

5036

2017-2018 Regular Sessions

I N A S S E M B L Y

February 6, 2017

Introduced by M. of A. WEPRIN, MOSLEY, OTIS, BENEDETTO, HOOPER, TITUS, SEPULVEDA, ORTIZ, MAYER, AUBRY, PICHARDO, CUSICK, BRINDISI, SKOUFIS, MURRAY, THIELE, BRABENEC, DiPIETRO, TITONE, GALEF, RAIJA, STIRPE, COLTON, DILAN, LAVINE, KEARNS, STECK, LOPEZ, WALKER, RICHARDSON, KIM, HIKIND, CAHILL, JEAN-PIERRE, HEVESI, BICHOTTE, JOYNER, SANTABARBARA, DenDEKKER, BLAKE, HUNTER -- Multi-Sponsored by -- M. of A. ARROYO, BARRETT, BUCHWALD, BUTLER, COOK, CURRAN, DAVILA, DINOWITZ, ENGLE-BRIGHT, FAHY, FARRELL, GIGLIO, GJONAJ, GOTTFRIED, GRAF, HAWLEY, JOHNS, KOLB, LALOR, LIFTON, LUPARDO, LUPINACCI, MAGEE, MALLIOTAKIS, McDONALD, McDONOUGH, McKEVITT, M. G. MILLER, MOYA, OAKS, PALMESANO, PALUMBO, PAULIN, PEOPLES-STOKES, PERRY, PRETLOW, RA, RAMOS, RIVERA, RODRIGUEZ, ROSENTHAL, RYAN, SIMANOWITZ, SKARTADOS, SOLAGES, STEC, WALTER, WRIGHT, ZEBROWSKI -- read once and referred to the Committee on Health

AN ACT to amend the domestic relations law and the public health law, in relation to adoptee rights

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

1 Section 1. Legislative findings. The legislature hereby states its
2 intention to acknowledge, support and encourage the life-long health and
3 well-being of persons who have been and will be adopted in the state of
4 New York. The legislature further recognizes that the inability to
5 access accurate and complete medical and self-identifying data of any
6 adopted person may result in such person succumbing to preventable
7 disease, premature death or otherwise unhealthy life. As such, the
8 provisions of this act seek to establish considerations under the law
9 for adopted persons to access their birth information while providing
10 for the privacy of an adopted person and his or her birth and adoptive
11 families.
12 S 2. Subdivision 2 of section 114 of the domestic relations law, as
13 amended by chapter 559 of the laws of 1992 and as designated by chapter
14 601 of the laws of 1994, is amended to read as follows:

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

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1 2. No person, including the attorney for the adoptive parents shall
2 disclose the surname of the child directly or indirectly to the adoptive
3 parents except upon order of the court. No person shall be allowed
4 access to such sealed records and order and any index thereof except
5 upon an order of a judge or surrogate of the court in which the order
6 was made or of a justice of the supreme court. [No] EXCEPT AS PROVIDED
7 IN SUBDIVISIONS FOUR AND FIVE OF THIS SECTION, NO order for disclosure
8 or access and inspection shall be granted except on good cause shown and
9 on due notice to the adoptive parents and to such additional persons as
10 the court may direct. Nothing contained herein shall be deemed to
11 require the state commissioner of health or his OR HER designee to
12 secure a court order authorizing disclosure of information contained in
13 adoption or birth records requested pursuant to the authority of section
14 forty-one hundred thirty-eight-c or section forty-one hundred thirty-
15 eight-d of the public health law; upon the receipt of such request for
16 information, the court shall transmit the information authorized to be
17 released thereunder to the state commissioner of health or his OR HER
18 designee.

19 S 3. Section 114 of the domestic relations law is amended by adding a
20 new subdivision 5 to read as follows:

21 5. NOTWITHSTANDING ANY INCONSISTENT PROVISION OF LAW: (A) AN ADOPTED
22 PERSON WHO HAS ATTAINED THE AGE OF EIGHTEEN YEARS MAY APPLY TO THE COURT
23 IN WHICH THE ORDER OF ADOPTION WAS MADE, OR TO THE SUPREME COURT, TO
24 REQUEST AN ORDER RELEASING A CERTIFIED COPY OF HIS OR HER ORIGINAL LONG
25 FORM BIRTH CERTIFICATE, OR WHERE NO BIRTH CERTIFICATE IS AVAILABLE, THE
26 IDENTIFYING INFORMATION OF HIS OR HER BIRTH PARENT OR PARENTS, IN
27 ACCORDANCE WITH THIS SUBDIVISION. SUCH APPLICATION SHALL INCLUDE SUFFI-
28 CIENT PROOF OF IDENTITY OF SUCH ADOPTED PERSON.

29 (B) UPON RECEIPT OF AN APPLICATION PURSUANT TO PARAGRAPH (A) OF THIS
30 SUBDIVISION, THE COURT SHALL PROVIDE THE DEPARTMENT OF HEALTH, OR ORDER
31 THAT SUCH DEPARTMENT BE PROVIDED, WITH THE IDENTIFYING INFORMATION OF
32 THE ADOPTED PERSON'S BIRTH PARENT OR PARENTS AND DIRECT THE DEPARTMENT
33 OF HEALTH TO MAKE A REASONABLE AND GOOD FAITH EFFORT, DOCUMENTED IN
34 WRITING AND COMPLETED WITHIN ONE HUNDRED TWENTY DAYS, TO NOTIFY THE
35 BIRTH PARENT OR PARENTS AND ADVISE SUCH PARENT OR PARENTS THAT THE
36 ADOPTED PERSON HAS MADE AN APPLICATION PURSUANT TO THIS SUBDIVISION.
37 SUCH NOTIFICATION AND ADVISORY GIVEN SHALL COMPLY WITH ANY TERMS AND
38 CONDITIONS SET FORTH BY THE COURT AND SHALL BE MADE BY MEANS DESIGNED TO
39 BE SENSITIVE TO THE PERSONAL NATURE OF THE MATTER. SUCH NOTIFICATION
40 SHALL ALSO INCLUDE AN ADVISORY TO SUCH PARENT OR PARENTS ABOUT THE
41 ADOPTION MEDICAL INFORMATION REGISTRY ESTABLISHED BY SECTION FORTY-ONE
42 HUNDRED THIRTY-EIGHT-C OF THE PUBLIC HEALTH LAW AND THE PROCEDURES BY
43 WHICH A BIRTH PARENT MAY PROVIDE MEDICAL INFORMATION TO THE REGISTRY.
44 THE DEPARTMENT OF HEALTH SHALL, BEFORE MAKING EFFORTS TO NOTIFY THE
45 BIRTH PARENT OR PARENTS, DETERMINE WHETHER SUCH PARENT OR PARENTS HAVE
46 ALREADY FILED A WRITTEN CONFIRMATION WITH THE COURT OR THE DEPARTMENT OF
47 HEALTH PURSUANT TO PARAGRAPH (H) OF THIS SUBDIVISION OR A BIRTH PARENT
48 REGISTRATION CONSENT FORM WITH THE ADOPTION INFORMATION REGISTRY PURSU-
49 ANT TO SUBDIVISION TEN OF SECTION FORTY-ONE HUNDRED THIRTY-EIGHT-C OF
50 THE PUBLIC HEALTH LAW. WHERE SUCH CONFIRMATION OR CONSENT FORM IS ON
51 FILE, THE DEPARTMENT OF HEALTH SHALL NOTIFY THE COURT AND NO SUCH
52 EFFORTS TO NOTIFY THE PARENT SHALL BE MADE.

53 (C) UPON NOTIFICATION PURSUANT TO PARAGRAPH (B) OF THIS SUBDIVISION,
54 OR EARLIER AT THE DISCRETION OF THE BIRTH PARENT PURSUANT TO PARAGRAPH
55 (H) OF THIS SUBDIVISION, SUCH BIRTH PARENT MAY COMPLETE A WRITTEN AND
56 NOTARIZED CONFIRMATION THAT HE OR SHE WISHES TO MAINTAIN CONFIDENTIALITY

1 OF IDENTIFYING INFORMATION, OR THAT HE OR SHE CONSENTS TO THE RELEASE OF
2 IDENTIFYING INFORMATION.

3 (D) UPON RECEIPT OF SUCH WRITTEN CONFIRMATION, OR WHERE THE PARENT HAS
4 COMPLETED A BIRTH PARENT REGISTRATION CONSENT FORM PURSUANT TO SUBDIVI-
5 SION TEN OF SECTION FORTY-ONE HUNDRED THIRTY-EIGHT-C OF THE PUBLIC
6 HEALTH LAW, THE DEPARTMENT OF HEALTH SHALL NOTIFY THE COURT AND PROVIDE
7 THE COURT WITH THE WRITTEN CONFIRMATION OR CONSENT FORM, AS THE CASE MAY
8 BE, COMPLETED BY THE BIRTH PARENT. WHERE SUCH CONSENT FORM HAS BEEN
9 REVOKED BY A BIRTH PARENT, THE DEPARTMENT OF HEALTH SHALL SO NOTIFY THE
10 COURT AND SUCH REVOCATION SHALL BE CONSIDERED BY THE COURT AS A REQUEST
11 FOR CONTINUED CONFIDENTIALITY OF IDENTIFYING INFORMATION.

12 (I) IF THE BIRTH PARENT CONSENTS TO THE RELEASE OF IDENTIFYING INFOR-
13 MATION, THE COURT SHALL (A) ORDER THE RELEASE OF A CERTIFIED COPY OF THE
14 LONG-FORM BIRTH CERTIFICATE TO THE ADOPTED PERSON, OR (B) WHEN SUCH
15 BIRTH CERTIFICATE IS NOT AVAILABLE, ORDER THAT THE IDENTIFYING INFORMA-
16 TION BE MADE AVAILABLE TO THE ADOPTED PERSON.

17 (II) IF THE BIRTH PARENT REQUESTS CONTINUED CONFIDENTIALITY, THE COURT
18 SHALL DIRECT THE RELEASE OF A CERTIFIED COPY OF THE BIRTH CERTIFICATE
19 WITH THE IDENTIFYING INFORMATION REGARDING SUCH PARENT REDACTED, AND
20 SHALL PROVIDE SUCH ADOPTED PERSON WITH SUCH REDACTED COPY AND FILE A
21 COPY OF THE REDACTED VERSION IN THE COURT RECORD. SUCH REDACTED COPY
22 SHALL INCLUDE NON-IDENTIFYING INFORMATION AS THAT TERM IS DEFINED IN
23 SUBDIVISION THREE OF SECTION FORTY-ONE HUNDRED THIRTY-EIGHT-C OF THE
24 PUBLIC HEALTH LAW.

25 (III) WHERE THERE ARE TWO IDENTIFIED BIRTH PARENTS AND ONLY ONE SUCH
26 PARENT HAS REQUESTED CONFIDENTIALITY, THE IDENTIFYING INFORMATION
27 REGARDING THE OTHER PARENT MAY, IN THE DISCRETION OF THE COURT, BE
28 RELEASED TO THE ADOPTED PERSON IN ACCORDANCE WITH THIS SUBDIVISION. THE
29 CONSENT OF ONE PARENT SHALL NOT BE CONSTRUED TO BE CONSENT BY THE OTHER
30 PARENT.

31 THE COURT SHALL ISSUE A WRITTEN ORDER WHEN MAKING A DETERMINATION
32 PURSUANT TO SUBPARAGRAPHS (II) AND (III) OF THIS PARAGRAPH.

33 (E) (I) IF AFTER REASONABLE AND GOOD FAITH EFFORTS PURSUANT TO PARA-
34 GRAPH (A) OF THIS SUBDIVISION, THE BIRTH PARENT IS UNABLE TO BE NOTIFIED
35 OR DOES NOT RESPOND TO SUCH NOTIFICATION, THE DEPARTMENT OF HEALTH SHALL
36 SO NOTIFY THE COURT. UNLESS THE COURT, IN ITS DISCRETION, FOR GOOD CAUSE
37 SPECIFIED IN ITS ORDER, DETERMINES THAT THE RELEASE OF SUCH BIRTH
38 CERTIFICATE OR IDENTIFYING INFORMATION WOULD BE CLEARLY DETRIMENTAL TO
39 THE WELFARE OF THE BIRTH OR ADOPTIVE PARENTS, THE COURT SHALL: (A)
40 RELEASE, OR DIRECT THE RELEASE OF, AN UNREDACTED, CERTIFIED COPY OF THE
41 LONG-FORM BIRTH CERTIFICATE TO THE ADOPTED PERSON, OR (B) IF SUCH BIRTH
42 CERTIFICATE IS NOT AVAILABLE, RELEASE OR DIRECT THE RELEASE OF THE IDEN-
43 TIFYING INFORMATION THAT WOULD HAVE APPEARED ON THE ORIGINAL LONG-FORM
44 BIRTH CERTIFICATE. FOR THE PURPOSES OF THIS PARAGRAPH, GOOD CAUSE SHALL
45 INCLUDE, BUT IS NOT LIMITED TO, EVIDENCE CONCERNING THE WISHES OF THE
46 BIRTH PARENT REGARDING CONFIDENTIALITY AS EXPRESSED AT THE TIME OF THE
47 ADOPTION OR SURRENDER. THE COURT SHALL ISSUE A WRITTEN ORDER WHEN MAKING
48 A DETERMINATION PURSUANT TO THIS PARAGRAPH.

49 (II) WHERE THE COURT DETERMINES NOT TO RELEASE AN UNREDACTED BIRTH
50 CERTIFICATE PURSUANT TO SUBPARAGRAPH (I) OF THIS PARAGRAPH, THE COURT
51 SHALL DIRECT THE RELEASE OF A CERTIFIED COPY OF THE BIRTH CERTIFICATE
52 WITH THE IDENTIFYING INFORMATION REGARDING THE BIRTH PARENT OR PARENTS
53 REDACTED, AND SHALL PROVIDE SUCH ADOPTED PERSON WITH SUCH REDACTED COPY.

54 (F) UPON THE CONSENT OF A BIRTH PARENT TO RELEASE IDENTIFYING INFORMA-
55 TION PURSUANT TO THIS SUBDIVISION, THE DEPARTMENT OF HEALTH SHALL
56 PROVIDE SUCH PARENT WITH A CONTACT PREFERENCE FORM THAT SHALL, IF

1 COMPLETED BY THE BIRTH PARENT, ACCOMPANY A COPY OF A BIRTH CERTIFICATE
2 OR OTHER IDENTIFYING INFORMATION PROVIDED TO THE ADOPTED PERSON UNDER
3 THIS SUBDIVISION AND BE FILED WITH THE ADOPTION INFORMATION REGISTRY
4 ESTABLISHED BY SECTION FORTY-ONE HUNDRED THIRTY-EIGHT-C OF THE PUBLIC
5 HEALTH LAW. THE CONTACT PREFERENCE FORM SHALL INCLUDE THE FOLLOWING
6 CONTENT TO BE COMPLETED AT THE OPTION OF THE BIRTH PARENT:

7 (I) I AM WILLING TO OR WOULD LIKE TO BE CONTACTED.

8 (II) I WOULD PREFER TO BE CONTACTED ONLY THROUGH AN INTERMEDIARY.

9 (III) I HAVE COMPLETED A MEDICAL HISTORY FORM AND HAVE FILED IT WITH
10 THE DEPARTMENT OF HEALTH.

11 (IV) PLEASE DO NOT CONTACT ME. IF I DECIDE LATER THAT I WOULD LIKE TO
12 BE CONTACTED, I WILL SUBMIT AN UPDATED CONTACT PREFERENCE FORM TO THE
13 COURT OR THE DEPARTMENT OF HEALTH.

14 (V) ADD ANY ADDITIONAL INFORMATION HERE (IF DESIRED):

15 THE MEDICAL HISTORY FORM SHALL BE IN A FORM PRESCRIBED BY THE DEPART-
16 MENT OF HEALTH AND SHALL BE SUPPLIED TO THE BIRTH PARENT WITH A CONTACT
17 PREFERENCE FORM.

18 THE MEDICAL HISTORY FORM AND CONTACT PREFERENCE FORM ARE CONFIDENTIAL
19 COMMUNICATIONS FROM THE BIRTH PARENT TO THE PERSON NAMED ON THE SEALED
20 BIRTH CERTIFICATE AND SHALL BE PLACED IN SEPARATE SEALED ENVELOPES UPON
21 RECEIPT FROM THE BIRTH PARENT.

22 THE SEALED ENVELOPES CONTAINING THE CONTACT PREFERENCE FORM AND
23 MEDICAL HISTORY FORM SHALL BE RELEASED TO A PERSON REQUESTING HIS OR HER
24 BIRTH CERTIFICATE UNDER THIS SUBDIVISION OR HIS OR HER AGENT, SUCH AS
25 HIS OR HER ATTORNEY, WITH APPROPRIATE AUTHORIZATION. THE CONTACT PREF-
26 ERENCE FORM AND MEDICAL HISTORY FORM ARE PRIVATE COMMUNICATIONS FROM THE
27 BIRTH PARENT TO THE PERSON NAMED ON THE SEALED BIRTH CERTIFICATE AND NO
28 COPIES OF THE FORMS SHALL BE RETAINED BY THE COURT.

29 (G) THE DEPARTMENT OF HEALTH SHALL DEVELOP AN AFFIRMATIVE INFORMATION
30 CAMPAIGN AND WIDELY DISSEMINATE TO THE PUBLIC, THROUGH ITS WEBSITE,
31 PUBLIC SERVICE ANNOUNCEMENTS AND OTHER MEANS, IN MULTIPLE LANGUAGES AND
32 THROUGH MULTIPLE OUTLETS, INFORMATION CONCERNING THE ADOPTION INFORMA-
33 TION REGISTRY ESTABLISHED BY SECTION FORTY-ONE HUNDRED THIRTY-EIGHT-C OF
34 THE PUBLIC HEALTH LAW AND THE PROVISIONS OF THIS SUBDIVISION, INCLUDING,
35 BUT NOT LIMITED TO, THE MEANS BY WHICH A BIRTH PARENT MAY FILE A WRITTEN
36 CONFIRMATION PURSUANT TO PARAGRAPH (H) OF THIS SUBDIVISION WITH THE
37 COURT THAT ORDERED THE ADOPTION OR THE DEPARTMENT OF HEALTH THAT HE OR
38 SHE WISHES TO MAINTAIN THE CONFIDENTIALITY OF IDENTIFYING INFORMATION,
39 OR CONSENTS TO THE RELEASE OF SUCH IDENTIFYING INFORMATION.

40 (H) A BIRTH PARENT MAY, AT ANY TIME, FILE A WRITTEN AND NOTARIZED
41 CONFIRMATION WITH THE COURT THAT ORDERED THE ADOPTION OR WITH THE
42 DEPARTMENT OF HEALTH INDICATING THAT HE OR SHE WISHES TO MAINTAIN CONFID-
43 ENTIALITY OF IDENTIFYING INFORMATION OR THAT HE OR SHE CONSENTS TO THE
44 RELEASE OF IDENTIFYING INFORMATION. THE DEPARTMENT OF HEALTH SHALL NOTI-
45 FY THE COURT AND PROVIDE THE COURT WITH A COPY OF SUCH WRITTEN CONFIRMA-
46 TION. THE COURT SHALL HONOR SUCH WRITTEN CONFIRMATION UNLESS IT IS WITH-
47 DRAWN OR MODIFIED, IN NOTARIZED WRITING, BY THE BIRTH PARENT.

48 (I) FOR THE PURPOSES OF THIS SUBDIVISION, "ADOPTED PERSON" SHALL
49 INCLUDE A PERSON WHO WAS SURRENDERED AS DESCRIBED IN SUBDIVISION SEVEN
50 OF SECTION ONE HUNDRED NINE OF THIS ARTICLE.

51 S 4. Subdivision 10 of section 4138-c of the public health law, as
52 added by chapter 435 of the laws of 2008, is amended and a new subdivi-
53 sion 10-a is added to read as follows:

54 10. The commissioner is directed to develop an adoption information
55 registry birth parent registration consent form to be completed at the
56 time of surrender or consent to adoption. Such form shall include check-

1 off boxes to be appropriately marked by the biological parent or parents
2 whose consent is necessary for the relinquishment of such child indicat-
3 ing whether or not such parent consents to the receipt of identifying
4 information AND A CERTIFIED COPY OF THE ORIGINAL BIRTH CERTIFICATE by
5 the child to be adopted. A copy of such form shall be sent to the
6 department with copies of the original and amended birth certificates.
7 Such form shall state that it is the responsibility of the birth parent
8 to update the registry with any changes in contact information. The form
9 shall additionally advise the biological parents of the adoption medical
10 information sub-registry and the procedures by which a birth parent may
11 provide medical information to the sub-registry. Notwithstanding any
12 inconsistent provision of law to the contrary, the commissioner is
13 directed to develop any rules and regulations necessary to expedite the
14 transfer of information from any agency, court or department necessary
15 to implement this subdivision.

16 10-A. NOTWITHSTANDING ANY INCONSISTENT PROVISION OF LAW TO THE CONTRA-
17 RY, FOR SURRENDERS OCCURRING AND ORDERS OF ADOPTIONS ENTERED AFTER THE
18 EFFECTIVE DATE OF THIS SUBDIVISION, WHERE THE BIOLOGICAL PARENT OR
19 PARENTS WHOSE CONSENT IS NECESSARY FOR THE RELINQUISHMENT OF SUCH CHILD
20 CONSENTS TO THE RELEASE OF A CERTIFIED COPY OF THE CHILD'S ORIGINAL
21 BIRTH CERTIFICATE OR DOES NOT AFFIRMATIVELY REQUEST, ON THE FORM
22 DESCRIBED IN SUBDIVISION TEN OF THIS SECTION, THAT SUCH ORIGINAL BIRTH
23 CERTIFICATE REMAIN CONFIDENTIAL, THE SURRENDERED OR ADOPTED PERSON
24 SHALL, AFTER ATTAINING THE AGE OF EIGHTEEN AND UPON APPLICATION TO THE
25 DEPARTMENT AND ADEQUATE PROOF OF IDENTITY, HAVE THE RIGHT TO RECEIVE A
26 CERTIFIED COPY OF THEIR ORIGINAL BIRTH CERTIFICATE.

27 S 5. This act shall take effect April 15, 2018, provided, however,
28 that paragraphs (g) and (h) of subdivision 5 of section 114 of the
29 domestic relations law, as added by section three of this act, shall
30 take effect on the thirtieth day after such effective date.