



FAMILY LAW SECTION

THE STATE BAR OF CALIFORNIA

TO: Saul Bercovitch, Legislative Counsel
State Bar Office of Governmental Affairs

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MAY - 5 2009

DATE: April 30, 2009

RE: AB 372 (Ma), as amended April 21, 2009

POSITION TAKEN:

The Executive Committee of the Family Law Section of the State Bar (FLEXCOM) will support AB 372 if it is amended as discussed below.

Date position taken: April 30, 2009

Executive Committee vote: 8-0-0

BASIS FOR POSITION:

This bill, as amended April 21, 2009, would make an original birth certificate available on request unless a birth parent affirmatively opted to deny this information to the adoptee. The bill would also provide for the release of birth records in the case of medical necessity. FLEXCOM proposes that the bill be amended to deal with the following issues:

1. Proposed Health & Safety Code Section 102705.2 provides for the release of birth records in the case of medical necessity. FLEXCOM recommends adding to the proposed new section a specific reference to Health & Safety Code Section 102705, to make clear that a judicial order would be required before birth records may be obtained without a birth parent's consent.

2. The bill provides for the delivery of certain notices to the birth parents. FLEXCOM recommends that the bill be amended to require that any such notice be delivered either by mail return receipt restricted delivery or personal service. This will insure that care will be exercised in contacting birth parents. There was unanimous concern by FLEXCOM that notification to birth parents needs to be handled delicately and that any form of notification to the birth parents could disturb family units which had developed without the knowledge of the adoptee's existence.
3. Most significantly, FLEXCOM recommends that the form of notice in the bill be amended to one where a birth parent opts in to the release of information to the adoptee. The bill currently calls for the release of information unless the birth parent opts out after notification. FLEXCOM believes that silence should not be deemed consent under these circumstances. FLEXCOM believes it is preferable for a birth parent to agree to the release, rather than having information released due to a failure to object. FLEXCOM has concerns that birth parents – because of language barriers, lack of education, or other reasons – may not understand, may fail to give proper attention to, or may ignore the “opt out” notices, and that consequences would then flow from the absence of action.

For all of these reasons, FLEXCOM will support AB 372 if amended as follows:

SECTION 1. Section 102705.2 is added to the Health and Safety Code, to read:

102705.2. (a) Notwithstanding any other provision of law, this section shall govern the provision of a copy of an original and unredacted birth certificate by the State Registrar to an adopted person who is the subject of that birth certificate.

(b) In a case of medical necessity regarding a serious health condition of an adopted person, the State Registrar, *after judicial approval as required by Health and Safety Code Section 102705*, shall provide a copy of the original and unredacted birth certificate of the adoptee to that adoptee, his or her parent or guardian if the adoptee is a minor, or another person who is legally authorized to make decisions regarding health care for the adoptee. For purposes of this subdivision, a case of medical necessity regarding a serious health condition includes, but is not limited to, a health condition for which a successful treatment option would involve the use of parental or familial information regarding the adoptee, such as a medical condition requiring a direct-match tissue transplant.

(c) On and after January 1, 2010, the State Registrar, upon request by an adoptee, shall provide a copy of the original and unredacted birth certificate of an adoptee to that adoptee when the adoptee attains 25 years of age, except as otherwise provided in subdivision (d) or (e).

(d) (1) On and after January 1, 2010, upon receiving a request from an adoptee pursuant to subdivision (c), the State Registrar shall provide notice to each birth parent named on the original birth certificate of an adopted person who was the subject of adoption proceedings that were completed prior to January 1, 2010, informing the birth parent that the original and unredacted birth certificate of the adopted child shall be provided to the adopted child when the child attains at least 25 years of age, unless paragraph (3) applies.

(2) The notice provided pursuant to paragraph (1) shall be sent to the best available address for each birth parent who is listed on the original birth certificate. The notice shall be **personally delivered or** sent **restricted delivery** return receipt requested and shall do both of the following:

(A) The notice shall advise the birth parent regarding the change in the law pursuant to this section.

(B) The notice shall include a form on which the birth parent may indicate that he or she ~~does not wish~~ **consents to** a copy of the original and unredacted birth certificate to be provided to the adoptee.

(3) The State Registrar shall not provide a birth certificate pursuant to subdivision (c) if any of the following apply:

(A) The notice provided pursuant to paragraph (1) was not received by each birth parent listed on the birth certificate, as indicated by the fact that the State Registrar has not received the return receipt acknowledgment.

(B) Less than six months have elapsed since the birth parent received the notice, as indicated by the date on the return receipt requested.

(C) ~~Each~~ **Either** birth parent listed on the certificate has **failed to submit the** signed the form included in the notice requesting that the State Registrar not provide the birth certificate to the adoptee. If two birth parents are listed on the birth certificate and only one birth parent has signed the notice, however, the state Registrar shall release a copy of the birth certificate on which information identifying and pertaining to ~~that~~ the nonsigning birth parent has been redacted.

(e) (1) On and after January 1, 2010, upon receiving notice that adoption proceedings regarding a child have been completed, the State Registrar shall provide notice to each birth parent named on the original birth certificate of an adopted person who is the subject of adoption proceedings that are completed on or after January 1, 2010, informing the birth parent that a copy of the original and unredacted birth certificate of the adopted child shall be provided to the adopted child when the child attains 25 years of age, ~~unless paragraph (3) applies.~~ **if the birth parent consents.**

(2) The notice provided pursuant to paragraph (1) shall be sent to the best available address for each birth parent who is listed on the original birth certificate. The notice shall be **personally delivered or** sent **restricted delivery (addressee only)** return receipt requested and shall ~~do both of the following~~ **enable the parent to consent to the release of a copy of the birth certificate.**

(A) ~~The notice shall include a form on which the birth parent may indicate that he or she does not wish a copy of the original birth certificate to be provided to the adoptee. The form shall include the following statement:~~

~~—For reasons that may include, but are not limited to, rape, incest, religious beliefs, or personal preference, I do not authorize the State Registrar to provide a copy of the original and unredacted birth certificate to the adoptee.~~

~~—(B) The notice shall include a second form, which a birth parent may sign, revoking the first form and instead authorizing the State Registrar to provide a copy of the original and unredacted birth certificate to the adoptee.~~

(3) The State Registrar shall not provide a birth certificate pursuant to subdivision (c) if ~~both of the following~~ apply:

~~—(A) The notice provided pursuant to paragraph (1) was received by each birth parent listed on the birth certificate, as indicated by the return receipt acknowledgment received by the State Registrar from the birth parent.~~

~~—(B) Each birth parent listed on the certificate has signed the first form included in the notice indicating that he or she requests that the original and unredacted birth certificate remain confidential and has not subsequently signed the second form revoking the first form and instead authorizing the State Registrar to provide a copy of that birth certificate to the adoptee *unless the birth parent has actually consented*. If two birth parents are listed on the birth certificate and only one birth parent has signed the notice and has not signed the second form, however, the State Registrar shall release a copy of the birth certificate on which the information identifying and pertaining to that birth parent has been redacted.~~

(f) The State Registrar shall develop and adopt the forms necessary to implement this section.

GERMANENESS:

The subject matter of AB 372 falls within the unique and special knowledge, training, experience and technical expertise of the members of the Family Law Section of the State Bar of California because Family Lawyers regularly and routinely deal with all aspects of adoption.

DISCLAIMER:

This position is only that of the FAMILY LAW SECTION of the State Bar of California. This position has not been adopted by either the State Bar's Board of Governors or overall membership, and is not to be construed as representing the position of the State Bar of California.

Membership in the FAMILY LAW SECTION is voluntary and funding for section activities, including all legislative activities, is obtained entirely from voluntary sources.

cc: Claire M. Buckey, Legislative Chair, Family Law Section Executive Committee e
Paul L. Brimberry, Legislative Vice Chair, Family Law Section Executive Committee
Jennifer Wada, Section Legislative Representative