

4845--B

2017-2018 Regular Sessions

I N S E N A T E

March 3, 2017

Introduced by Sens. LANZA, BOYLE -- read twice and ordered printed, and when printed to be committed to the Committee on Children and Families -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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:

15 2. No person, including the attorney for the adoptive parents shall  
16 disclose the surname of the child directly or indirectly to the adoptive  
17 parents except upon order of the court. No person shall be allowed  
18 access to such sealed records and order and any index thereof except  
19 upon an order of a judge or surrogate of the court in which the order  
20 was made or of a justice of the supreme court. [No] EXCEPT AS PROVIDED  
21 IN SUBDIVISIONS FOUR AND FIVE OF THIS SECTION, NO order for disclosure

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

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1 or access and inspection shall be granted except on good cause shown and  
2 on due notice to the adoptive parents and to such additional persons as  
3 the court may direct. Nothing contained herein shall be deemed to  
4 require the state commissioner of health or his OR HER designee to  
5 secure a court order authorizing disclosure of information contained in  
6 adoption or birth records requested pursuant to the authority of section  
7 forty-one hundred thirty-eight-c or section forty-one hundred thirty-  
8 eight-d of the public health law; upon the receipt of such request for  
9 information, the court shall transmit the information authorized to be  
10 released thereunder to the state commissioner of health or his OR HER  
11 designee.

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

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

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

46 (C) UPON NOTIFICATION PURSUANT TO PARAGRAPH (B) OF THIS SUBDIVISION,  
47 OR EARLIER AT THE DISCRETION OF THE BIRTH PARENT PURSUANT TO PARAGRAPH  
48 (H) OF THIS SUBDIVISION, SUCH BIRTH PARENT MAY COMPLETE A WRITTEN AND  
49 NOTARIZED CONFIRMATION THAT HE OR SHE WISHES TO MAINTAIN CONFIDENTIALITY  
50 OF IDENTIFYING INFORMATION, OR THAT HE OR SHE CONSENTS TO THE RELEASE OF  
51 IDENTIFYING INFORMATION.

52 (D) UPON RECEIPT OF SUCH WRITTEN CONFIRMATION, OR WHERE THE PARENT HAS  
53 COMPLETED A BIRTH PARENT REGISTRATION CONSENT FORM PURSUANT TO SUBDIVI-  
54 SION TEN OF SECTION FORTY-ONE HUNDRED THIRTY-EIGHT-C OF THE PUBLIC  
55 HEALTH LAW, THE DEPARTMENT OF HEALTH SHALL NOTIFY THE COURT AND PROVIDE  
56 THE COURT WITH THE WRITTEN CONFIRMATION OR CONSENT FORM, AS THE CASE MAY

1 BE, COMPLETED BY THE BIRTH PARENT. WHERE SUCH CONSENT FORM HAS BEEN  
2 REVOKED BY A BIRTH PARENT, THE DEPARTMENT OF HEALTH SHALL SO NOTIFY THE  
3 COURT AND SUCH REVOCATION SHALL BE CONSIDERED BY THE COURT AS A REQUEST  
4 FOR CONTINUED CONFIDENTIALITY OF IDENTIFYING INFORMATION.

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

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

18 (III) WHERE THERE ARE TWO IDENTIFIED BIRTH PARENTS AND ONLY ONE SUCH  
19 PARENT HAS REQUESTED CONFIDENTIALITY, THE IDENTIFYING INFORMATION  
20 REGARDING THE OTHER PARENT MAY, IN THE DISCRETION OF THE COURT, BE  
21 RELEASED TO THE ADOPTED PERSON IN ACCORDANCE WITH THIS SUBDIVISION. THE  
22 CONSENT OF ONE PARENT SHALL NOT BE CONSTRUED TO BE CONSENT BY THE OTHER  
23 PARENT.

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

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

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

47 (F) UPON THE CONSENT OF A BIRTH PARENT TO RELEASE IDENTIFYING INFORMA-  
48 TION PURSUANT TO THIS SUBDIVISION, THE DEPARTMENT OF HEALTH SHALL  
49 PROVIDE SUCH PARENT WITH A CONTACT PREFERENCE FORM THAT SHALL, IF  
50 COMPLETED BY THE BIRTH PARENT, ACCOMPANY A COPY OF A BIRTH CERTIFICATE  
51 OR OTHER IDENTIFYING INFORMATION PROVIDED TO THE ADOPTED PERSON UNDER  
52 THIS SUBDIVISION AND BE FILED WITH THE ADOPTION INFORMATION REGISTRY  
53 ESTABLISHED BY SECTION FORTY-ONE HUNDRED THIRTY-EIGHT-C OF THE PUBLIC  
54 HEALTH LAW. THE CONTACT PREFERENCE FORM SHALL INCLUDE THE FOLLOWING  
55 CONTENT TO BE COMPLETED AT THE OPTION OF THE BIRTH PARENT:

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

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

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

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

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

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

11 THE MEDICAL HISTORY FORM AND CONTACT PREFERENCE FORM ARE CONFIDENTIAL  
12 COMMUNICATIONS FROM THE BIRTH PARENT TO THE PERSON NAMED ON THE SEALED  
13 BIRTH CERTIFICATE AND SHALL BE PLACED IN SEPARATE SEALED ENVELOPES UPON  
14 RECEIPT FROM THE BIRTH PARENT.

15 THE SEALED ENVELOPES CONTAINING THE CONTACT PREFERENCE FORM AND  
16 MEDICAL HISTORY FORM SHALL BE RELEASED TO A PERSON REQUESTING HIS OR HER  
17 BIRTH CERTIFICATE UNDER THIS SUBDIVISION OR HIS OR HER AGENT, SUCH AS  
18 HIS OR HER ATTORNEY, WITH APPROPRIATE AUTHORIZATION. THE CONTACT PREF-  
19 ERENCE FORM AND MEDICAL HISTORY FORM ARE PRIVATE COMMUNICATIONS FROM THE  
20 BIRTH PARENT TO THE PERSON NAMED ON THE SEALED BIRTH CERTIFICATE AND NO  
21 COPIES OF THE FORMS SHALL BE RETAINED BY THE COURT.

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

33 (H) A BIRTH PARENT MAY, AT ANY TIME, FILE A WRITTEN AND NOTARIZED  
34 CONFIRMATION WITH THE COURT THAT ORDERED THE ADOPTION OR WITH THE  
35 DEPARTMENT OF HEALTH INDICATING THAT HE OR SHE WISHES TO MAINTAIN CONFIDENTIALITY OF IDENTIFYING INFORMATION OR THAT HE OR SHE CONSENTS TO THE RELEASE OF IDENTIFYING INFORMATION. THE DEPARTMENT OF HEALTH SHALL NOTIFY THE COURT AND PROVIDE THE COURT WITH A COPY OF SUCH WRITTEN CONFIRMATION. THE COURT SHALL HONOR SUCH WRITTEN CONFIRMATION UNLESS IT IS WITHDRAWN OR MODIFIED, IN NOTARIZED WRITING, BY THE BIRTH PARENT.

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

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

47 10. The commissioner is directed to develop an adoption information  
48 registry birth parent registration consent form to be completed at the  
49 time of surrender or consent to adoption. Such form shall include check-  
50 off boxes to be appropriately marked by the biological parent or parents  
51 whose consent is necessary for the relinquishment of such child indicat-  
52 ing whether or not such parent consents to the receipt of identifying  
53 information AND A CERTIFIED COPY OF THE ORIGINAL BIRTH CERTIFICATE by  
54 the child to be adopted. A copy of such form shall be sent to the  
55 department with copies of the original and amended birth certificates.  
56 Such form shall state that it is the responsibility of the birth parent

1 to update the registry with any changes in contact information. The form  
2 shall additionally advise the biological parents of the adoption medical  
3 information sub-registry and the procedures by which a birth parent may  
4 provide medical information to the sub-registry. Notwithstanding any  
5 inconsistent provision of law to the contrary, the commissioner is  
6 directed to develop any rules and regulations necessary to expedite the  
7 transfer of information from any agency, court or department necessary  
8 to implement this subdivision.

9 10-A. NOTWITHSTANDING ANY INCONSISTENT PROVISION OF LAW TO THE CONTRA-  
10 RY, FOR SURRENDERS OCCURRING AND ORDERS OF ADOPTIONS ENTERED AFTER THE  
11 EFFECTIVE DATE OF THIS SUBDIVISION, WHERE THE BIOLOGICAL PARENT OR  
12 PARENTS WHOSE CONSENT IS NECESSARY FOR THE RELINQUISHMENT OF SUCH CHILD  
13 CONSENTS TO THE RELEASE OF A CERTIFIED COPY OF THE CHILD'S ORIGINAL  
14 BIRTH CERTIFICATE OR DOES NOT AFFIRMATIVELY REQUEST, ON THE FORM  
15 DESCRIBED IN SUBDIVISION TEN OF THIS SECTION, THAT SUCH ORIGINAL BIRTH  
16 CERTIFICATE REMAIN CONFIDENTIAL, THE SURRENDERED OR ADOPTED PERSON  
17 SHALL, AFTER ATTAINING THE AGE OF EIGHTEEN AND UPON APPLICATION TO THE  
18 DEPARTMENT AND ADEQUATE PROOF OF IDENTITY, HAVE THE RIGHT TO RECEIVE A  
19 CERTIFIED COPY OF THEIR ORIGINAL BIRTH CERTIFICATE.

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