

## Introduction

Adoption in the United States is a complex issue. It impacts not only individuals who have been adopted, but also their biological and adoptive families. While much of the current scholarly and political focus is on the issue of adoptee access to original birth records,<sup>1</sup> an even earlier action also deserves analysis: the initial amending of these original birth certificates.

States have adopted a variety of methods in order to address this topic, and so have amended birth certificates in different ways. There are multiple arguments both in favor and against this amending, and choices made by state legislators have the potential to greatly affect the lives of adoptees and their families. Given Minnesota's current laws, legislators have the opportunity to expand upon the topic, and to implement new or changed adoption laws in the state.

## History of Amending Birth Certificates

Adoption has been considered at both the state and federal level in the United States for many years. Massachusetts, in 1851, was the first state to pass an adoption statute.<sup>2</sup> The law was called the "Adoption of Children Act," and it was meant to ensure

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<sup>1</sup> See, for example, U.S. Department of Health and Human Services- Children's Bureau, "Access to Adoption Records," 2012, <https://www.childwelfare.gov/pubPDFs/infoaccessap.pdf>.

<sup>2</sup> Deloney, Wayne. "Unsealing Adoption Records: The Right to Privacy Versus the Right of Adult Adoptees to Find Their Birthparents." *Whittier Journal of Child and Family Advocacy* 7, no. 1 (2007): 119 (citing Caswell, Kathleen. "Opening the Door to the Past: Recognizing the Privacy Rights of Adult Adoptees and Birthparents in California's Sealed Adoption Records While Facilitating the Quest for Personal Origin and Belonging." *Golden Gate University Law Review* 32, no. 2 (2002): 277.

that adoptive parents were competent to raise the children they intended to adopt.<sup>3</sup> Later, in 1917, Minnesota became the first state to pass a law regarding adoptee birth records; the state's "Children's Code" said that adoption decrees could note that a child's name had been changed post-adoption, but that the information on the original birth certificate could not be changed, and the document had to be marked "illegitimate."<sup>4</sup>

In the United States, adoptees' birth certificates therefore remained largely unaltered until 1930, when two vital statistics registrars suggested amending adoptees' original birth certificates post-adoption, with the goal of avoiding potential societal stigma resulting from the adoption.<sup>5</sup> That same year, some states implemented this idea, replacing the names on adoptees' birth certificates from those of the biological parents with those of the adoptive parents.<sup>6</sup> By 1941, 35 states had laws that stated that this

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<sup>3</sup> Editors of Encyclopaedia Britannica. "Adoption- Kinship." 2014. Accessed August 7, 2015.

<sup>4</sup> Carp, E. Wayne. "How Tight was the Seal? A Reappraisal of Adoption Records in the United States, England, and New Zealand, 1851-1955," in *International Advances in Adoption Research for Practice*, ed. Elsbeth Neil and Gretchen Wrobel (Wiley-Blackwell, 2009) (citing Carp, E. Wayne. *Family Matters: Secrecy and Disclosure in the History of Adoption*. Harvard University Press, 1998).

<sup>5</sup> Caswell, Kathleen. "Opening the Door to the Past: Recognizing the Privacy Rights of Adult Adoptees and Birthparents in California's Sealed Adoption Records While Facilitating the Quest for Personal Origin and Belonging." *Golden Gate University Law Review* 32, no. 2 (2002): 277 (citing Carp, E. Wayne. *Family Matters: Secrecy and Disclosure in the History of Adoption*. Harvard University Press, 1998).

<sup>6</sup> West, Katherine A. "Denying a Class of Adopted Children Equal Protection." *Santa Clara Law Review* 53, no. 3 (2013): 971 (citing Samuels, Elizabeth J. "The Idea of Adoption: An Inquiry into the History of Adult Adoptee Access to Birth Records." *Rutgers Law Review* 53 (2001): 376).

amending should occur,<sup>7</sup> and almost all states had them by 1948.<sup>8</sup> Currently, all states have adopted a version of Article 3, Part 8 of the Uniform Adoption Act of 1994, which says that state registrars should create new, amended birth certificates for adoptees after registrars receive the certified decrees of adoption.<sup>9</sup>

### **Overview of Current State Statutes**

As discussed above, the majority of American laws concerning adoptee birth certificates exist in the states, rather than at the federal level. Federal legislators have addressed the topic, with the above-mentioned Uniform Adoption Act, as well as the Revised Model State Vital Statistics Act,<sup>10</sup> for example, but have otherwise not seemed to focus extensively on the area of documentation.<sup>11</sup> In fact, as of 2012 the federal

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<sup>7</sup> Hildebrand, Heidi. “Because They Want to Know: An Examination of the Legal Rights of Adoptees and Their Parents.” *Southern Illinois University Law Review* 24 (2000): 521 (citing Carp, E. Wayne. *Family Matters: Secrecy and Disclosure in the History of Adoption* (Harvard University Press, 1998), 54).

<sup>8</sup> Hildebrand, Heidi. “Because They Want to Know: An Examination of the Legal Rights of Adoptees and their Parents.” *Southern Illinois University Law Review* 24 (2000): 521 (citing Carp, E. Wayne. *Family Matters: Secrecy and Disclosure in the History of Adoption* (Harvard University Press, 1998), 55).

<sup>9</sup> West, Katherine A. “Denying a Class of Adopted Children Equal Protection.” *Santa Clara Law Review* 53, no. 3 (2013): 971-972 (citing Brief of Amici Curiae Joan Heifetz Hollinger, *Adar v. Smith*, 597 F.2d 697 (2010) at 7).

<sup>10</sup> Uniform Law Commission. “Uniform Adoption Act (1994).” *Paper Presented at Annual Conference Meeting in its One-Hundred and Third Year*, Chicago, Illinois.  
[http://www.uniformlaws.org/shared/docs/adoption/uaa\\_final\\_94.pdf](http://www.uniformlaws.org/shared/docs/adoption/uaa_final_94.pdf)

<sup>11</sup> Federal legislators have looked into many other aspects of adoption. See, for example, U.S. Department of Health and Human Services, “Major Federal Legislation Concerned with

government had not mandated any requirements for how the information included on birth certificates was to be compiled or reported.<sup>12</sup> While the federal government is involved, the majority of adoption statutes occur at the state level.

State legislators therefore have the opportunity to implement meaningful change in this area of the law, and many have already done so, focusing state statutes on a variety of topics related to amending birth certificates. Four of the areas in which state actions have varied are the following: 1) Inclusion of biological parents; 2) Changed place of birth; 3) Indication of amendment; and 4) Optional amending. Because states have chosen to handle these issues in a variety of ways, closer analysis of each issue provides potentially useful insight into the many possible approaches to the topics.

### ***Inclusion of Biological Parents***

A topic prevalent in many state statutes is whether the names of biological parents are listed on adoptees' amended birth certificates. Often, these individuals are not included, and state registrars instead replace their names with those of the adoptive parents.<sup>13</sup> Maryland's statute, which states that, "If the individual is adopted.... the adoptive parents shall be recorded as the parents of the individual," is representative of

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Child Protection, Child Welfare, and Adoption," 2012,  
<https://www.childwelfare.gov/pubPDFs/majorfedlegis.pdf>

<sup>12</sup> Hackford-Peer, Ruth. "Adar v. Smith: Penalizing Innocent Children for the 'Sins' of Their Parents." *American University Modern American* 8 (2012): 45 (citing U.S. Department of Health and Human Services. Office of the Inspector General. *Birth Certificate Fraud*. By June Gibbs Brown. OEI 7-99-00570 (2005): 2).

<sup>13</sup> See, for example, Conn. Gen. Stat. § 7-53; Fla. Stat. § 382.015; Ky. Rev. Stat. § 199.570

statutes in many states.<sup>14</sup> With this type of amending, birth certificates list the adoptive, rather than the biological, parents.

In some other states, this area of the law is slightly more flexible, and biological parents can potentially be included on amended birth certificates. For example, in Alabama, either the biological parents or the adoptive parents can be listed on the certificate, depending on which situation is deemed “appropriate.”<sup>15</sup> In Wisconsin, only the adoptive parents are on the birth certificate, but biological parents can also be included if there is a court order.<sup>16</sup> Lastly, in Hawaii, the adoptive parents are listed on the amended birth certificate, but they can choose to include the names of the biological parents as well.<sup>17</sup> Overall, while states often omit the names of biological parents from amended birth certificates, some states have different practices.

#### *Same-Sex Couples*

Given the Supreme Court’s recent ruling in *Obergefell v. Hodges*,<sup>18</sup> a particular aspect of this topic, inclusion of same-sex adoptive parents, may become especially relevant. Due to the holding, states may begin to develop new or more thorough statutes concerning whether same-sex couples can be included on adoptees’ amended certificates.

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<sup>14</sup> Md. Stat. § 4-211

<sup>15</sup> ALA Code § 22-9A-12

<sup>16</sup> Wis. Stat. § 69.15

<sup>17</sup> Haw. Rev. Stat. § 578-14

<sup>18</sup> *Obergefell v. Hodges*, 576 US \_\_ (2015), <https://supreme.justia.com/cases/federal/us/576/14-556/> (Supreme Court held that same-sex marriages were legal in the United States).

Some states, such as Iowa, currently allow this practice,<sup>19</sup> and others, such as Oklahoma, recognize adoptions made by same-sex couples in other states, and allow the couples to be listed on the amended birth certificates of their adopted children.<sup>20</sup> Other states vary their approach based on the circumstances; for example, in Maryland, female same-sex couples can both be included on amended birth certificates, but male couples have to first get a court order.<sup>21</sup> Conversely, some states do not allow same-sex couples to be listed on certificates: a Mississippi law states, “Adoption by couples of the same gender is prohibited,”<sup>22</sup> and in Texas, one of the parents listed on an amended birth certificate must be male, and the other female.<sup>23</sup> States currently vary in their stances regarding the inclusion of same-sex couples on amended birth certificates.

### *Changed Place of Birth*

While, as shown above, states often change the names of parents on adoptees’ amended birth certificates, they commonly keep the listed place of birth consistent with the original certificate.<sup>24</sup> Arkansas’ statute states that, “When a new certificate of birth is

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<sup>19</sup> See *Gartner v. Iowa Department of Public Health*, 830 N.W.2d 335, 354 (Iowa 2013) (Court held that same-sex partners could both be included on their children’s birth certificates).

<sup>20</sup> See *Finstuen v. Crutcher*, 496 F.3d 1139, 1156 (10<sup>th</sup> Ct. App. 2007) (Court held that 10 Okla. Stat. § 7502-1.4, which stated that Oklahoma would not recognize same-sex adoptions made in other states, was unconstitutional).

<sup>21</sup> Lambda Legal. "Birth Certificates and Second-Parent Adoptions for Married Same-Sex Couples in Maryland." 2011.

<sup>22</sup> Miss. Code Ann. § 93-17-3

<sup>23</sup> Tex. Health and Safety Code § 192.008

<sup>24</sup> See, for example, Alaska Stat. § 18.50.220; Ind. Code Ann. § 31-19-13-1; Neb. Rev. Stat. § 71-626.01

established, the actual city and county, or both... shall be shown,” and many states have similar laws.<sup>25</sup> In these states, amending does not change an adoptee’s listed birthplace.

However, despite the practices of many states, others choose to do the opposite, and instead substitute an adoptee’s actual place of birth with the location of their adoptive parents. For example, in Kentucky, the relevant statute says, “The new birth certificate shall recite the residence of the adoptive parents as the birthplace of the child and this shall be deemed for all legal purposes to be the birthplace of the child.”<sup>26</sup> In states with laws like this, amending birth certificates changes the adoptee’s listed place of birth.

Lastly, other states give adoptive parents a choice, at least in certain situations. For example, in Georgia, an adoptee’s actual birthplace is used on the amended certificate if the adoptee is the biological child of either spouse. However, if this is not the case, then the adoptive parents decide whether to include the adoptee’s actual place of birth or the adoptive parents’ location as the adoptee’s listed birthplace.<sup>27</sup> Similarly, in Illinois, the adoptee’s actual place of birth is listed on amended certificates, but adoptive parents can request this be replaced by their place of residence.<sup>28</sup> In these states, adoptive parents have some discretion to determine the contents of adoptees’ amended certificates.

### *Indication of Amendment*

As noted above, states often choose to amend certificates to exclude biological parents, and sometimes also change an adoptee’s listed place of birth. However, many choose to make no notation of this amendment on adoptees’ new certificates. For

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<sup>25</sup> Ark. Code. § 20-18-406

<sup>26</sup> Ky. Rev. Stat. § 199.570; see also Miss. Code Ann. § 93-17021 (Mississippi has a similar law)

<sup>27</sup> Ga. Code Ann. § 31-10-14

<sup>28</sup> 410 ILCS 535/17

example, New Hampshire’s statute states, “A birth certificate for an adoptee shall make no reference to adoption and shall conform as nearly as possible to any other birth certificate,”<sup>29</sup> and many states have similar laws.<sup>30</sup> In these situations, there is no indication on the document that an adoptee’s amended certificate is not the original.

Additionally, in some states, adoptive parents (or sometimes the adoptees themselves) can choose whether amended birth certificates contain any indication that they have been amended.<sup>31</sup> Colorado’s statute, similar to those in other states, says, “A new certificate of birth issued pursuant to an adoption... shall be marked by the state registrar with the words, ‘issued pursuant to adoption’ if so requested by the adoptive parent or the adoptive person.”<sup>32</sup> In states with optional indication, adoptees and their families can choose whether they want the amended birth certificate to include a notation that it is not the original.

Finally, some states have unique approaches to this issue. For example, in South Carolina, only amended birth certificates for adult adoptees need to include an indication that they have been amended; this is not required for child adoptees.<sup>33</sup> In Montana, there does not need to be an explicit indication of amendment, but some language is different on amended certificates: the words “attendant’s own signature” are replaced by “Department of Health and Human Services,”<sup>34</sup> and this change could potentially

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<sup>29</sup> N.H. Rev. Stat. § 170-B:31

<sup>30</sup> See, for example, Cal. Health and Safety Code § 102645, art. 1; Fla. Stat. § 382.015; Rev. Code Wash. § 70.58.210

<sup>31</sup> See, for example, La. Rev. Stat. § 40:79; Maine Rev. Stat. § 2761

<sup>32</sup> Colo. Rev. Stat. § 25-2-113

<sup>33</sup> S.C. Code Ann. § 44-63-140

<sup>34</sup> Mont. Code Ann. § 50-15-304

indicate an amended certificate. Overall, while some states do not include a notation of amendment, others use different practices.

### *Choice to Amend Certificate*

States have adopted a variety of laws meant to regulate the amendment of birth certificates that commonly occurs after an individual has been adopted. However, in some states, amendment is not required at all, and is instead just an option. In these states, various parties are given the authority to decide that an adoptee's original birth certificate will not be amended.<sup>35</sup> Arkansas' relevant law is similar to others used in states that also allow for optional amendments, and it says, "[A] new certificate of birth shall not be established if so requested by the court decreeing the adoption, the adoptive parents, or the adoptive person."<sup>36</sup> In states with laws like these, adoptions are not necessarily followed by amended birth certificates.

### *Focus on Minnesota*

Despite all of the statutes used in other states, Minnesota does not currently have extensive laws concerning the topic. In fact, Minnesota's current statutes specifically reference few of the four topics considered above. One of the few relevant laws states, "Upon receipt of an order, decree, or certificate of adoption, the state registrar shall register a replacement vital record in the new name of the adopted person."<sup>37</sup> This lack of detail provides an opportunity for Minnesota legislators to expand on and clarify the issue, potentially improving the lives of adoptees and their families.

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<sup>35</sup> See, for example, R.I. Gen Laws §23-3-15; S.D. Codified Laws § 34-25-16.1; Vt. Stat. § 802

<sup>36</sup> Ark. Code Ann. § 20-18-406

<sup>37</sup> Minn. Stat. § 144.218

### Arguments in Favor of Amending

There are several reasons that legislators may want to consider passing laws that support the practice of amending birth certificates; currently, all states do this, and there are arguments that this is a beneficial practice. Firstly, amending birth certificates allows adoptees to keep their adoption confidential, and may make it easier for them to avoid any potential stigma.<sup>38</sup> Some adoptees may prefer to keep their adoption private, and amending birth certificates helps them to do this.

Secondly, amending can benefit adoptive parents; for adoptees adopted as children, these individuals are the ones who are responsible for the adoptee, and so there is an argument that they should be listed on the adoptee's amended birth certificate. While the biological parents gave birth to the child, it is the adoptive parents who raise the child, and who will be using the adoptee's birth certificate later in the adoptee's life.<sup>39</sup> Amending birth certificates may make it easier for adoptive parents to use the certificates to benefit adoptees.<sup>40</sup>

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<sup>38</sup> Various sources suggest that, despite societal change, there is still a stigma against adoption.

See, for example, Small, Joanne Wolf. *Adopted in America: A Study in Stigma*. 2013.  
[http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2280517](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2280517)

<sup>39</sup> Parents use their children's birth certificates for many purposes: for example, enrolling children in school, getting a social security card or passport for a child, and claiming the child as a dependent for parents' taxes. West, Katherine A. "Denying a Class of Adopted Children Equal Protection." *Santa Clara Law Review* 53 (2013): 965 (citing Lambda Legal, "Adar v. Smith Case Background," 2011, [http://data.lambdalegal.org/publications/downloads/fs\\_adar-v-smith-case-background.pdf](http://data.lambdalegal.org/publications/downloads/fs_adar-v-smith-case-background.pdf)).

<sup>40</sup> Birth certificates that do not include parents' names can be very problematic when it comes to a variety of situations, including obtaining medical care for children. See, in the context

Lastly, amending birth certificates allows for biological parents to maintain their privacy.<sup>41</sup> As noted above, the biological parents no longer are responsible for the adoptee, and there is an argument that they therefore should have the right to keep their identity private.

### **Arguments Against Amending**

However, despite the arguments in favor, there are also arguments suggesting that adoptees' birth certificates should not be amended, or that the amendment should be implemented differently. Firstly, although amending may allow for more confidentiality for adoptees, it is also potentially unfair to them; biological children have the right to have their biological parents listed on their birth certificate, while adoptees do not always have this opportunity.<sup>42</sup>

Secondly, amended birth certificates may not always be accurate. Some states do not require proof for the information that is put on amended certificates, and so the

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of same-sex adoptive couples, West, Katherine A. "Denying a Class of Adopted Children Equal Protection." *Santa Clara Law Review* 53 (2013) at 981-982 (citing Brief of Amici Curiae Joan Heifetz Hollinger et al., *Adar v. Smith*, 597 F.3d 697). (5<sup>th</sup> Cir. 2010), 2010 WL 5778048 at \*8-9).

<sup>41</sup> See Caswell, Kathleen. "Opening the Door to the Past: Recognizing the Privacy Rights of Adult Adoptees and Birthparents in California's Sealed Adoption Records While Facilitating the Quest for Personal Origin and Belonging." *Golden Gate University Law Review* 32, no. 2 (2002) (discussion of privacy issues, concerns, and rights for adoptive children and biological parents).

<sup>42</sup> See West, Katherine A. "Denying a Class of Adopted Children Equal Protection." *Santa Clara Law Review* 53, no. 3 (2013): (discussion of Equal Protection Clause and amended birth certificates).

contents of these certificates may be unverified.<sup>43</sup> Amending birth certificates therefore potentially leaves adoptees and their families with birth certificates that do not contain correct information, even pertaining to their adoption.

Thirdly, there is an argument that biological parents should not expect to have complete privacy. Adoptees keep their original birth certificates until they are adopted, and so will keep this document if they are not adopted.<sup>44</sup> In this situation, biological parents would not be able to maintain their privacy, anyway; biological parents cannot expect to keep their identity a secret, even after they put a child up for adoption.

Lastly, amending birth certificates creates potential security risks.<sup>45</sup> Even after a birth certificate is amended, and the original document is sealed, an adoptee may maintain a copy of the original, meaning that they will have two certificates. These could be used to obtain two driver's licenses, passports, or other forms of identification, and then to commit identity fraud or other crimes.<sup>46</sup> While this issue is not unique to amended birth certificates, it seems possible that possessing more than one certificate

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<sup>43</sup> Not all states require proof for the information that is put on amended birth certificates, meaning the data could be potentially inaccurate. See U.S. Department of Health and Human Services. Office of the Inspector General. *Birth Certificate Fraud*. By June Gibbs Brown. OEI 7-99-00570 (2005), 14-15.

<sup>44</sup> Hildebrand, Heidi. "Because They Want to Know: An Examination of the Legal Rights of Adoptees and their Parents." *Southern Illinois University Law Review* 24 (2000): 534.

<sup>45</sup> There is a problem with birth certificate-related fraud in the United States, including problems associated with people who have more than one birth certificate See U.S. Department of Health and Human Services. Office of the Inspector General. *Birth Certificate Fraud*. By June Gibbs Brown. OEI 7-99-00570 (2005).

<sup>46</sup> See U.S. Department of Health and Human Services. Office of the Inspector General. *Birth Certificate Fraud*. By June Gibbs Brown. OEI 7-99-00570 (2005), 1.

could introduce additional risks; given that many adoptees only have their amended certificate,<sup>47</sup> the original could potentially be used without their knowledge.

### **Potential Future Steps**

Given the multiple arguments on both sides of the issue, Minnesota legislators should carefully analyze the state's current statutes, and consider whether it might be in the best interest of adoptees and their families to create new legislation or to amend existing laws. There are a variety of approaches that could potentially benefit adoptees, while also considering the rights and interests of biological and adoptive families.

### ***Opportunities from State Variety***

States clearly differ in their approaches to amending birth certificates for adoptees, and Minnesota legislators could look to statutes from other states for guidance when shaping the state's policies. Many states currently have laws, concerning all four aspects of amended birth certificates noted above (Inclusion of biological parents; changed place of birth; indication of amendment; and choice to amend certificate), that allow for more choice in the adoption process.

For example, some states currently allow adoptive parents to choose whether to allow biological parents on amended birth certificates,<sup>48</sup> require that an adoptee's actual place of birth be listed on the birth certificate,<sup>49</sup> provide the option for an amended birth

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<sup>47</sup> See U.S. Department of Health and Human Services- Children's Bureau, "Access to Adoption Records," 2012, <https://www.childwelfare.gov/pubPDFs/infoaccessap.pdf>.

<sup>48</sup> Haw. Rev. Stat. § 578-14

<sup>49</sup> See, for example, Alaska Stat. § 18.50.220; Ind. Code Ann. § 31-19-13-1; Neb. Rev. Stat. § 71-626.01

certificate to contain a note that it is not the original,<sup>50</sup> and give adoptees the choice whether they want their birth certificate to be amended at all.<sup>51</sup>

If Minnesota legislators were to combine all of these statutes, this could potentially be a step toward increasing the freedom and accuracy of the adoption and birth certificate amending processes, therefore benefiting adoptees and all those involved with the adoption process.

### **Conclusion**

Amending birth certificates is a complicated topic that impacts not only adoptees, but also their biological and adoptive families. Adding to the complexity, states have approached the issue in a variety of ways, choosing different methods and techniques to address adoptee rights.

There are multiple arguments both in favor and against the practice of amending certificates, and various benefits and detriments to each side. Because Minnesota's adoption laws are not very extensive, legislators currently have the opportunity to consider these arguments and then to expand upon the state's statutes, therefore improving the lives of adoptees and their biological and adoptive families.

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<sup>50</sup> See, for example, Colo. Rev. Stat. § 25-2-113; La. Rev. Stat. § 40:79; Maine Rev. Stat. § 2761

<sup>51</sup> See, for example, Ark, Code Ann. § 20-18-406 R.I. Gen Laws §23-3-15; S.D. Codified Laws § 34-25-16.1