

3255--A

Cal. No. 438

2009-2010 Regular Sessions

I N   S E N A T E

March 13, 2009

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Introduced by Sen. DUANE -- (at request of the Department of Health) -- read twice and ordered printed, and when printed to be committed to the Committee on Health -- reported favorably from said committee, ordered to first and second report, ordered to a third reading -- reported favorably from said committee and committed to the Committee on Rules -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the public health law, in relation to birth certificates for children born in foreign countries; and registration for the adoption information registry; and repealing certain provisions of such law relating thereto

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1     Section 1. Section 4138-a of the public health law is REPEALED and a  
2     new section 4138-a is added to read as follows:  
3     S 4138-A. CERTIFICATE OF BIRTH DATA. ANY EXISTING CERTIFICATE OF BIRTH  
4     DATA SHALL CONTINUE TO BE EFFECTIVE.  
5     S 2. Section 4138-b of the public health law, as added by chapter 329  
6     of the laws of 2008, is amended to read as follows:  
7     S 4138-b. Birth certificate: foreign country adoption. Whenever the  
8     adoption or finalization of a foreign adoption or recognition of a  
9     foreign adoption of a child pursuant to section one hundred eleven-c of  
10    the domestic relations law has been reported to the [local registrar]  
11    COMMISSIONER, the [registrar] COMMISSIONER shall [issue] FILE a birth  
12    certificate for the child PROVIDED THERE IS NO OTHER BIRTH CERTIFICATE  
13    OR OTHER BIRTH RECORD ON FILE OTHER THAN IN THE COUNTRY WHERE SUCH CHILD  
14    WAS BORN AND PROVIDED, FURTHER, THAT A CERTIFICATE OF BIRTH DATA DOES  
15    NOT EXIST FOR THAT PERSON. Such birth certificate shall be [issued and]  
16    filed upon receipt of: proof that the adoptive parent [or child is] WAS  
17    a resident of this state AT THE TIME OF ADOPTION; a copy of the adoption  
18    documents of the jurisdiction or country in which the child was adopted;

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets  
[ ] is old law to be omitted.

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1 a certified translation of the foreign adoption documents, evidence of  
2 the date and place of the child's birth; and evidence of IR-3 OR IR-4  
3 immigrant visa status, or a successor immigrant visa status. The birth  
4 certificate shall include the child's name, sex, date of birth, time of  
5 birth, place of birth, mother's maiden name, and father's name. A BIRTH  
6 CERTIFICATE FOR A FOREIGN COUNTRY ADOPTION WHICH HAS BEEN FILED BY A  
7 LOCAL REGISTRAR AND ALL SUPPORTING DOCUMENTATION SHALL BE SUBMITTED BY  
8 THE LOCAL REGISTRAR TO THE COMMISSIONER WHO SHALL FILE A NEW BIRTH  
9 CERTIFICATE PURSUANT TO THIS SECTION.

10 S 3. Subdivisions 2, 4, 5 and 6 of section 4138-c of the public health  
11 law, subdivision 2 as amended by chapter 435 of the laws of 2008, subdi-  
12 vision 4 as amended by chapter 588 of the laws of 1999, and paragraph  
13 (a) of subdivision 4 and subdivisions 5 and 6 as amended by chapter 469  
14 of the laws of 2007, are amended to read as follows:

15 2. The registry shall accept, at any time, and maintain the verified  
16 registration transmitted by an agency pursuant to section forty-one  
17 hundred thirty-eight-d of this [article] TITLE, or of the birth parents  
18 of an adoptee if such adoptee was born in this state. The registry shall  
19 not accept nor maintain the registration of an adoptee sooner than eigh-  
20 teen years after the adoptee's birth, or in the case of registration by  
21 a biological sibling of an adoptee, no sooner than the longer of eigh-  
22 teen years after the biological sibling's birth or eighteen years after  
23 the adoptee's birth; provided, however, that any person whose registra-  
24 tion was accepted may withdraw such registration prior to the release of  
25 any identifying information. The adoptee registrant, and the biological  
26 sibling registrant, shall include as part of the registration the iden-  
27 tification, including the name and address, of known biological siblings  
28 of the adoptee. The adoptee may upon registration or any time thereafter  
29 elect not to have release of information by the authorized agency  
30 involved in such adoption. The department shall establish an authorized  
31 agency fee schedule for search costs and registry costs and services  
32 provided by such agency in gathering and forwarding information pursuant  
33 to this section. The fee schedule may also include costs for disseminat-  
34 ing information about the registry and the adoption medical information  
35 sub-registry to the public. Such publications or brochures may include  
36 information as to identifying and non-identifying information, how to  
37 register and fees charged to the registrants, and any other information  
38 deemed appropriate.

39 4. Upon acceptance of a registration [by an adoptee or by the biolog-  
40 ical sibling of an adoptee] pursuant to this section, the department  
41 shall search the records of the department to determine whether the  
42 adoptee's adoption occurred within the state.

43 (a) If the department determines that the adoption occurred within the  
44 state, it shall notify the court wherein the adoption occurred to submit  
45 to the department non-identifying information as may be contained in the  
46 records of the court and the names of the birth parents of the adoptee.  
47 Notwithstanding any other provision of law to the contrary, the court  
48 shall thereupon transmit to the department non-identifying information  
49 as may be contained in the records of the court, and the names of the  
50 birth parents of the adoptee, provided that, if the court determines  
51 from its records that the adoption was from an authorized agency, the  
52 court shall submit to the department only the name and address of such  
53 authorized agency and the names of the birth parents of the adoptee. In  
54 such cases, unless the adoptee registrant [or the biological sibling  
55 registrant] shall have elected otherwise, the department shall notify  
56 the authorized agency whose name was provided by the court to release

1 promptly to the adoptee [or biological sibling registrant] all non-iden-  
2 tifying information as may be contained in the agency records. Such  
3 agency shall thereafter promptly release the non-identifying information  
4 to the adoptee registrant. If the adoptee registrant shall have elected  
5 not to have the information released to him or her by the authorized  
6 agency, the agency shall submit promptly to the department all non-iden-  
7 tifying information as may be contained in the agency records. In any  
8 case where the agency records are incomplete, no longer exist or are  
9 otherwise unavailable, the department shall so notify the court. The  
10 court shall thereupon promptly submit such non-identifying information  
11 as may be contained in their records. If no authorized agency was  
12 involved or if the adoptee registrant shall have elected not to have  
13 release of information by the authorized agency involved in such  
14 adoption, the department shall release the non-identifying information  
15 to the adoptee registrant. The department and/or an authorized agency  
16 may restrict the nature of the non-identifying information released  
17 pursuant to this section upon a reasonable determination that disclosure  
18 of such non-identifying information would not be in the adoptee's,  
19 biological sibling's, or parent's best interest.

20 (b) If the department determines that the adoption did not occur with-  
21 in the state, it shall notify the adoptee registrant that no record  
22 exists of the adoption occurring within the state.

23 5. Upon acceptance of a registration pursuant to this section, the  
24 department shall search the registry to determine whether the adoptee,  
25 any biological sibling of the adoptee, or birth parents of the adoptee  
26 is also registered.

27 (a) If the department determines the adoptee is not in contact with a  
28 biological sibling under the age of eighteen and that there is a corre-  
29 sponding registration for the adoptee, for [each] EITHER of the birth  
30 parents, and/or for the biological sibling registrant, it shall notify  
31 the court wherein the adoption occurred and the department shall notify  
32 all such persons that a corresponding match has been made and request  
33 such persons' final consent to the release of identifying information.

34 (b) If the department determines that there is no corresponding regis-  
35 tration for the adoptee, for [each] EITHER of the birth parents, and/or  
36 for a biological sibling of the adoptee, it shall notify the registering  
37 person that no corresponding match has been made. The department shall  
38 not solicit or request the consent of the non-registered person or  
39 persons.

40 6. Upon receipt of a final consent by the adoptee, by [each] EITHER of  
41 the birth parents, and/or by a biological sibling of the adoptee, the  
42 department shall, unless the adoptee or biological sibling registrant  
43 shall elect otherwise, if an authorized agency was involved in such  
44 adoption, release identifying information to such agency; such agency  
45 shall thereafter promptly release identifying information ABOUT THE  
46 CONSENTING REGISTRANTS to [all] the CONSENTING registrants. If no  
47 authorized agency was involved, or if any registrant shall have elected  
48 not to have release of the information by the authorized agency involved  
49 in such adoption the department shall release identifying information to  
50 [all] the CONSENTING registrants. Such identifying information shall be  
51 limited to the names and addresses of the CONSENTING registrants and  
52 shall not include any other information contained in the adoption or  
53 birth records. However, nothing in this section shall be construed to  
54 prevent the release of adoption records as otherwise permitted by law.

55 S 4. Subdivision 9 of section 4138-c of the public health law is  
56 REPEALED.

1 S 5. Subdivisions 3, 4, and 5 of section 4138-d of the public health  
2 law, subdivisions 3 and 4 as amended by chapter 588 of the laws of 1999,  
3 the opening paragraph of subdivision 4 as separately amended by chapter  
4 504 of the laws of 1999 and paragraphs (a) and (b) of subdivision 4 and  
5 subdivision 5 as amended by chapter 469 of the laws of 2007, are amended  
6 to read as follows:

7 3. Upon acceptance of a registration [by an adoptee or the biological  
8 sibling registrant] pursuant to this section, the agency shall search  
9 the records of the agency to determine whether the agency was involved  
10 in such adoption.

11 (a) If the agency determines that the agency was not involved in such  
12 adoption, it shall notify the registrant that no record exists of the  
13 adoption and refer the registrant to the department's adoption informa-  
14 tion registry operated pursuant to section forty-one hundred thirty-  
15 eight-c of this [article] TITLE.

16 (b) If the agency determines that the agency was involved in such  
17 adoption, it shall transmit the registration to the adoption information  
18 registry operated by the department and the agency shall release the  
19 non-identifying information, as defined in section [four thousand one]  
20 FORTY-ONE hundred thirty-eight-c of this [article] TITLE, to the adoptee  
21 registrant [or the biological sibling registrant]. The agency may  
22 restrict the nature of the non-identifying information released pursuant  
23 to this section upon a reasonable determination that disclosure of such  
24 non-identifying information would not be in the adoptee's, the biolog-  
25 ical sibling's or parent's best interest.

26 4. Upon acceptance of a registration pursuant to this section, the  
27 department shall search the records of the department to determine  
28 whether the adoptee's adoption occurred within the state. The department  
29 shall establish an authorized agency fee schedule for search costs and  
30 registry costs of an authorized agency.

31 (a) If the department determines that there is a corresponding regis-  
32 tration for the adoptee, for [each] EITHER of the birth parents and/or  
33 for a biological sibling of the adoptee, it shall notify the court wher-  
34 ein the adoption occurred and the department shall notify the agency  
35 that a corresponding match has been made. The agency shall notify all  
36 such [persons] REGISTRANTS that a corresponding match has been made and  
37 request such persons' final consent to the release of identifying infor-  
38 mation.

39 (b) If the department determines that there is no corresponding regis-  
40 tration for the adoptee, for EITHER OF the birth parents and/or for a  
41 biological sibling of the adoptee, it shall notify the agency which  
42 shall notify the registering person that no corresponding match has been  
43 made. The agency shall not solicit or request the consent of the non-re-  
44 gistered person or persons.

45 5. Upon receipt of a final consent by the adoptee, by [each] EITHER of  
46 the birth parents and/or by a biological sibling of the adoptee, the  
47 agency shall release identifying information ABOUT THE CONSENTING REGIS-  
48 TRANTS to [all] the CONSENTING registrants. Such identifying information  
49 shall be limited to the names and addresses of the CONSENTING regis-  
50 trants and shall not include any other information contained in the  
51 adoption or birth records. However, nothing in this section shall be  
52 construed to prevent the release of adoption records as otherwise  
53 permitted by law.

54 S 6. Subdivision 9 of section 4138-d of the public health law is  
55 REPEALED.

56 S 7. This act shall take effect immediately.