

2016 Regular Session

HOUSE BILL NO. 391

BY REPRESENTATIVE NANCY LANDRY

(On Recommendation of the Louisiana State Law Institute)

CHILDREN/ADOPTION: Provides with respect to the disclosure of information regarding an adoption

1 AN ACT

2 To amend and reenact Children's Code Articles 1185, 1187, 1188, and 1191(introductory
3 paragraph) and (1) and to enact Part III of Chapter 5 of Title XII of the Children's
4 Code, to be comprised of Articles 1192.1 through 1192.4, relative to adoption; to
5 provide for the creation of a confidential intermediary process; to provide for the
6 disclosure of information that appears on adopted person's birth certificate; to
7 provide for counseling; to provide guidelines and duties for the confidential
8 intermediary process; to provide for the order of disclosure; and to provide for
9 related matters.

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. Children's Code Articles 1185, 1187, 1188, and 1191(introductory
12 paragraph) and (1) are hereby amended and reenacted and Part III of Chapter 5 of Title XII
13 of the Children's Code, comprised of Articles 1192.1 through 1192.4, is hereby enacted to
14 read as follows:

15 CHAPTER 5. CONFIDENTIALITY

16 PART I. GENERAL PROVISIONS

17 * * *

18 Art. 1185. Confidential ~~records~~ reports

19 No one except the judge presiding in the ~~case proceedings~~, his successor, ~~or~~
20 a curator ad hoc, as provided ~~for~~ in Article 1191, or a confidential intermediary as

1 provided in Article 1192.3, shall have access to the confidential ~~records of reports~~
2 rendered to the court pursuant to this Title. Following final disposition of an
3 adoption ~~case proceeding~~, the all confidential reports submitted by the department
4 to the judge shall be retained in the court's confidential adoption record.

5 * * *

6 Art. 1187. Court records of proceedings

7 All court records of adoption proceedings shall be confidential and shall not
8 be open to inspection except on written ~~authorization~~ order by the court and there
9 shall be no publication thereof.

10 PART II. DISCLOSURE UPON SHOWING OF COMPELLING NECESSITY

11 Art. 1188. Motion for disclosure

12 A. An adopted person or, ~~if still a minor~~, his legal representative ~~on his~~
13 ~~behalf~~ may file a motion for disclosure of information pertaining to his adoption
14 pursuant to Article 1189. ~~The action shall be styled: "In re the Adoption of~~
15 _____".

16 B. All proceedings involving disclosure shall be filed in the court in which
17 the judgment of adopted was rendered.

18 C. A biological sibling or descendant of an adopted person, ~~or if still a~~
19 ~~minor, his~~ or a legal representative on his behalf, of the sibling or descendant may
20 file a motion for disclosure pursuant to Article 1189.

21 ~~C.D.~~ This action and the limited medical exception provision of Article 1127
22 and the motion authorized in Article 1192.1 shall be the exclusive means for gaining
23 access to records of adoptions whether maintained by this court, ~~some other~~ another
24 court, ~~an~~ any adoption agency, any state agency, or private individual,
25 notwithstanding provisions of law to the contrary.

26 * * *

27 Art. 1191. Duties of a curator ad hoc

28 Upon appointment, the curator ad hoc shall be responsible for all of the
29 following:

1 (1) ~~Securing~~ Obtaining all records pertaining to the petitioner's request
2 through subpoenas duces tecum or other discovery process, if necessary.

3 * * *

4 PART III. DISCLOSURE WITHOUT SHOWING OF COMPELLING NECESSITY

5 Art. 1192.1. Motion for disclosure

6 A. An adopted person who has attained the age of eighteen years may file
7 a motion for disclosure to obtain his original birth certificate or other identifying
8 information regarding a biological parent without a showing of compelling necessity.

9 B. All proceedings involving disclosure shall be filed in the court in which
10 the judgment of adoption was rendered.

11 Art. 1192.2. Authority of the court; confidential intermediary process; counseling
12 requirement

13 A. After reviewing a motion filed in accordance with Article 1192.1, the
14 court shall appoint a licensed clinical social worker, a social worker acting in the
15 employ of a licensed child placing agency, a licensed professional counselor, a
16 licensed psychologist, or a licensed psychiatrist as a confidential intermediary.

17 B. Before the court may release any information that may lead to contact
18 between a biological parent and an adopted person, each party shall participate in not
19 less than one hour of counseling with a licensed clinical social worker, a social
20 worker acting in the employ of a licensed adoption agency, a licensed professional
21 counselor, a licensed psychologist, or a licensed psychiatrist. The counseling shall
22 take place no earlier than six months prior to the filing of the motion for disclosure.
23 The confidential intermediary may perform this counseling as a part of his services.
24 The counselor shall execute an affidavit attesting to the counseling. An adopted
25 person or biological parent who is domiciled outside the state may obtain the
26 required counseling from a social worker, counselor, psychologist, or psychiatrist,
27 who is board-certified or licensed in his state of domicile.

28 C. If the court determines that a confidential intermediary has violated the
29 requirements of confidentiality, the court shall file a complaint with the state board

1 or other authority that issued the confidential intermediary's or agency's license and
2 may do the following:

3 (1) Refer the case to the district attorney for the consideration of charges
4 pursuant to Article 1186(C) or any other statute.

5 (2) Find the confidential intermediary in contempt of court as otherwise
6 provided by law and impose a fine of not more than five hundred dollars,
7 imprisonment for not more than six months, or both.

8 Comment-2016

9 The counseling required in Paragraph B of this Article acknowledges the
10 complex emotional issues inherent in adoption, and is included to ensure that the
11 parties can make a fully informed decision with regard to the nature and
12 consequences of any disclosure of identifying information. Similar requirements are
13 included in the surrender process in Art. 1120 and in the voluntary registration
14 process in Art. 1272.

15 Art. 1192.3. Duties of a confidential intermediary

16 A. Upon acceptance of appointment, the confidential intermediary shall be
17 responsible for the following:

18 (1) Obtaining all records pertaining to the petitioner's request.

19 (2) Reviewing all records pertaining to the adoption.

20 (3) Reporting to the court any objections to disclosure received from a
21 custodian of records.

22 (4) Personally conducting, in the most discreet manner possible and without
23 revealing any information about the adoption, inquiries necessary to locate the
24 biological parent.

25 (5) Preserving the confidentiality of the parties from unnecessary disclosure.

26 B. In contacting the biological parents, the confidential intermediary shall
27 reveal no information about the adoption to anyone other than a biological parent and
28 then only in personal, direct, private communication. The confidential intermediary
29 shall ascertain the position of the biological parent concerning the exchange of
30 identifying information with the petitioner. The confidential intermediary shall
31 inform the biological parent that counseling in accordance with Article 1192.2 is

1 required. If the biological parent voluntarily agrees to the exchange, his consent
2 shall be in writing.

3 C. The confidential intermediary shall report his findings to the court within
4 thirty days after the date of his acceptance of appointment, recommending the grant
5 or denial of the petitioner's motion and specifying the scope and content of any
6 disclosure order for the court's consideration. If necessary, the confidential
7 intermediary may request additional time within which to complete his work.

8 D. In all cases, the confidential intermediary shall be entitled to a reasonable
9 fee for his services, commensurate with the services performed. The fee shall be
10 paid by the mover.

11 Art. 1192.4. Order of disclosure; confidential intermediary

12 A. The court shall grant the motion upon finding all of the following:

13 (1) That the counseling requirement of Article 1192.2 has been satisfied.

14 (2) That the biological parent has consented in writing to the exchange of
15 identifying information.

16 B. The court shall deny the motion if the biological parent has not consented
17 in writing to the exchange of identifying information after being contacted by the
18 confidential intermediary.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 391 Original

2016 Regular Session

Nancy Landry

Abstract: Provides a confidential intermediary process for adopted persons over the age of 18 to obtain their original birth certificate or other identifying information.

Present law (Ch.C. Art. 1185) provides for the confidentiality of adoptions records and restricts access to them.

Proposed law retains present law and authorizes the release of confidential reports to confidential intermediaries.

Present law (Ch.C. Art. 1188) provides for the motion for disclosure upon the showing of a compelling necessity.

Proposed law retains present law and adds the confidential intermediary process to the list of exclusive means for gaining access to adoption records. Proposed law also adds a venue provision for this motion.

Proposed law (Ch.C. Art. 1192.1) authorizes an adopted person age 18 years or older to file a motion seeking the disclosure of his birth certificate or other identifying information. Requires the court to appoint a confidential intermediary and requires the parties to undergo at least one hour of counseling prior to the release of any information which may lead to contact between an adopted person and his biological parent.

Proposed law authorizes the court to report a confidential intermediary for discipline if he violates the requirements of confidentiality.

Proposed law (Ch.C. Art. 1192.3) provides the duties of the confidential intermediary, including reviewing the adoption records, locating the biological parent, and reporting his findings to the court. Also provides for the mover to pay the fees of the confidential intermediary.

Proposed law (Ch.C. Art. 1192.4) requires the court to grant the motion for disclosure if the parties have complied with the counseling requirement and if the biological parent has consented in writing to the release of identifying information.

Proposed law requires the court to deny the motion for disclosure if the biological parent does not consent in writing to the release of identifying information.

(Amends Ch.C. Arts. 1185, 1187, 1188, and 1191(intro. para.) and (1); Adds Ch.C. Arts. 1192.1-1192.4)