

## Article 9.

### Confidentiality of Records and Disclosure of Information.

#### **§ 48-9-101. Records defined.**

(a) For purposes of this Article, "records" means any petition, affidavit, consent or relinquishment, transcript or notes of testimony, deposition, power of attorney, report, decree, order, judgment, correspondence, document, invoice, receipt, certificate, or other printed, written, microfilmed or microfiched, video-taped or tape-recorded material or electronic data processing records regardless of physical form or characteristics pertaining to a proceeding for adoption under this Chapter.

(b) Repealed by Session Laws 2010-116, s. 2, effective October 1, 2010. (1995, c. 457, s. 2; 2007-262, s. 1; 2010-116, s. 2.)

#### **§ 48-9-102. Records confidential and sealed.**

(a) All records created or filed in connection with an adoption, except the decree of adoption and the entry in the special proceedings index in the office of the clerk of court, and on file with or in the possession of the court, an agency, the State, a county, an attorney, or other provider of professional services, are confidential and may not be disclosed or used except as provided in this Chapter.

(b) During a proceeding for adoption, records shall not be open to inspection by any person except upon an order of the court finding that disclosure is necessary to protect the interest of the adoptee.

(c) When a decree of adoption becomes final, all records and all indices of records, except for the Special Proceedings Index, on file with the court, an agency, or this State shall be retained permanently and sealed. Sealed records shall not be open to inspection by any person except as otherwise provided in this Article.

(d) All records filed in connection with an adoption, including a copy of the petition giving the date of the filing of the original petition, the original of each consent and relinquishment, additional documents filed pursuant to G.S. 48-2-305, any report to the court, any additional documents submitted and orders entered, any orders of dismissal, and a copy of the final decree, shall be sent by the clerk of superior court to the Division within 10 days after the appeal period for a decree of adoption has expired or 10 days following the final disposition of an appeal pursuant to G.S. 48-2-607(b). The original petition and final decree or order of dismissal shall be retained by the clerk.

(d1) The Division, within 40 days after receipt of the record in subsection (d), shall conduct a limited review for the sole purpose of identifying any obvious error on the report to vital records that is prepared by the superior court clerk and to notify the clerk of the error. If the Division notifies the superior court clerk of an error in the report to vital records, then the clerk shall correct the report and return it to the Division within 10 days after receipt of the notice.

(e) The Division shall, subject to the review in (d1), cause the papers and reports related to the proceeding to be permanently indexed and filed.

(f) The Division shall, within 40 days after receiving it from the court, transmit a report of each adoption and any name change to the State Registrar if the adoptee was born in this State. In the case of an adoptee who was not born in this State, the Division shall, within 40 days after receiving it from the court, transmit the report and any name change to the appropriate official responsible for issuing birth certificates or their equivalent.

(g) In any adoption, the State Registrar may, in addition to receiving the report from the Division, request a copy of the final order and any separate order of name change directly from the clerk of court. (1949, c. 300; 1957, c. 778, s. 7; 1961, c. 186; 1967, c. 619, ss. 6, 7; c. 880, s. 3; 1969, c. 21, ss. 3-6; c. 982; 1971, c. 1231, s. 1; 1973, c. 476, s. 138; c. 849, s. 3; 1975, c. 91; 1979, c. 739, ss. 1, 2; 1981, c. 657; c. 924, ss. 2, 3; 1983, c. 454, s. 6; 1989, c. 208; c. 727, s. 219(4); 1993, c. 539, s. 411; c. 553, s. 14; 1994, Ex. Sess., c. 24, s. 14(c); 1995, c. 457, s. 2; 1997-215, s. 9(a)-(c); 2001-208, s. 11; 2001-487, s. 101; 2018-40, s. 12; 2019-172, s. 8.)

### **§ 48-9-103. Release of nonidentifying information.**

(a) An adoptive parent, an adoptee who is an adult at the time of the request, or a minor adoptee who is a parent or an expectant parent may request a copy of any document prepared pursuant to G.S. 48-3-205 and a copy of any additional nonidentifying health-related information about the adoptee's original family that has been submitted to a court, agency, or the Division. A minor seeking treatment pursuant to G.S. 90-21.1 may request that a copy of this information be sent to the treating physician.

(b) If a request under this section is made to the agency that placed the adoptee or prepared the report to the court, the agency shall furnish the individual making the request or the treating physician named by a minor making the request with a copy of any relevant report or information that is included in the sealed records of the agency. If a request under this section is made to the court that issued the decree of adoption, the court shall refer the individual to the Division, or, if known to the court, the agency that placed the adoptee or prepared the report to the court. The Division may refer the individual to the agency that prepared the report to the court. If the agency no longer exists, the Division may furnish the information to an agency convenient to the requesting party.

(c) Any report or information released under this section shall be edited by the sender to exclude the name, address, or other information that could reasonably be expected to lead directly to the identity of an adoptee at birth or an adoptee's parent at the adoptee's birth or other member of the adoptee's original family and shall contain an express reference to the confidentiality provisions of this Chapter.

(d) An individual who is denied access to a report or information requested under this section may petition the clerk of original jurisdiction for review of the reasonableness of the denial.

(e) If the court or the agency receives information from an adoptee's former parent or from an adoptee's former relative about a health or genetic condition that may affect the health of the adoptee or the adoptee's child, an appropriate employee shall make a reasonable effort to contact and forward the information to an adoptee who is 18 or more years of age, or an adoptive parent of an adoptee who is under 18 years of age.

(f) Nothing in this section shall prohibit an agency from disclosing nonidentifying information about the adoptee's present circumstances, in the nature of information required under G.S. 48-3-205, to a former parent, an adult sibling, or the guardian of a minor sibling on request.

(g) The Department shall prescribe a reasonable procedure for verifying the identity, age, or other relevant characteristics of an individual who requests or provides a report or information under this section and the Department, the court, or agency may charge a reasonable fee for locating and making copies of a report or information.

(h) No request under this section shall be made to the State Registrar of Vital Statistics. (1949, c. 300; 1957, c. 778, s. 7; 1961, c. 186; 1969, c. 982; 1973, c. 476, s. 138; 1979, c.

739, ss. 1, 2; 1981, c. 924, ss. 2, 3; 1983, c. 454, s. 6; 1993, c. 539, s. 411; 1994, Ex. Sess., c. 24, s. 14(c); 1995, c. 457, s. 2.)

**§ 48-9-104. Release of identifying information; confidential intermediary services.**

(a) Except as provided in this section or in G.S. 48-9-109(2) or (3), no person or entity shall release from any records retained and sealed under this Article the name, address, or other information that reasonably could be expected to lead directly to the identity of an adoptee, an adoptive parent of an adoptee, an adoptee's parent at birth, or an individual who, but for the adoption, would be the adoptee's sibling or grandparent, except upon order of the court for cause pursuant to G.S. 48-9-105.

(b) A child placing agency licensed by the Department or a county department of social services may agree to act as a confidential intermediary for any of the following:

- (1) A biological parent.
- (2) An adult adoptee.
- (3) An adult biological sibling of an adult adoptee.
- (4) An adult biological half sibling of an adult adoptee.
- (5) An adult family member of a deceased biological parent.
- (6) An adult family member of a deceased adoptee.

In order to obtain and share nonidentifying birth family health information, to facilitate contact, or to share identifying information with any person listed in subdivisions (1) through (6) of this subsection, an agency may act as a confidential intermediary without appointment by the court pursuant to G.S. 48-9-105 and with the written consent of all parties to the contact or the sharing of information. Written consent of the biological parent is required if the biological parent is living at the time any party described in subdivisions (2) through (6) of this subsection seeks to contact or share identifying information with any other party described in subdivisions (2) through (6) of this subsection. Further, an agency may agree to act as a confidential intermediary for the adoptive parents of a minor adoptee or the guardian of a minor adoptee, without appointment by the court pursuant to G.S. 48-9-105, to obtain and share nonidentifying birth family health information. An agency providing confidential intermediary services shall contact individuals in a manner reasonably calculated to prevent incidental disclosure of confidential information. An agency that agrees to provide confidential intermediary services may charge a reasonable fee for doing so, which fee must be pursuant to written agreement signed by the individual to be charged. The Division shall establish guidelines for confidential intermediary services.

(c) For purposes of this section only, the term "family member" means a spouse, child, stepchild, parent, stepparent, grandparent, or grandchild.

(d) If an agency providing confidential intermediary services determines that the person who is the subject of the search is deceased, the agency may obtain a copy of the death certificate pursuant to G.S. 130A-93 and deliver it to the person who requested the services. If the agency further determines that a lineal ascendant of the deceased person who is the subject of the search is deceased, the agency may also obtain a copy of the death certificate of the deceased lineal ascendant and deliver it to the person who requested the services. (1949, c. 300; 1957, c. 778, s. 7; 1961, c. 186; 1969, c. 982; 1973, c. 476, s. 138; 1979, c. 739, ss. 1, 2; 1981, c. 924, ss. 2, 3; 1983, c. 454, s. 6; 1993, c. 539, s. 411; 1994, Ex. Sess., c. 24, s. 14(c); 1995, c. 457, s. 2; 2001-150, s. 12; 2007-262, s. 3; 2010-116, s. 3; 2011-237, s. 1.)

**§ 48-9-105. Action for release of identifying and other nonidentifying information.**

(a) Any information necessary for the protection of the adoptee or the public in or derived from the records, including medical information not otherwise obtainable, may be disclosed to an individual who files a written motion in the cause before the clerk of original jurisdiction. In hearing the petition, the court shall give primary consideration to the best interest of the adoptee, but shall also give due consideration to the interests of the members of the adoptee's original and adoptive family.

(b) The movant must serve a copy of the motion, with written proof of service, upon the Department and the agency that prepared the report for the court. The clerk shall give at least five days' notice to the Department and the agency of every hearing on this motion, whether the hearing is before the clerk or a judge of the district court; and the Department and the agency shall be entitled to appear and be heard in response to the motion.

(c) In determining whether cause exists for the release of the name or identity of an individual, the court shall consider:

- (1) The reason the information is sought;
- (2) Any procedure available for satisfying the petitioner's request without disclosing the name or identity of another individual, including having the court appoint a representative to contact the individual and request specific information;
- (3) Whether the individual about whom identifying information is sought is alive;
- (4) To the extent known, the preference of the adoptee, the adoptive parents, the adoptee's parents at birth, and other members of the adoptee's original and adoptive families, and the likely effect of disclosure on these individuals;
- (5) The age, maturity, and expressed needs of the adoptee;
- (6) The report or recommendation of any individual appointed by the court to assess the request for identifying information; and
- (7) Any other factor relevant to an assessment of whether the benefit to the petitioner of releasing the information sought will be greater than the benefit to any other individual of not releasing the information.

(d) An individual who files a motion under this section may also ask the court to authorize the release by the State Registrar of a certified copy of the adoptee's original certificate of birth. (1949, c. 300; 1985, c. 448; 1995, c. 88, s. 6; 1995, c. 457, s. 2.)

#### **§ 48-9-106. Release of original certificate of birth.**

Upon receipt of a certified copy of a court order issued pursuant to G.S. 48-9-105 authorizing the release of an adoptee's original certificate of birth, the State Registrar shall give the individual who obtained the order a copy of the original certificate of birth with a certification that the copy is a true copy of a record that is no longer a valid certificate of birth. (1995, c. 457, s. 2.)

#### **§ 48-9-107. New birth certificates.**

(a) Upon receipt of a report of the adoption of a minor from the Division, or the documents required by G.S. 48-9-102(g) from the clerk of superior court in the adoption of an adult, or a report of an adoption from another state, the State Registrar shall prepare a new birth certificate for the adoptee that shall contain the adoptee's full adoptive name, sex, state of birth, and date of birth; the full name of the adoptive father, if applicable; the full maiden name of the adoptive mother, if applicable; and any other pertinent information consistent with this section as may be determined

by the State Registrar. The new certificate shall contain no reference to the adoption of the adoptee and shall not refer to the adoptive parents in any way other than as the adoptee's parents.

(b) In an adoption by a stepparent, the State Registrar shall prepare a new birth certificate pursuant to subsection (a) of this section except:

- (1) The adoptive parent and the parent whose relation with the adoptee remains unchanged shall be listed as the adoptee's mother and father on the new birth certificate; and
- (2) The city and county of birth of the adoptee shall be the same on the new birth certificate as on the original certificate.

The names of the adoptee's parents shall not be changed as provided in subdivision (1) of this subsection if the petitioner, the petitioner's spouse, the adoptee if age 12 or older, and any living parent whose parental rights are terminated by the adoption jointly file a request that the parents' names not be changed with the court prior to the entry of the adoption decree. The Division shall send a copy of this request with its report to the State Registrar or other appropriate official in the adoption of a minor stepchild, and the clerk of superior court shall send a copy with the documents required by G.S. 48-9-102(g) in the adoption of an adult stepchild.

(c) The State Registrar shall seal the original certificate of birth and all records in the possession of that office pertaining to the adoption. These records shall not be unsealed except as provided in this Article. The State Registrar shall provide certified typed copies or abstracts of the new certificate of birth of an adoptee prepared pursuant to subsection (a) of this section to the adoptee, the adoptee's children, the adoptive parents, and the adoptee's spouse, brothers, and sisters. For purposes of this subsection, "parent", "brother", and "sister" shall mean the adoptee's adoptive parent, brother, or sister and shall not mean a former parent, brother, or sister.

(d) At the time of preparing the new birth certificate pursuant to subsection (a) of this section, the State Registrar shall notify the register of deeds or appropriate official in the health department in the county of the adoptee's birth to remove the adoptee's birth certificate from the records and forward it to the State Registrar for retention under seal with the original certificate of birth in the State Registrar's office. The register of deeds shall also delete all index entries for that birth certificate. The State Registrar shall not issue copies of birth certificates for adoptees to registers of deeds. Only the State Registrar shall issue certified copies of such records, and these copies shall be prepared as prescribed in subsection (c) of this section.

(e) The State Registrar may by rule prescribe requirements for reports of adoptions from other states. (1949, c. 300; 1951, c. 730, ss. 1-4; 1955, c. 951, s. 1; 1967, c. 880, s. 3; c. 1042, ss. 1-3; 1969, c. 21, s. 2-6; c. 977; 1971, c. 1231, s. 1; 1973, c. 476, s. 128; c. 849, ss. 1-3; 1975, c. 91; 1981, c. 657; 1983, c. 454, s. 6; 1989, c. 208; c. 727, s. 219(3), (4); 1993, c. 553, s. 14; 1995, c. 457, s. 2; 1997-215, s. 18.)

#### **§ 48-9-108. Restoration of original birth certificates if a decree of adoption is set aside.**

If a final decree of adoption is set aside, the court shall send a certified copy of the order within 10 days after it becomes final to the State Registrar if the adoptee was born in this State or to the appropriate official responsible for issuing birth certificates or their equivalent if the adoptee was not born in this State. The court shall also send a copy to the Division. If the adoptee desires to have the adoptive name shown on the original birth certificate when it is restored, the order must include this directive. Upon receipt of such an order, the State Registrar shall seal the certificate issued under this section and restore the adoptee's original certificate of birth. This sealed file may subsequently be opened only by direction of a valid court order pursuant to G.S. 48-9-105 and G.S. 48-9-106. (1995, c. 457, s. 2.)

**§ 48-9-109. Certain disclosures authorized.**

Nothing in this Article shall be interpreted or construed to prevent:

- (1) An employee of a court, agency, or any other person from:
  - a. Inspecting permanent, confidential, or sealed records, other than records maintained by the State Registrar, for the purpose of discharging any obligation under this Chapter.
  - b. Disclosing the name of the court where a proceeding for adoption occurred, or the name of an agency that placed an adoptee, to an individual described in G.S. 48-9-104(a) who can verify his or her identity.
  - c. Disclosing or using information contained in permanent and sealed records, other than records maintained by the State Registrar, for statistical or other research purposes as long as the disclosure will not result in identification of a person who is the subject of the information and subject to any further conditions the Department may reasonably impose.
  - d. Giving a file-stamped copy of a document to a person, or to the legal representative of a person, who has filed the document in an adoption proceeding.
- (2) In agency placements, a parent or guardian placing a child for adoption and the adopting parents from authorizing an agency to release information or from releasing information to each other that could reasonably be expected to lead directly to the identity of an adoptee, an adoptive parent of an adoptee, or an adoptee's placing parent or guardian. The consent to the release of identifying information shall be in writing and signed prior to the adoption by any placing parent or guardian and the adopting parents and acknowledged under oath in the presence of an individual authorized to administer oaths or take acknowledgments. Any consent to release identifying information shall be filed under G.S. 48-2-305.
- (3) The Division from sharing information from its records regarding the identity of birth parents with an agency acting as a confidential intermediary pursuant to G.S. 48-9-104(b), if the information is needed by the agency to carry out its duties as a confidential intermediary. Any information disclosed to the agency pursuant to this subdivision shall not be redisclosed by the agency except as allowed by G.S. 48-9-104(b). (1995, c. 457, s. 2; 2001-150, s. 13; 2007-262, s. 4; 2012-16, s. 9; 2019-172, s. 9.)