

5036--A

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, MURRAY, THIELE, BRABENEC, DiPIETRO, TITONE, GALEF, RAIA, 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, ENGLEBRIGHT, 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 -- 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.

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

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1 S 2. Subdivision 2 of section 114 of the domestic relations law, as  
2 amended by chapter 559 of the laws of 1992 and as designated by chapter  
3 601 of the laws of 1994, is amended to read as follows:

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

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

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

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

1 (C) UPON NOTIFICATION PURSUANT TO PARAGRAPH (B) OF THIS SUBDIVISION,  
2 OR EARLIER AT THE DISCRETION OF THE BIRTH PARENT PURSUANT TO PARAGRAPH  
3 (H) OF THIS SUBDIVISION, SUCH BIRTH PARENT MAY COMPLETE A WRITTEN AND  
4 NOTARIZED CONFIRMATION THAT HE OR SHE WISHES TO MAINTAIN CONFIDENTIALITY  
5 OF IDENTIFYING INFORMATION, OR THAT HE OR SHE CONSENTS TO THE RELEASE OF  
6 IDENTIFYING INFORMATION.

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

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

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

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

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

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

53 (II) WHERE THE COURT DETERMINES NOT TO RELEASE AN UNREDACTED BIRTH  
54 CERTIFICATE PURSUANT TO SUBPARAGRAPH (I) OF THIS PARAGRAPH, THE COURT  
55 SHALL DIRECT THE RELEASE OF A CERTIFIED COPY OF THE BIRTH CERTIFICATE

1 WITH THE IDENTIFYING INFORMATION REGARDING THE BIRTH PARENT OR PARENTS  
2 REDACTED, AND SHALL PROVIDE SUCH ADOPTED PERSON WITH SUCH REDACTED COPY.

3 (F) UPON THE CONSENT OF A BIRTH PARENT TO RELEASE IDENTIFYING INFORMA-  
4 TION PURSUANT TO THIS SUBDIVISION, THE DEPARTMENT OF HEALTH SHALL  
5 PROVIDE SUCH PARENT WITH A CONTACT PREFERENCE FORM THAT SHALL, IF  
6 COMPLETED BY THE BIRTH PARENT, ACCOMPANY A COPY OF A BIRTH CERTIFICATE  
7 OR OTHER IDENTIFYING INFORMATION PROVIDED TO THE ADOPTED PERSON UNDER  
8 THIS SUBDIVISION AND BE FILED WITH THE ADOPTION INFORMATION REGISTRY  
9 ESTABLISHED BY SECTION FORTY-ONE HUNDRED THIRTY-EIGHT-C OF THE PUBLIC  
10 HEALTH LAW. THE CONTACT PREFERENCE FORM SHALL INCLUDE THE FOLLOWING  
11 CONTENT TO BE COMPLETED AT THE OPTION OF THE BIRTH PARENT:

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

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

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

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

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

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

23 THE MEDICAL HISTORY FORM AND CONTACT PREFERENCE FORM ARE CONFIDENTIAL  
24 COMMUNICATIONS FROM THE BIRTH PARENT TO THE PERSON NAMED ON THE SEALED  
25 BIRTH CERTIFICATE AND SHALL BE PLACED IN SEPARATE SEALED ENVELOPES UPON  
26 RECEIPT FROM THE BIRTH PARENT.

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

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

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

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

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

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

22 10-A. NOTWITHSTANDING ANY INCONSISTENT PROVISION OF LAW TO THE CONTRA-  
23 RY, FOR SURRENDERS OCCURRING AND ORDERS OF ADOPTIONS ENTERED AFTER THE  
24 EFFECTIVE DATE OF THIS SUBDIVISION THE SURRENDERED OR ADOPTED PERSON  
25 SHALL, AFTER ATTAINING THE AGE OF EIGHTEEN AND UPON APPLICATION TO THE  
26 DEPARTMENT AND ADEQUATE PROOF OF IDENTITY, HAVE THE RIGHT TO RECEIVE A  
27 CERTIFIED COPY OF THEIR ORIGINAL BIRTH CERTIFICATE.

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