 3, 4, and 4.1 as follows:

(720 ILCS 525/3) (from Ch. 40, par. 1703)

Sec. 3. Definitions. As used in this Act:

"Adoption services" has the meaning given that term in the Child Care Act of 1969.

"Placing out" means to arrange for the free care or placement of a child in a family other than that of the child's parent, stepparent, grandparent, brother, sister, uncle or aunt or legal guardian, for the purpose of adoption or for the purpose of providing care.

"Prospective adoptive parent" means a person or persons who have filed or intend to file a petition to adopt a child under the Adoption Act.

~~"Adoption services" has the meaning given that term in the Child Care Act of 1969.~~

(Source: P.A. 94-586, eff. 8-15-05.)

(720 ILCS 525/4) (from Ch. 40, par. 1704)

Sec. 4. The provisions of this Act shall not be construed

to prevent the payment of salaries or other compensation by a licensed child welfare agency providing adoption services, as that term is defined by the Child Care Act of 1969, as now or hereafter amended, to the officers, employees, agents, contractors, or any other persons acting on behalf of the child welfare agency, provided that such salaries and compensation are consistent with subsection (a) of Section 14.5 of the Child Care Act of 1969.

The provisions of this Act shall not be construed to prevent the payment by a prospective adoptive parent ~~person with whom a child has been placed for adoption~~ of reasonable and actual medical fees or hospital charges for services rendered in connection with the birth of such child, if such payment is made to the physician or hospital who or which rendered the services or to the biological mother of the child or to prevent the receipt of such payment by such physician, hospital, or mother.

The provisions of this Act shall not be construed to prevent a prospective adoptive parent from giving a gift or gifts or other thing or things of value to a biological parent provided that the total value of such gift or gifts or thing or things of value does not exceed \$200.

(Source: P.A. 94-586, eff. 8-15-05.)

(720 ILCS 525/4.1) (from Ch. 40, par. 1704.1)

Sec. 4.1. Payment of certain expenses.

(a) A prospective adoptive parent ~~person or persons who have filed or intend to file a petition to adopt a child under the Adoption Act~~ shall be permitted to pay the reasonable living expenses of the biological parents of the child sought to be adopted, in addition to those expenses set forth in Section 4, only in accordance with the provisions of this Section.

"Reasonable living expenses" means those expenses related to activities of daily living and meeting basic needs, including, but not limited to, lodging, food, and clothing for the biological parents during the biological mother's pregnancy and for no more than 120 days prior to the biological mother's expected date of delivery and for no more than 60 days after the birth of the child. The term does not include expenses for lost wages, gifts, educational expenses, or other similar expenses of the biological parents.

(b) (1) The prospective adoptive parents ~~petitioners~~ may seek leave of the court to pay the reasonable living expenses of the biological parents. They shall be permitted to pay the reasonable living expenses of the biological parents only upon prior order of the circuit court where the petition for adoption will be filed, or if the petition for adoption has been filed in the circuit court where the petition is pending.

(2) Notwithstanding clause (b)(1) of this Section, a prospective adoptive parent may advance a maximum of \$1,000 for reasonable birth parent living expenses without prior order of

court. The prospective adoptive parents shall present a final accounting of all expenses to the court prior to the entry of a final judgment order for adoption.

(3) If the court finds an accounting by the prospective adoptive parents to be incomplete or deceptive or to contain amounts which are unauthorized or unreasonable, the court may order a new accounting or the repayment of amounts found to be excessive or unauthorized or make any other orders it deems appropriate.

(c) Payments under this Section shall be permitted only in those circumstances where there is a demonstrated need for the payment of such expenses to protect the health of the biological parents or the health of the child sought to be adopted.

(d) Payment of their reasonable living expenses, as provided in this Section, shall not obligate the biological parents to place the child for adoption. In the event the biological parents choose not to place the child for adoption, the prospective adoptive parents ~~petitioners~~ shall have no right to seek reimbursement from the biological parents, or from any relative or associate of the biological parents, of moneys paid to, or on behalf of, the biological parents pursuant to a court order under this Section.

(d-1) Notwithstanding subsection (d) of this Section, a prospective adoptive parent may seek reimbursement of reasonable living expenses from a person who receives such

payments only if the person who accepts payment of reasonable living expenses before the child's birth, as described in subsection (d) of this Section, knows that the person on whose behalf he or she is accepting payment is not pregnant at the time of the receipt of such payments or the person receives reimbursement for reasonable living expenses simultaneously from more than one prospective adoptive parent without the knowledge of the prospective adoptive parent.

(d-5) No person or entity shall offer, provide, or co-sign a loan or any other credit accommodation, directly or indirectly, with a biological parent or a relative or associate of a biological parent based on the contingency of a surrender or placement of a child for adoption.

(e) Within 14 days after the completion of all payments for reasonable living expenses of the biological parents under this Section, the prospective adoptive parents ~~petitioners~~ shall present a final accounting of all those expenses to the court. ~~The accounting shall include vouchers for all moneys expended, copies of all checks written, and receipts for all cash payments.~~ The accounting shall also include the verified statements of the prospective adoptive parents ~~petitioners~~, each attorney of record, and the biological parents or parents to whom or on whose behalf the payments were made attesting to the accuracy of the accounting.

(f) If the placement of a child for adoption is made in accordance with the Interstate Compact on the Placement of

Children, and if the sending state permits the payment of any expenses of biological parents that are not permitted under this Act, then the payment of those expenses shall not be a violation of this Act. In that event, the prospective adoptive parents ~~petitioners~~ shall file an accounting of all payments of the expenses of the biological parent or parents with the court in which the petition for adoption is filed or is to be filed. The accounting shall include a copy of the statutory provisions of the sending state that permit payments in addition to those permitted by this Act and a copy of all orders entered in the sending state that relate to expenses of the biological parents paid by the prospective adoptive parents ~~petitioners~~ in the sending state.

(g) The prospective adoptive parents ~~petitioners~~ shall be permitted to pay the reasonable attorney's fees of a ~~the~~ biological parent's ~~parents'~~ attorney in connection with proceedings under this Act or in connection with proceedings for the adoption of the child if the amount of fees of the attorney is \$1,000 or less. If the amount of attorney's fees of each biological parent exceeds \$1,000, the ~~—The~~ attorney's fees shall be paid only after a petition seeking leave to pay those fees is filed with the court in which the adoption proceeding is filed or to be filed. The court shall review the petition for leave to pay attorney's fees, and if the court determines that the fees requested are reasonable, the court shall permit the petitioners to pay them. If the court

determines that the fees requested are not reasonable, the court shall determine and set the reasonable attorney's fees of the biological parents' attorney which may be paid by the petitioners. The prospective adoptive parents shall present a final accounting of all those fees to the court prior to the entry of a final judgment order for adoption.

(h) The court may appoint a guardian ad litem for an unborn child to represent the interests of the child in proceedings under this Section.

(i) The provisions of this Section apply to a person who is a prospective adoptive parent ~~has filed or intends to file a petition to adopt a child under the Adoption Act.~~ This Section does not apply to a licensed child welfare agency, as that term is defined in the Child Care Act of 1969, whose payments are governed by the Child Care Act of 1969 and the Department rules adopted thereunder.

(Source: P.A. 93-1063, eff. 6-1-05; 94-586, eff. 8-15-05.)

Section 10. The Adoption Act is amended by changing Section 18.3a as follows:

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

Sec. 18.3a. Confidential intermediary.

(a) General purposes. Notwithstanding any other provision of this Act, any adopted or surrendered person 21 years of age or over, any adoptive parent or legal guardian of an adopted or

surrendered person under the age of 21, or any birth parent of an adopted or surrendered person who is 21 years of age or over may petition the court in any county in the State of Illinois for appointment of a confidential intermediary as provided in this Section for the purpose of exchanging medical information with one or more mutually consenting biological relatives, obtaining identifying information about one or more mutually consenting biological relatives, or arranging contact with one or more mutually consenting biological relatives. Additionally, in cases where an adopted or surrendered person is deceased, an adult child of the adopted or surrendered person or his or her adoptive parents or surviving spouse may file a petition under this Section and in cases where the birth parent is deceased, an adult birth sibling of the adopted or surrendered person or of the deceased birth parent may file a petition under this Section for the purpose of exchanging medical information with one or more mutually consenting biological relatives of the adopted or surrendered person, obtaining identifying information about one or more mutually consenting biological relatives of the adopted or surrendered person, or arranging contact with one or more mutually consenting biological relatives of the adopted or surrendered person. Beginning January 1, 2006, any adopted or surrendered person 21 years of age or over; any adoptive parent or legal guardian of an adopted or surrendered person under the age of 21; any birth parent, birth sibling, birth aunt, or birth uncle

of an adopted or surrendered person over the age of 21; any surviving child, adoptive parent, or surviving spouse of a deceased adopted or surrendered person who wishes to petition the court for the appointment of a confidential intermediary shall be required to accompany their petition with proof of registration with the Illinois Adoption Registry and Medical Information Exchange.

(b) Petition. Upon petition by an adopted or surrendered person 21 years of age or over, an adoptive parent or legal guardian of an adopted or surrendered person under the age of 21, or a birth parent of an adopted or surrendered person who is 21 years of age or over, the court shall appoint a confidential intermediary. Upon petition by an adult child, adoptive parent or surviving spouse of an adopted or surrendered person who is deceased, by an adult birth sibling of an adopted or surrendered person whose common birth parent is deceased and whose adopted or surrendered birth sibling is 21 years of age or over, or by an adult sibling of a birth parent who is deceased, and whose surrendered child is 21 years of age or over, the court may appoint a confidential intermediary if the court finds that the disclosure is of greater benefit than nondisclosure. The petition shall state which biological relative or relatives are being sought and shall indicate if the petitioner wants to do any one or more of the following: exchange medical information with the biological relative or relatives, obtain identifying

information from the biological relative or relatives, or to arrange contact with the biological relative.

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

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

(e) Eligibility of intermediary. The court may appoint as confidential intermediary any person certified by the Department of Children and Family Services as qualified to serve as a confidential intermediary. Certification shall be dependent upon the confidential intermediary completing a course of training including, but not limited to, applicable federal and State privacy laws.

(f) Confidential Intermediary Council. There shall be established under the Department of Children and Family Services a Confidential Intermediary Advisory Council. One member shall be an attorney representing the Attorney General's Office appointed by the Attorney General. One member shall be a currently certified confidential intermediary appointed by the Director of the Department of Children and Family Services. The Director shall also appoint 5 additional members. When making

those appointments, the Director shall consider advocates for adopted persons, adoptive parents, birth parents, lawyers who represent clients in private adoptions, lawyers specializing in privacy law, and representatives of agencies involved in adoptions. The Director shall appoint one of the 7 members as the chairperson. An attorney from the Department of Children and Family Services and the person directly responsible for administering the confidential intermediary program shall serve as ex-officio, non-voting advisors to the Council. Council members shall serve at the discretion of the Director and shall receive no compensation other than reasonable expenses approved by the Director. The Council shall meet no less than twice yearly, and shall make recommendations to the Director regarding the development of rules, procedures, and forms that will ensure efficient and effective operation of the confidential intermediary process, including:

(1) Standards for certification for confidential intermediaries.

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

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

(4) The relationship between confidential intermediaries and the court system, including the development of sample orders defining the scope of the

intermediaries' access to information.

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

(g) Access. Subject to the limitations of subsection (i) of this Section, the confidential intermediary shall have access to vital records maintained by the Department of Public Health and its local designees for the maintenance of vital records or a comparable public entity that maintains vital records in another state in accordance with that state's laws and all records of the court or any adoption agency, public or private, as limited in this Section, which relate to the adoption or the identity and location of an adopted or surrendered person, of an adult child or surviving spouse of a deceased adopted or surrendered person, or of a birth parent, birth sibling, or the sibling of a deceased birth parent. The confidential intermediary shall not have access to any personal health information protected by the Standards for Privacy of Individually Identifiable Health Information adopted by the U.S. Department of Health and Human Services under the Health Insurance Portability and Accountability Act of 1996 unless the confidential intermediary has obtained written consent from the person whose information is being sought or, if that person is a minor child, that person's parent or guardian. Confidential intermediaries shall be authorized to inspect confidential relinquishment and adoption records. The

confidential intermediary shall not be authorized to access medical records, financial records, credit records, banking records, home studies, attorney file records, or other personal records. In cases where a birth parent is being sought, an adoption agency shall inform the confidential intermediary of any statement filed pursuant to Section 18.3, hereinafter referred to as "the 18.3 statement", indicating a desire of the surrendering birth parent to have identifying information shared or to not have identifying information shared. If there was a clear statement of intent by the sought-after birth parent not to have identifying information shared, the confidential intermediary shall discontinue the search and inform the petitioning party of the sought-after relative's intent. Information provided to the confidential intermediary by an adoption agency shall be restricted to the full name, date of birth, place of birth, last known address, last known telephone number of the sought-after relative or, if applicable, of the children or siblings of the sought-after relative, and the 18.3 statement.

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

through adoption.

(i) Duties of confidential intermediary in conducting a search. In conducting a search under this Section, the confidential intermediary shall first confirm that there is no Denial of Information Exchange on file with the Illinois Adoption Registry. If the petitioner is an adult child of an adopted or surrendered person who is deceased, the confidential intermediary shall additionally confirm that the adopted or surrendered person did not file a Denial of Information Exchange with the Illinois Adoption Registry during his or her life. If the petitioner is an adult birth sibling of an adopted or surrendered person or an adult sibling of a birth parent who is deceased, the confidential intermediary shall additionally confirm that the birth parent did not file a Denial of Information Exchange with the Registry during his or her life. If the confidential intermediary learns that a sought-after birth parent signed a statement indicating his or her intent not to have identifying information shared, and did not later file an Information Exchange Authorization with the Adoption Registry, the confidential intermediary shall discontinue the search and inform the petitioning party of the birth parent's intent.

In conducting a search under this Section, the confidential intermediary shall attempt to locate the relative or relatives from whom the petitioner has requested information. If the sought-after relative is deceased or cannot be located after a

diligent search, the confidential intermediary may contact other adult relatives of the sought-after relative.

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

(1) The sought-after relative may totally reject one or all of the requests for medical information, identifying information or contact. The sought-after relative shall be informed that they can provide a medical questionnaire to be forwarded to the petitioner without releasing any identifying information. The confidential intermediary shall inform the petitioner of the sought-after relative's decision to reject the sharing of information or contact.

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

additional information.

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

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

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

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

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

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

....."

(k) Sanctions.

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

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

(3) The Department shall fine any confidential intermediary who improperly discloses confidential information in violation of item (1) or (2) of this subsection (k) an amount up to \$2,000 per improper disclosure. This fine does not affect civil liability under

item (2) of this subsection (k). The Department shall deposit all fines and penalties collected under this Section into the Illinois Adoption Registry and Medical Information Fund.

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

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

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

(o) Except as provided in subsection (k) of this Section, no liability shall accrue to the State, any State agency, any judge, any officer or employee of the court, any certified

confidential intermediary, or any agency designated to oversee confidential intermediary services for acts, omissions, or efforts made in good faith within the scope of this Section.

(p) An adoption agency that has received a request from a confidential intermediary for the full name, date of birth, last known address, or last known telephone number of a sought-after relative pursuant to subsection (g) of Section 18.3, or for medical information regarding a sought-after relative pursuant to subsection (h) of Section 18.3, must satisfactorily comply with this court order within a period of 45 days. The court shall order the adoption agency to reimburse the petitioner in an amount equal to all payments made by the petitioner to the confidential intermediary, and the adoption agency shall be subject to a civil monetary penalty of \$1,000 to be paid to the Department of Children and Family Services. Following the issuance of a court order finding that the adoption agency has not complied with Section 18.3, the adoption agency shall be subject to a monetary penalty of \$500 per day for each subsequent day of non-compliance. Proceeds from such fines shall be utilized by the Department of Children and Family Services to subsidize the fees of petitioners as referenced in subsection (d) of this Section.

(q) Provide information to eligible petitioner. The confidential intermediary may provide to eligible petitioners as described in subsections (a) and (b) of this Section, the name of the child welfare agency which had legal custody of the

surrendered person or responsibility for placing the surrendered person and any available contact information for such agency. In addition, the confidential intermediary may provide to such petitioners the name of the state in which the surrender occurred or in which the adoption was finalized.

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

Proceeds from the penalties paid to the Department of Children and Family Services shall be deposited into the DCFS Children's Services Fund. The Department of Children and Family Services shall submit reports to the Confidential Intermediary Advisory Council by July 1 and January 1 of each year in order to report the penalties assessed and collected under this subsection, the amounts of related deposits into the DCFS Children's Services Fund, and any expenditures from such deposits.

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

Section 99. Effective date. This Act takes effect upon becoming law.