HOUSE BILL 1039

D4 0lr2167 CF SB 743

By: Delegates Malone and Carr

Introduced and read first time: February 5, 2020

Assigned to: Judiciary

Committee Report: Favorable

House action: Adopted

Read second time: March 6, 2020

CHAPTER	
---------	--

1 AN ACT concerning

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

Adoption – Access to Birth and Adoption Records and Search, Contact, and Reunion Services

FOR the purpose of repealing certain provisions of law specifying that certain provisions of law apply only to adoptions in which a juvenile court enters an order for adoption on or after a certain date; repealing provisions of law limiting, under certain circumstances, access to certain information in certain birth and adoption records by certain adoptees and biological parents; repealing the right of certain adoptees and biological parents to file, cancel, or refile a disclosure veto barring the disclosure of certain information in certain birth and adoption records; authorizing certain adoptees and biological parents to file, cancel, or refile a certain contact preference form regarding certain contact with certain individuals; altering the age at which an adoptee, or a biological parent if an adoptee is at least a certain age, may apply to the Secretary of Health for a copy of certain birth or adoption records; requiring the Director of Social Services to develop and make available a certain contact preference form; specifying the contents of a contact preference form; requiring the Secretary to take certain actions; repealing certain provisions of law requiring the Secretary to redact certain information from certain birth and adoption records; altering the age at which certain individuals may apply to the Director to receive adoption search, contact, and reunion services; altering the age of certain individuals whom a confidential intermediary is authorized to attempt to contact under certain circumstances; requiring the Secretary to replace a certain disclosure veto with a certain contact preference form under certain circumstances; defining a certain term; altering a certain definition; and generally relating to birth and adoption records and adoption search, contact, and reunion services.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

Strike out indicates matter stricken from the bill by amendment or deleted from the law by amendment.



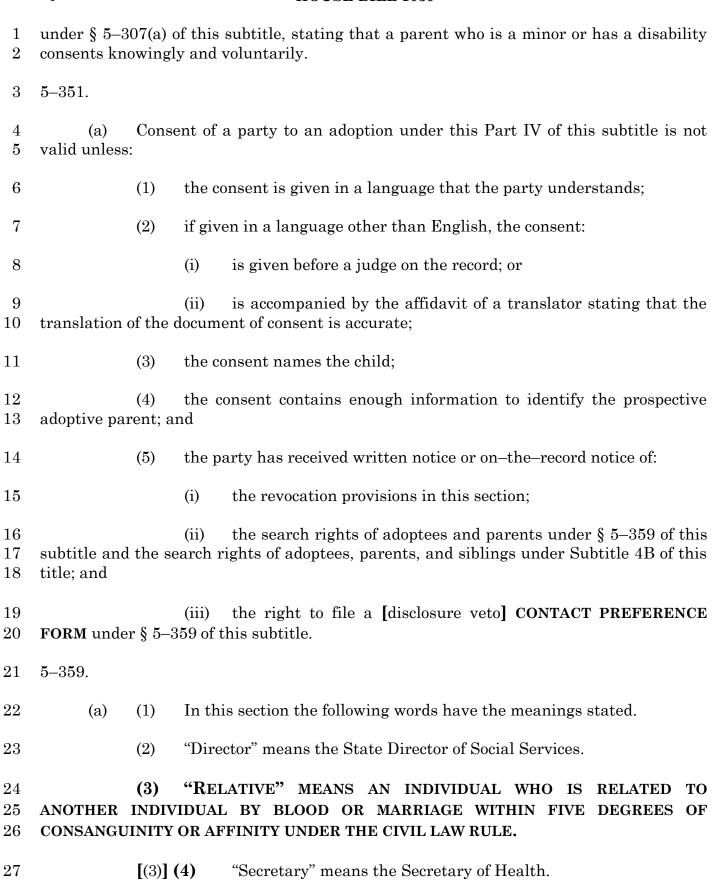
1 2 3 4 5 6	· · · · · · · · · · · · · · · · · · ·							
7 8 9 10 11	BY repealing and reenacting, without amendments, Article – Family Law Section 5–4B–01(a) Annotated Code of Maryland (2019 Replacement Volume)							
12 13 14 15 16	BY repealing and reenacting, with amendments, Article – Health – General Section 4–211(g) Annotated Code of Maryland (2019 Replacement Volume)							
17 18	SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:							
19			Article – Family Law					
20	5–321.							
21	(a) (3)	Cons	ent of a party to guardianship is not valid unless:					
22		(i)	the consent is given in a language that the party understands;					
23		(ii)	if given in a language other than English, the consent:					
24			1. is given before a judge on the record; or					
25 26	the translation of	the doc	2. is accompanied by the affidavit of a translator stating that cument of consent is accurate;					
27 28	before a judge of:	(iii)	the party has received written notice or on-the-record notice					
29 30	this section;		1. the revocation provisions in subsections (a)(2) and (c)(1) of					
31 32 33	this subtitle and t	he sea	2. the search rights of adoptees and parents under § 5–359 of rch rights of adoptees, parents, and siblings under Subtitle 4B of					

1 2	PREFERENCE FOI	RM un	3. der § 5		right of this s			a	[disclosure	veto]	CONTA	ACT
3 4	consent is accompa	(iv) nied b	_						n appearanc nat:	e for a	parent,	the
5			1.	coun	sel revi	ewed	l the c	onse	ent with the	parent	; and	
6			2.	the p	arent c	onse	nts kı	nowi	ngly and vol	luntaril	y; and	
7 8 9	under § 5–307(a) o		subtitl	e stat		-		•	n affidavit o o is a minor			
0	5–339.											
$\frac{1}{2}$	(a) (3) not valid unless:	Conse	ent of a	ı party	y to an	adop	tion u	ınde	r this Part I	II of th	is subtit	le is
13		(i)	the co	nsent	is give	n in	a lang	guag	e that the pa	arty un	derstand	s;
4		(ii)	if give	en in a	ı langu	age o	ther t	han	English, the	e conse	nt:	
15			1.	is giv	ven befo	ore a	judge	on 1	the record; o	r		
16 17	the translation of t	he doc	2. ument		-		-	affic	lavit of a tra	nslator	stating	that
18		(iii)	the co	nsent	names	the	child;					
19 20	prospective adoptiv			conser	nt cont	ains	eno	ugh	information	n to i	dentify	the
21		(v)	the pa	arty h	as recei	ived v	writte	n no	otice or on—t	he–reco	ord notice	e of:
22 23	this section;		1.	the r	evocati	on pr	ovisio	ns i	n subsection	s (a)(2)	and (b)(1	1) of
24 25 26	this subtitle and the this title; and	ne seai	2. rch rig			_		-	es and parer nd siblings u		•	
27 28	PREFERENCE FOI	RM un	3. der § 5		right of this s				[disclosure	veto]	CONTA	ACT

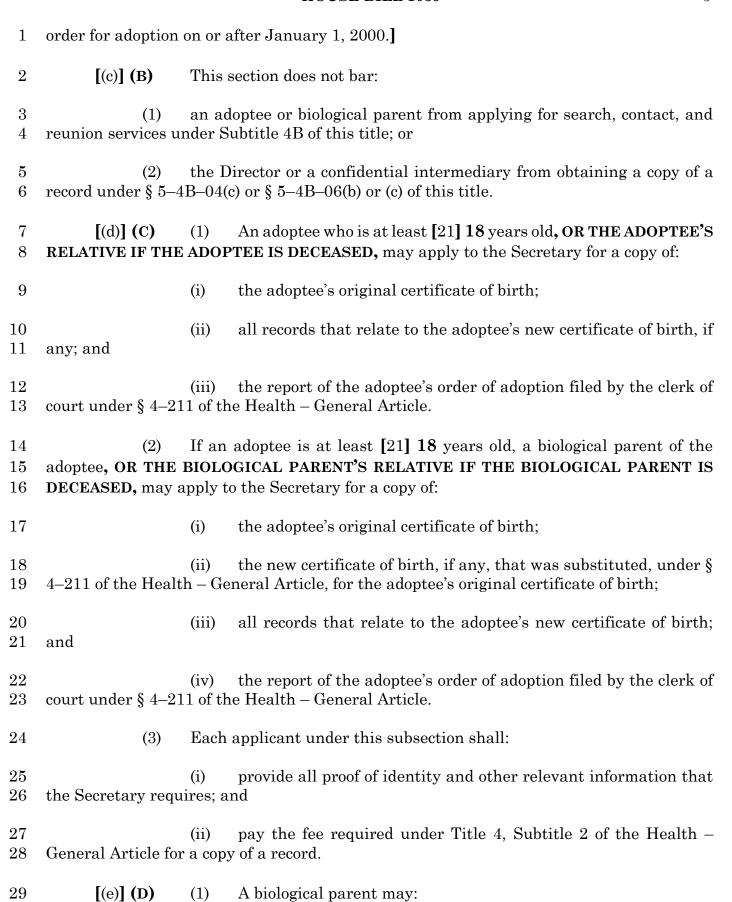
(vi)

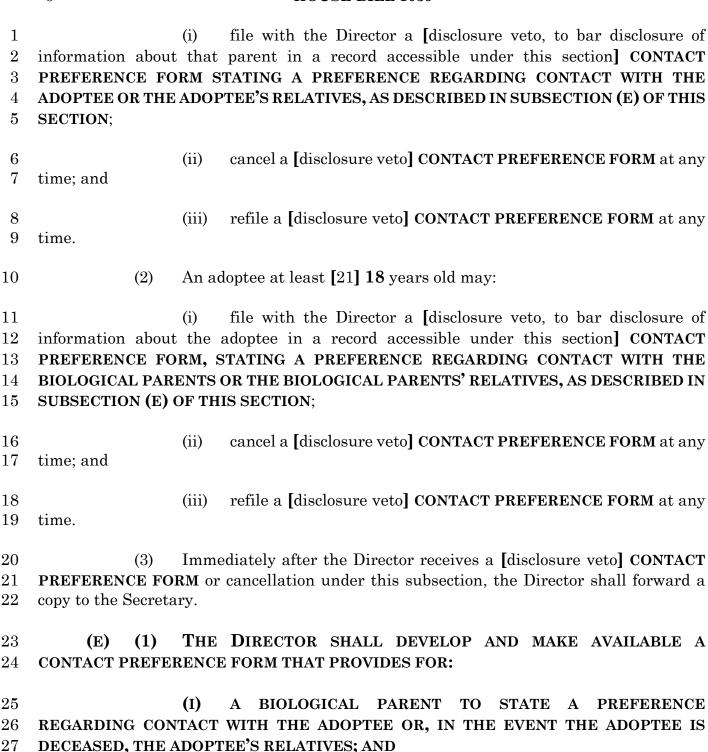
the consent is accompanied by an affidavit of counsel appointed

(b)

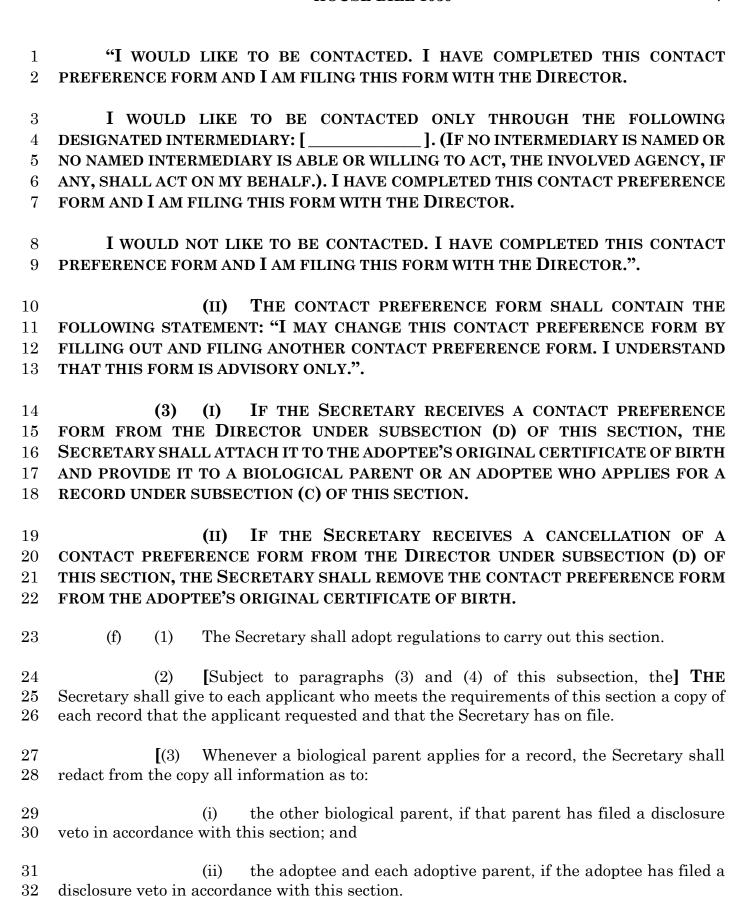


This section applies only to an adoption in which a juvenile court enters an





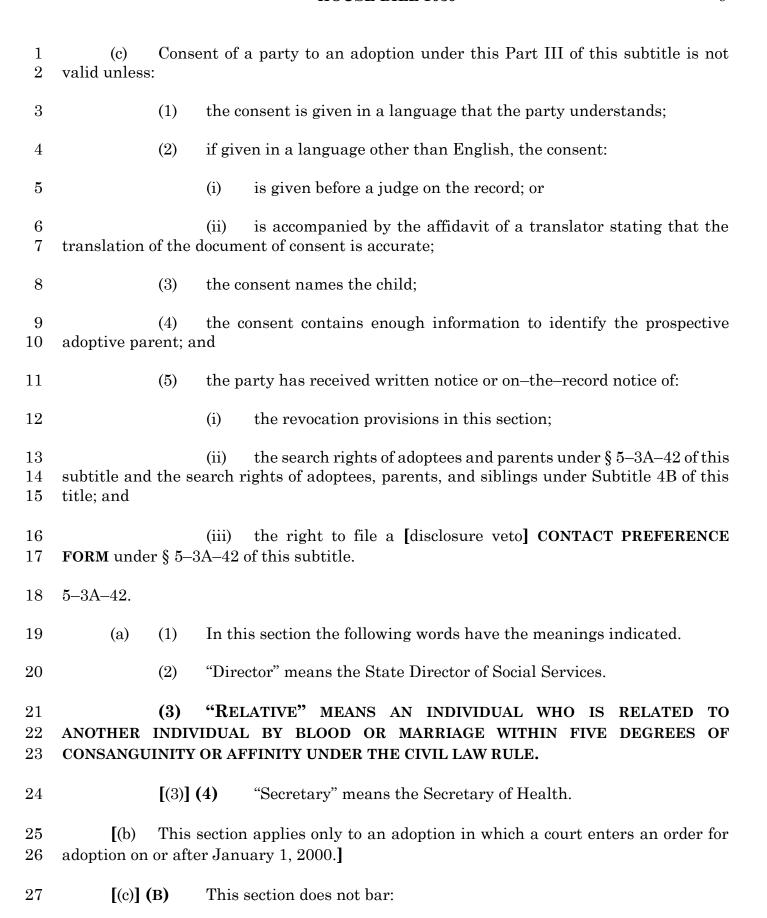
- 28 (II) AN ADOPTEE TO STATE A PREFERENCE REGARDING 29 CONTACT BY THE BIOLOGICAL PARENTS OR, IN THE EVENT THE BIOLOGICAL 30 PARENTS ARE DECEASED, THE BIOLOGICAL PARENTS' RELATIVES.
- 31 **(2) (I)** THE CONTACT PREFERENCE FORM SHALL ALLOW THE 32 ADOPTEE OR THE BIOLOGICAL PARENT TO SELECT ONE OF THE FOLLOWING 33 STATEMENTS:

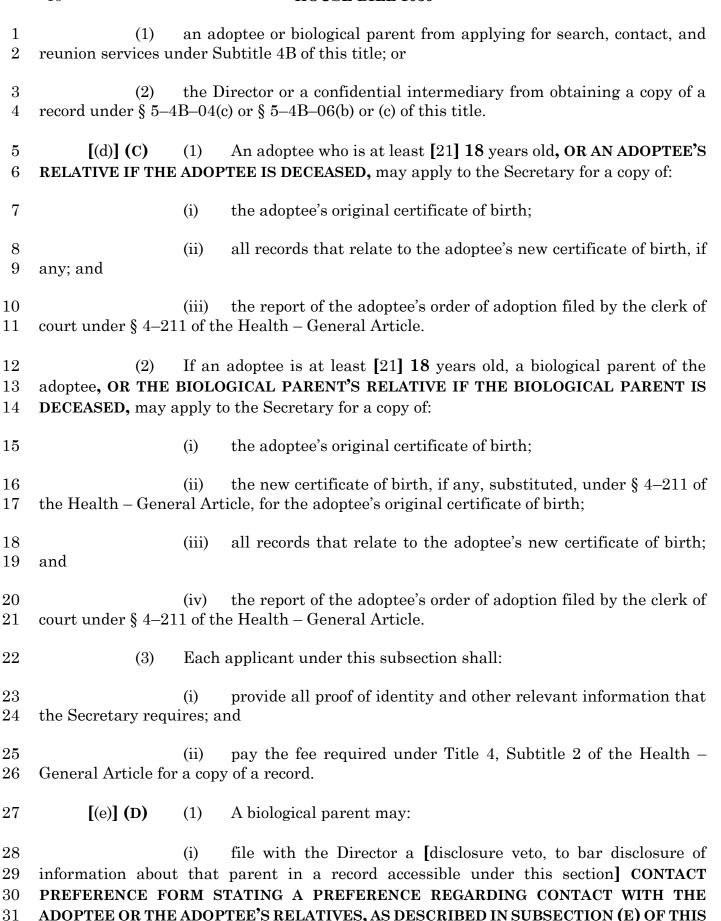


- 1 Whenever an adoptee applies for a record, the Secretary shall redact **(4)** 2 from the copy all information as to a biological parent, if that parent has filed a disclosure 3 veto in accordance with this section. 4 [(5)] **(3)** The Secretary shall give each applicant under this section notice 5 of the adoption search, contact, and reunion services available under Subtitle 4B of this 6 title. 7 5-3A-19. 8 Consent of a parent may include a waiver of the right to notice of: (a) (1) 9 (i) the filing of a petition under this subtitle; and 10 (ii) further proceedings under this subtitle. (2)11 Consent to guardianship is not valid unless the consent: 12(i) is given after the child for whom guardianship is sought is born; 13 (ii) is given in a language that the party understands; 14 if given in a language other than English: (iii) 15 1. is given before a judge on the record; or 16 2. is accompanied by the affidavit of a translator stating that 17 the translation of the document of consent is accurate; 18 (iv) contains an express notice of: 19 1. the right to revoke consent, at any time within 30 days 20after the person signs the consent, unless the revocation is barred under subsection (b)(2) 21of this section; 22 2. the search rights of adoptees and parents under § 235-3A-42 of this subtitle and the search rights of adoptees, parents, and siblings under 24Subtitle 4B of this title; and 253. the right to file a [disclosure veto CONTACT PREFERENCE FORM under § 5–3A–42 of this subtitle; and 2627 is accompanied by an affidavit of counsel appointed under § 285–3A–07(a) of this subtitle stating that a parent who is a minor or has a disability consents
- $30 \quad 5-3A-35.$

knowingly and voluntarily.

29



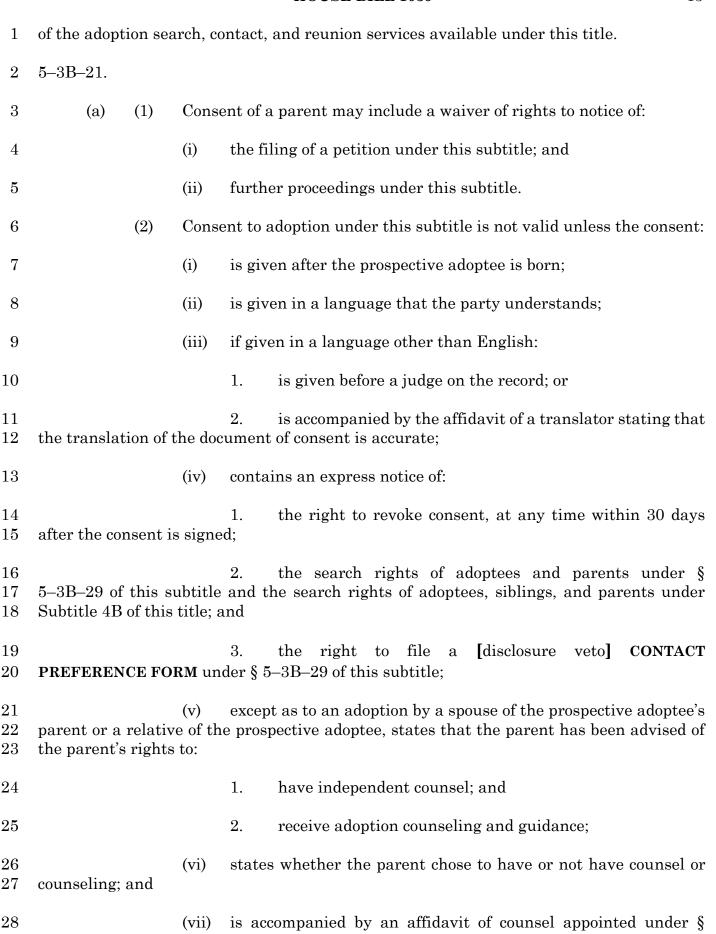


1 SECTION;

- 2 (ii) cancel a [disclosure veto] CONTACT PREFERENCE FORM at any
- 3 time; and
- 4 (iii) refile a [disclosure veto] CONTACT PREFERENCE FORM at any
- 5 time.
- 6 (2) An adoptee at least [21] 18 years old may:
- 7 (i) file with the Director a [disclosure veto, to bar disclosure of
- 8 information about the adoptee in a record accessible under this section] CONTACT
- 9 PREFERENCE FORM STATING A PREFERENCE REGARDING CONTACT WITH THE
- 10 BIOLOGICAL PARENTS OR THE BIOLOGICAL PARENTS' RELATIVES, AS DESCRIBED IN
- 11 SUBSECTION (E) OF THIS SECTION;
- 12 (ii) cancel a [disclosure veto] CONTACT PREFERENCE FORM at any
- 13 time; and
- 14 (iii) refile a [disclosure veto] CONTACT PREFERENCE FORM at any
- 15 time.
- 16 (3) Immediately after the Director receives a [disclosure veto] CONTACT
- 17 PREFERENCE FORM or cancellation under this subsection, the Director shall forward a
- 18 copy to the Secretary.
- 19 **(E) (1)** THE DIRECTOR SHALL DEVELOP AND MAKE AVAILABLE A
- 20 CONTACT PREFERENCE FORM THAT ALLOWS:
- 21 (I) A BIOLOGICAL PARENT TO STATE A PREFERENCE
- 22 REGARDING CONTACT WITH THE ADOPTEE OR, IN THE EVENT THE ADOPTEE IS
- 23 DECEASED, THE ADOPTEE'S RELATIVES; AND
- 24 (II) AN ADOPTEE TO STATE A PREFERENCE REGARDING
- 25 CONTACT BY THE BIOLOGICAL PARENTS OR, IN THE EVENT THE BIOLOGICAL
- 26 PARENTS ARE DECEASED, THE BIOLOGICAL PARENTS' RELATIVES.
- 27 (2) (I) THE CONTACT PREFERENCE FORM SHALL ALLOW THE
- 28 ADOPTEE OR THE BIOLOGICAL PARENT TO SELECT ONE OF THE FOLLOWING
- 29 STATEMENTS:
- 30 "I WOULD LIKE TO BE CONTACTED. I HAVE COMPLETED THIS CONTACT
- 31 PREFERENCE FORM AND I AM FILING THIS FORM WITH THE DIRECTOR.

1	I WOULD LIKE TO BE CONTACTED ONLY THROUGH THE FOLLOWING
2	DESIGNATED INTERMEDIARY: []. (IF NO INTERMEDIARY IS NAMED OF
3	NO NAMED INTERMEDIARY IS ABLE OR WILLING TO ACT, THE INVOLVED AGENCY, IF
4	. <u> </u>
5	FORM AND I AM FILING THIS FORM WITH THE DIRECTOR.
9	FORM AND I AM FILING THIS FORM WITH THE DIRECTOR.
6	I WOULD NOT LIKE TO BE CONTACTED. I HAVE COMPLETED THIS CONTACT
7	PREFERENCE FORM AND I AM FILING THIS FORM WITH THE DIRECTOR.".
8	(II) THE CONTACT PREFERENCE FORM SHALL CONTAIN THE
9	FOLLOWING STATEMENT: "I MAY CHANGE THIS CONTACT PREFERENCE FORM BY
0	FILLING OUT AND FILING ANOTHER CONTACT PREFERENCE FORM. I UNDERSTAND
1	THAT THIS FORM IS ADVISORY ONLY.".
	(a) (b) I G
2	(3) (I) IF THE SECRETARY RECEIVES A CONTACT PREFERENCE
13	FORM FROM THE DIRECTOR UNDER SUBSECTION (D) OF THIS SECTION, THE
4	
15	AND PROVIDE IT TO A BIOLOGICAL PARENT OR AN ADOPTEE WHO APPLIES FOR A
16	RECORD UNDER SUBSECTION (C) OF THIS SECTION.
17	(II) IF THE SECRETARY RECEIVES A CANCELLATION OF A
8	CONTACT PREFERENCE FORM FROM THE DIRECTOR UNDER SUBSECTION (D) OF
9	THIS SECTION, THE SECRETARY SHALL REMOVE THE CONTACT PREFERENCE FORM
20	FROM THE ADOPTEE'S ORIGINAL CERTIFICATE OF BIRTH.
21	(f) (1) The Secretary shall adopt regulations to carry out this section.
	(a) [C 1: 4 4
22	(2) [Subject to paragraphs (3) and (4) of this subsection, the] THE
23	Secretary shall give to each applicant who meets the requirements of this section a copy of
24	each record that the applicant requested and that the Secretary has on file.
25	[(3) Whenever a biological parent applies for a record, the Secretary shall
26	redact from the copy all information as to:
27	(i) the other biological parent, if that parent has filed a disclosure
28	veto in accordance with this section; and
10	veto in accordance with time section, and
29	(ii) the adoptee and each adoptive parent, if the adoptee has filed a
30	disclosure veto in accordance with this section.
31	(4) Whenever an adoptee applies for a record, the Secretary shall reduce
32	from the copy all information as to the biological parent, if that parent has filed a disclosure
33	veto in accordance with this section.]

[(5)] (3) The Secretary shall give each applicant under this section notice



(iii)

1 5–3B–06 of this subtitle stating that a parent who is a minor or has a disability gives 2 consent knowingly and voluntarily. 3 5-3B-29.4 (a) In this section the following words have the meanings indicated. (1) "Director" means the State Director of Social Services. 5 (2) 6 "RELATIVE" MEANS AN INDIVIDUAL WHO IS RELATED **(3)** TO 7 ANOTHER INDIVIDUAL BY BLOOD OR MARRIAGE WITHIN FIVE DEGREES OF 8 CONSANGUINITY OR AFFINITY UNDER THE CIVIL LAW RULE. "Secretary" means the Secretary of Health. 9 [(3)] **(4)** 10 This section applies only to an adoption in which a court enters an order for adoption on or after January 1, 2000. 11 12 This section does not bar: [(c)] **(B)** 13 an adoptee or biological parent from applying for search, contact, and 14 reunion services under Subtitle 4B of this title; or 15 the Director or a confidential intermediary from obtaining a copy of a record under $\S 5-4B-04(c)$ or $\S 5-4B-06(b)$ or (c) of this title. 16 17 [(d)] **(C)** An adoptee who is at least [21] 18 years old, OR AN ADOPTEE'S (1) **RELATIVE IF THE ADOPTEE IS DECEASED,** may apply to the Secretary for a copy of: 18 the adoptee's original certificate of birth; 19 (i) 20 (ii) all records that relate to the adoptee's new certificate of birth, if any; and 2122 the report of the adoptee's order of adoption filed by the clerk of (iii) court under § 4–211 of the Health – General Article. 2324If an adoptee is at least [21] 18 years old, a biological parent of the (2)25adoptee may apply to the Secretary for a copy of: 26 (i) the adoptee's original certificate of birth; 27 the new certificate of birth, if any, that was substituted, under § 4–211 of the Health – General Article, for the adoptee's original certificate of birth; 28

all records that relate to the adoptee's new certificate of birth;

1	and		
2 3	court under § 4–2	(iv) 11 of tl	the report of the adoptee's order of adoption filed by the clerk of ne Health – General Article.
4	(3)	Each	applicant under this subsection shall:
5 6	the Secretary requ	(i) uires; a	provide all proof of identity and other relevant information that and
7 8	General Article fo	(ii) r a cop	pay the fee required under Title 4, Subtitle 2 of the Health – y of a record.
9	[(e)] (D)	(1)	A biological parent may:
10 11 12 13	PREFERENCE FO	ORM S	file with the Director a [disclosure veto, to bar disclosure of parent in a record accessible under this section] CONTACT STATING A PREFERENCE REGARDING CONTACT WITH THE PTEE'S RELATIVES, AS DESCRIBED IN SUBSECTION (E) OF THIS
15 16	time; and	(ii)	cancel a [disclosure veto] CONTACT PREFERENCE FORM at any
17 18	time.	(iii)	refile a [disclosure veto] CONTACT PREFERENCE FORM at any
9	(2)	An a	doptee [21] AT LEAST 18 years old may:
20 21 22 23 24	PREFERENCE FO	ORM S RENTS	file with the Director a [disclosure veto, to bar disclosure of adoptee in a record accessible under this section] CONTACT STATING A PREFERENCE REGARDING CONTACT WITH THE OR THE BIOLOGICAL PARENTS' RELATIVES, AS DESCRIBED IN IS SECTION;
25 26	time; and	(ii)	cancel a [disclosure veto] CONTACT PREFERENCE FORM at any
27 28	time.	(iii)	refile a [disclosure veto] CONTACT PREFERENCE FORM at any
29 30	(3) PREFERENCE FO		ediately after the Director receives a [disclosure veto] CONTACT

copy to the Secretary.

- 1 (E) (1) THE DIRECTOR SHALL DEVELOP AND MAKE AVAILABLE A 2 CONTACT PREFERENCE FORM THAT ALLOWS:
- 3 (I) A BIOLOGICAL PARENT TO STATE A PREFERENCE
- 4 REGARDING CONTACT WITH THE ADOPTEE OR, IN THE EVENT THE ADOPTEE IS
- 5 DECEASED, THE ADOPTEE'S RELATIVES; AND
- 6 (II) AN ADOPTEE TO STATE A PREFERENCE REGARDING
- 7 CONTACT BY THE BIOLOGICAL PARENTS OR, IN THE EVENT THE BIOLOGICAL
- 8 PARENTS ARE DECEASED, THE BIOLOGICAL PARENTS' RELATIVES.
- 9 (2) (I) THE CONTACT PREFERENCE FORM SHALL ALLOW THE
- 10 ADOPTEE OR THE BIOLOGICAL PARENT TO SELECT ONE OF THE FOLLOWING
- 11 STATEMENTS:
- 12 "I WOULD LIKE TO BE CONTACTED. I HAVE COMPLETED THIS CONTACT
- 13 PREFERENCE FORM AND I AM FILING THIS FORM WITH THE DIRECTOR.
- I WOULD LIKE TO BE CONTACTED ONLY THROUGH THE FOLLOWING
- 15 DESIGNATED INTERMEDIARY: [_____]. (IF NO INTERMEDIARY IS NAMED OR
- 16 NO NAMED INTERMEDIARY IS ABLE OR WILLING TO ACT, THE INVOLVED AGENCY, IF
- 17 ANY, SHALL ACT ON MY BEHALF.). I HAVE COMPLETED THIS CONTACT PREFERENCE
- 18 FORM AND I AM FILING THIS FORM WITH THE DIRECTOR.
- 19 I WOULD NOT LIKE TO BE CONTACTED. I HAVE COMPLETED THIS CONTACT
- 20 PREFERENCE FORM AND I AM FILING THIS FORM WITH THE DIRECTOR.".
- 21 (II) THE CONTACT PREFERENCE FORM SHALL CONTAIN THE
- 22 FOLLOWING STATEMENT: "I MAY CHANGE THIS CONTACT PREFERENCE FORM BY
- 23 FILLING OUT AND FILING ANOTHER CONTACT PREFERENCE FORM, I UNDERSTAND
- 24 THAT THIS FORM IS ADVISORY ONLY.".
- 25 (3) (I) IF THE SECRETARY RECEIVES A CONTACT PREFERENCE
- 26 FORM FROM THE DIRECTOR UNDER SUBSECTION (D) OF THIS SECTION, THE
- 27 SECRETARY SHALL ATTACH IT TO THE ADOPTEE'S ORIGINAL CERTIFICATE OF BIRTH
- 28 AND PROVIDE IT TO A BIOLOGICAL PARENT OR AN ADOPTEE WHO APPLIES FOR A
- 29 RECORD UNDER SUBSECTION (C) OF THIS SECTION.
- 30 (II) IF THE SECRETARY RECEIVES A CANCELLATION OF A
- 31 CONTACT PREFERENCE FORM FROM THE DIRECTOR UNDER SUBSECTION (D) OF
- 32 THIS SECTION, THE SECRETARY SHALL REMOVE THE CONTACT PREFERENCE FORM
- 33 FROM THE ADOPTEE'S ORIGINAL CERTIFICATE OF BIRTH.

1 (f) (1) The Secretary shall adopt regulations to carry out this section. 2 [Subject to paragraphs (3) and (4) of this subsection, the THE (2)3 Secretary shall give to each applicant who meets the requirements of this section a copy of 4 each record that the applicant requested and that the Secretary has on file. 5 Whenever a biological parent applies for a record, the Secretary shall 6 redact from the copy all information as to: 7 the other biological parent, if that parent has filed a disclosure (i) 8 veto in accordance with this section; and 9 (ii) the adoptee and each adoptive parent, if the adoptee has filed a 10 disclosure veto in accordance with this section. 11 Whenever an adoptee applies for a record, the Secretary shall redact 12 from the copy all information as to the biological parent, if that parent has filed a disclosure veto in accordance with this section. 13 14 [(5)] (3) The Secretary shall give each applicant under this section notice of the adoption search, contact, and reunion services available under this title. 15 16 5-4B-01.17 In this subtitle the following words have the meanings indicated. (a) 18 (h) "Sibling" means a brother or sister of the whole or half blood who: is at least [21] 18 years old; and 19 (1) 20 (2) has been adopted. 21 5-4B-02.22 An adopted individual at least [21] 18 years old may apply to the 23Director to receive search, contact, and reunion services. 24If an adopted individual is at least [21] 18 years old, the following (2)25individuals may apply to the Director to receive search, contact, and reunion services: 26 a biological parent of the adopted individual; (i) 27 (ii) a sibling of the adopted individual; and 28 (iii) a director of a local department acting on behalf of a minor in

29

out-of-home placement.

3

4

5

6

25

26

27

34

(3) A director of a local department or a local department director's designee may apply to the Director to receive search, contact, and reunion services to develop a placement resource or facilitate a family connection with relatives of a minor in out–of–home placement who was adopted through a local department if the local department has determined that reunification with the minor's adoptive parents is not in the minor's best interests.

7 5–4B–11.

- 8 (a) If an individual sought by a confidential intermediary is deceased, the 9 confidential intermediary may not disclose the identity of the deceased to the individual 10 who applied for search, contact, and reunion services.
- 11 (b) The confidential intermediary shall report the fact that the individual sought 12 is deceased to the individual who applied for search, contact, and reunion services.
- 13 (c) (1) If the deceased individual is a biological parent, the confidential intermediary may, with the consent of the applicant, attempt to contact a relative who is 15 at least [21] 18 years old to assess the willingness of the relative to communicate or exchange information with the applicant.
- 17 (2) If the deceased individual is an adopted individual, the confidential intermediary may, with the consent of the applicant, attempt to contact a member of the adoptive family who is at least [21] 18 years old to assess the willingness of the member of the adoptive family to communicate or exchange information with the applicant.
- 21 (3) If the applicant consents to contacting a relative or member of the 22 adoptive family, the applicant shall execute another written agreement with the 23 confidential intermediary concerning the provision of search, contact, and reunion services 24 under this subsection.
 - (4) (i) 1. Except as provided in subparagraph (ii) of this paragraph, the confidential intermediary may charge the individual a reasonable fee for the additional search, contact, and reunion services described in this subsection.
- 28 2. The overall amount of fees collected may not exceed the costs of providing the services.
- 30 (ii) The confidential intermediary may not charge a director of a local department who applies for search, contact, and reunion services on behalf of a minor in 32 out—of—home placement the fee described in subparagraph (i) of this paragraph.
- 33 (5) The confidential intermediary shall promptly:
 - (i) file the executed agreement with the Director; and

- 1 attempt to contact the relative or member of the adoptive family (ii) 2 sought by the applicant. 3 The provisions of this subtitle shall apply to search, contact, and reunion services provided by a confidential intermediary under this subsection. 4 Article - Health - General 5 6 4-211. 7 (g) (1) If a new certificate of birth is made, the Secretary shall: 8 (i) Substitute the new certificate of birth for any certificate then on 9 file; and 10 (ii) Place the original certificate of birth and all records that relate 11 to the new certificate of birth under seal. 12 (2)The seal may be broken only: 13 (i) On order of a court of competent jurisdiction; 14 (ii) If it does not violate the confidentiality of the record, on written 15 order of a designee of the Secretary; or 16 (iii) In accordance with Title 5, SUBTITLE 3, Subtitle 3A, SUBTITLE 17 **3B,** or Subtitle 4B of the Family Law Article. 18 A certified copy of the certificate of birth that later is issued shall be a 19 copy of the new certificate of birth, unless: 20A court of competent jurisdiction orders the issuance of a copy of the original certificate of birth; or 2122(ii) Title 5, SUBTITLE 3, Subtitle 3A, SUBTITLE 3B or Subtitle 4B 23 of the Family Law Article provides for the issuance of a copy of the original certificate of 24birth. 25 SECTION 2. AND BE IT FURTHER ENACTED, That if an adoptee or a biological 26 parent filed, before October 1, 2020, a disclosure veto to bar disclosure of information about 27the adoptee or the biological parent, the Secretary of Health shall replace the disclosure 28 veto with a contact preference form that indicates that the adoptee or the biological parent 29would not like to be contacted by the biological parent or the adoptee.
- SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect 31 October 1, 2020.