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I N A S S E M B L Y

January 26, 2018

Introduced by M. of A. WEPRIN -- read once and referred to the Committee on Health

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

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

1 Section 1. The public health law is amended by adding a new section  
2 4138-e to read as follows:

3 S 4138-E. BILL OF ADOPTEE RIGHTS. 1. THIS SECTION SHALL BE KNOWN AND  
4 MAY BE CITED AS THE "BILL OF ADOPTEE RIGHTS".

5 2. THE LEGISLATURE HEREBY STATES ITS INTENTION TO ACKNOWLEDGE, SUPPORT  
6 AND ENCOURAGE THE LIFE-LONG HEALTH AND WELL-BEING NEEDS OF PERSONS WHO  
7 HAVE BEEN AND WILL BE ADOPTED IN THE STATE OF NEW YORK. THE LEGISLATURE  
8 FURTHER RECOGNIZES THAT THE DENIAL OF ACCESS TO ACCURATE AND COMPLETE  
9 MEDICAL AND SELF-IDENTIFYING DATA OF ANY ADOPTED PERSON, KNOWN AND  
10 WILFULLY WITHHELD BY OTHERS, MAY RESULT IN SUCH PERSON SUCCEMUNG TO  
11 PREVENTABLE DISEASE, PREMATURE DEATH OR OTHERWISE UNHEALTHY LIFE, IS A  
12 VIOLATION OF THAT PERSON'S HUMAN RIGHTS AND IS CONTRARY TO THE TENETS OF  
13 GOVERNANCE. AS SUCH, THE PROVISIONS OF THIS SECTION SEEK TO ESTABLISH  
14 CONSIDERATIONS UNDER THE LAW FOR ADOPTED PERSONS EQUAL TO SUCH CONSIDER-  
15 ATIONS PERMITTED BY LAW TO ALL NON-ADOPTED PERSONS; THIS SECTION DOES SO  
16 WHILE PROVIDING FOR THE PRIVACY OF AN ADOPTED PERSON AND HIS OR HER  
17 BIRTH.

18 3. (A) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, WHEN AN ADOPTED  
19 PERSON ATTAINS THE AGE OF EIGHTEEN YEARS, THAT PERSON SHALL HAVE THE  
20 RIGHT TO RECEIPT OF A CERTIFIED COPY OF HIS OR HER ORIGINAL (LONG FORM,  
21 LINE BY LINE VAULT COPY) BIRTH CERTIFICATE AND ANY CHANGE HIS OR HER  
22 BIRTH PARENT OR PARENTS MAY HAVE ATTACHED TO THAT CERTIFICATE, AND/OR A  
23 MEDICAL HISTORY FORM IF AVAILABLE, UPON APPLICATION, PRESENTATION OF  
24 PROOF OF IDENTIFICATION AND THE PAYMENT OF A NOMINAL FEE.

25 (B) WHEN IT SHALL BE IMPOSSIBLE THROUGH GOOD-FAITH EFFORTS TO PROVIDE  
26 A COPY OF AN ADULT ADOPTED PERSON'S ORIGINAL BIRTH CERTIFICATE (AS IN  
27 THE CASE OF AN ADOPTED PERSON BORN OUTSIDE OF, BUT ADOPTED WITHIN, THE  
28 STATE OF NEW YORK), THE ADULT ADOPTED PERSON SHALL HAVE THE RIGHT TO

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

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1 SECURE FROM A COURT OF COMPETENT JURISDICTION OR THE ADOPTION AGENCY,  
2 THE TRUE AND CORRECT IDENTIFYING INFORMATION THAT WOULD HAVE APPEARED ON  
3 HIS OR HER ORIGINAL BIRTH CERTIFICATE. IN SUCH CASE THE AGENCY SHALL BE  
4 HELD HARMLESS FROM ANY LIABILITY ARISING OUT OF THE DISCLOSURE.

5 4. A BIRTH PARENT MAY AT ANY TIME REQUEST FROM THE DEPARTMENT A  
6 CONTACT PREFERENCE FORM THAT SHALL ACCOMPANY A BIRTH CERTIFICATE ISSUED  
7 UNDER THIS TITLE. THE CONTACT PREFERENCE FORM SHALL PROVIDE THE FOLLOW-  
8 ING INFORMATION TO BE COMPLETED AT THE OPTION OF THE BIRTH PARENT:

9 (A) I WOULD LIKE TO BE CONTACTED.

10 (B) I WOULD PREFER TO BE CONTACTED ONLY THROUGH AN INTERMEDIARY.

11 (C) I HAVE COMPLETED A MEDICAL HISTORY FORM AND HAVE FILED IT WITH THE  
12 DEPARTMENT.

13 (D) PLEASE DO NOT CONTACT ME. IF I DECIDE LATER THAT I WOULD LIKE TO  
14 BE CONTACTED, I WILL SUBMIT AN UPDATED CONTACT PREFERENCE FORM TO THE  
15 DEPARTMENT.

16 THE MEDICAL HISTORY FORM SHALL BE IN A FORM PRESCRIBED BY THE DEPART-  
17 MENT AND SHALL BE SUPPLIED TO THE BIRTH PARENT UPON REQUEST OF A CONTACT  
18 PREFERENCE FORM FROM THE DEPARTMENT.

19 ONLY THOSE PERSONS WHO ARE AUTHORIZED TO PROCESS APPLICATIONS MADE  
20 UNDER THIS TITLE MAY PROCESS CONTACT PREFERENCE AND MEDICAL HISTORY  
21 FORMS.

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

27 THE SEALED ENVELOPES CONTAINING THE CONTACT PREFERENCE FORM AND  
28 MEDICAL HISTORY FORM MAY BE RELEASED TO A PERSON REQUESTING HIS OR HER  
29 OWN ORIGINAL BIRTH CERTIFICATE UNDER THIS TITLE. THE CONTACT PREFERENCE  
30 FORM AND MEDICAL HISTORY FORM ARE PRIVATE COMMUNICATIONS FROM THE BIRTH  
31 PARENT TO THE PERSON NAMED ON THE SEALED BIRTH CERTIFICATE AND NO COPIES  
32 OF THE FORMS SHALL BE RETAINED BY THE DEPARTMENT. WHERE ONLY A MEDICAL  
33 HISTORY FORM IS REQUESTED THE BIRTH CERTIFICATE AND CONTACT PREFERENCE  
34 FORM SHALL NOT BE SENT, BUT MAY BE REQUESTED AT A LATER DATE.

35 S 2. Subdivision 5 of section 4138 of the public health law, as  
36 amended by chapter 201 of the laws of 1972, is amended to read as  
37 follows:

38 5. Thereafter, when a certified copy or certified transcript of the  
39 certificate of birth of such a person, or a certification of birth for  
40 such person is issued, it shall be based upon the new certificate of  
41 birth, except when an order of a court of competent jurisdiction shall  
42 require the issuance of a copy of the original certificate of birth OR  
43 UPON A WRITTEN NOTARIZED REQUEST BY THE ADULT ADOPTED PERSON HIMSELF OR  
44 HERSELF ONCE PROPER PROOF OF IDENTITY IS PROVIDED TO THE REGISTRAR.

45 S 3. Paragraph (b) of subdivision 3 of section 4138 of the public  
46 health law, as added by chapter 201 of the laws of 1972, is amended to  
47 read as follows:

48 (b) Thereafter, when a verified transcript or certification of birth  
49 of such person is issued by the registrar, it shall be based upon the  
50 new certificate, except when an order of a court of competent jurisdic-  
51 tion shall require the issuance of a verified transcript or certifi-  
52 cation based upon the original local record of birth OR UPON A WRITTEN  
53 NOTARIZED REQUEST BY THE ADULT ADOPTED PERSON HIMSELF OR HERSELF ONCE  
54 PROPER PROOF OF IDENTITY IS PROVIDED TO THE REGISTRAR.

1 S 4. Subdivision 7 of section 4138 of the public health law, as  
2 amended by chapter 644 of the laws of 1988, is amended to read as  
3 follows:

4 7. Whenever the commissioner makes a new birth certificate for any  
5 person pursuant to the provisions of subdivision one of this section, he  
6 OR SHE shall forward to such person, if eighteen years of age or more,  
7 [or to the parents of such person,] a certified copy, a certified tran-  
8 script [or] AND a certification of birth, [whichever he deems appropri-  
9 ate under the circumstances,] without making any charge therefor.

10 S 5. Section 4138 of the public health law is amended by adding two  
11 new subdivisions 8 and 9 to read as follows:

12 8. (A) AN ADOPTED PERSON EIGHTEEN YEARS OF AGE OR OLDER, OR THE BIRTH  
13 PARENT OR PARENTS, MAY SUBMIT TO THE REGISTRAR A NOTICE OF CHANGE OF  
14 NAME AND/OR ADDRESS AND SUCH INFORMATION SHALL BE ATTACHED TO THE  
15 ORIGINAL BIRTH CERTIFICATE OF THE ADOPTED PERSON.

16 (B) THE REGISTRAR SHALL DISCLOSE TO THE BIRTH PARENT OR PARENTS AT  
17 SUCH PARENT'S OR PARENTS' REQUEST, THE MOST CURRENT NAME AND ADDRESS OF  
18 AN ADOPTED PERSON IF THAT ADOPTED PERSON HAS REQUESTED SO BY FILING A  
19 NOTARIZED LETTER WITH THE REGISTRAR.

20 9. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, WHEN AN ADOPTED PERSON  
21 ATTAINS THE AGE OF EIGHTEEN YEARS, HE OR SHE SHALL HAVE THE RIGHT, UPON  
22 APPLICATION, PROOF OF IDENTITY AND PAYMENT OF A NOMINAL FEE, TO A CERTI-  
23 FIED COPY OF HIS OR HER ORIGINAL LONG FORM, LINE BY LINE, VAULT COPY  
24 BIRTH CERTIFICATE AND/OR A MEDICAL HISTORY FORM, IF AVAILABLE.

25 S 6. Paragraph (b) of subdivision 3 of section 4138-d of the public  
26 health law, as amended by chapter 181 of the laws of 2010, is amended to  
27 read as follows:

28 (b) If the agency determines that the agency was involved in such  
29 adoption, it shall transmit the registration to the adoption information  
30 registry operated by the department and the agency shall release the  
31 non-identifying information, as defined in section forty-one hundred  
32 thirty-eight-c of this title, to the [adoptee registrant. The agency may  
33 restrict the nature of the non-identifying information released pursuant  
34 to this section upon a reasonable determination that disclosure of such  
35 non-identifying information would not be in the adoptee's, the biolog-  
36 ical sibling's or parent's best interest] ADOPTED PERSON.

37 S 7. Section 4104 of the public health law, as amended by chapter 153  
38 of the laws of 2011, is amended to read as follows:

39 S 4104. Vital statistics; application of article. The provisions of  
40 this article except for the provisions contained in paragraph (i) of  
41 subdivision two and subdivision four of section four thousand one  
42 hundred, section four thousand one hundred three, subdivision two of  
43 section four thousand one hundred thirty-five, section four thousand one  
44 hundred thirty-five-b, subdivision eight of section four thousand one  
45 hundred seventy-four, paragraphs (b) and (e) of subdivision one, PARA-  
46 GRAPH (B) OF SUBDIVISION THREE, AND SUBDIVISIONS FIVE, SEVEN, EIGHT AND  
47 NINE of section four thousand one hundred thirty-eight, subdivision  
48 eleven of section four thousand one hundred thirty-eight-c, PARAGRAPH  
49 (B) OF SUBDIVISION THREE OF SECTION FOUR THOUSAND ONE HUNDRED  
50 THIRTY-EIGHT-D, SECTION FOUR THOUSAND ONE HUNDRED THIRTY-EIGHT-E and  
51 section four thousand one hundred seventy-nine of this article, shall  
52 not apply to the city of New York.

53 S 8. Subdivision 1 of section 114 of the domestic relations law, as  
54 amended by chapter 751 of the laws of 1989 and designated by chapter 601  
55 of the laws of 1994, is amended to read as follows:

1 1. If satisfied that the best interests of the adoptive child will be  
2 promoted thereby, the judge or surrogate shall make an order approving  
3 the adoption and directing that the adoptive child shall thenceforth be  
4 regarded and treated in all respects as the child of the adoptive  
5 parents or parent. In determining whether the best interests of the  
6 adoptive child will be promoted by the adoption, the judge or surrogate  
7 shall give due consideration to any assurance by a LOCAL commissioner of  
8 social services that he OR SHE will provide necessary support and main-  
9 tenance for the adoptive child pursuant to the social services law. Such  
10 order shall contain the full name, date and place of birth and reference  
11 to the schedule annexed to the petition containing the medical history  
12 of the child in the body thereof and shall direct that the child's  
13 medical history, heritage of the BIRTH parents, which shall include  
14 nationality, ethnic background and race; education, which shall be the  
15 number of years of school completed by the BIRTH parents at the time of  
16 the birth AND ALSO AT THE TIME OF SURRENDER of the adoptive child;  
17 general physical appearance of the BIRTH parents at the time of the  
18 birth AND ALSO AT THE TIME OF SURRENDER of the adoptive child, which  
19 shall include height, weight, color of hair, eyes, skin; occupation of  
20 the BIRTH parents at the time of the birth AND ALSO AT THE TIME OF  
21 SURRENDER of the adoptive child; health and medical history of the BIRTH  
22 parents at the time of the birth AND ALSO AT THE TIME OF SURRENDER of  
23 the adoptive child, including all available information setting forth  
24 conditions or diseases believed to be hereditary, any drugs or medica-  
25 tion taken during the pregnancy by the child's mother; and any other  
26 information which may be a factor influencing the child's present or  
27 future health, INCLUDING THE talents, hobbies and special interests of  
28 THE BIRTH parents as contained in the petition, be furnished to the  
29 adoptive parents. IN RECOGNITION OF THE IMPERATIVE LIFELONG IMPORTANCE  
30 OF SUCH INFORMATION FOR THE HEALTH AND WELL-BEING OF THE ADOPTED PERSON,  
31 IT SHALL BE THE DUTY OF THE LAW GUARDIAN AS PROVIDED FOR BY SECTIONS TWO  
32 HUNDRED FORTY-ONE, TWO HUNDRED FORTY-TWO, TWO HUNDRED FORTY-NINE AND TWO  
33 HUNDRED FORTY-NINE-A OF THE FAMILY COURT ACT TO ENSURE THE COMPREHENSIVE  
34 COMPLETION AND FILING OF ALL THE ABOVE REFERENCED INFORMATION PRIOR TO  
35 THE ACCEPTANCE OF THE TERMINATION OF PARENTAL RIGHTS OR THE ENTRY OF A  
36 CERTIFICATE OF ADOPTION. IT SHALL BE DEEMED BY THAT LEGAL REPRESENTATIVE  
37 THAT SUCH INFORMATION IS ALWAYS IN THE BEST INTEREST OF THE CHILD AND IS  
38 A PROTECTED RIGHT. PRIOR TO TERMINATION OF DUTIES, SUCH LAW GUARDIAN  
39 SHALL PROVIDE, AS DIRECTED BY SECTION FORTY-ONE HUNDRED THIRTY-EIGHT-C  
40 OF THE PUBLIC HEALTH LAW AND SECTIONS THREE HUNDRED SEVENTY-THREE AND  
41 THREE HUNDRED SEVENTY-THREE-A OF THE SOCIAL SERVICES LAW, TO THE RESPEC-  
42 TIVE RESPONSIBLE PARTIES ALL SUCH COLLECTED DATA, AND PROVIDE AN AFFIDA-  
43 VIT TO THE COURT REPORTING ALL DILIGENT EFFORTS TO OBTAIN SUCH DATA. A  
44 COPY OF SUCH AFFIDAVIT SHALL BE APPENDED TO THE ORIGINAL AND ANY AND ALL  
45 AMENDED BIRTH CERTIFICATES. If the judge or surrogate is also satisfied  
46 that there is no reasonable objection to the change of name proposed,  
47 the order shall direct that the name of the adoptive child be changed to  
48 the name stated in the agreement of adoption and that henceforth he OR  
49 SHE shall be known by that name. All such orders made by a family court  
50 judge of Westchester county since September first, nineteen hundred  
51 sixty-two, and on file in the office of the county clerk of such county  
52 shall be transferred to the clerk of the family court of such county.  
53 Such order and all the papers in the proceeding shall be filed in the  
54 office of the court granting the adoption and the order shall be entered  
55 in books which shall be kept under seal and which shall be indexed by  
56 the name of the adoptive parents and by the full original name of the

1 child. Such order, including orders heretofore entered, shall be subject  
2 to inspection and examination only as hereinafter provided. Notwith-  
3 standing the fact that adoption records shall be sealed and secret, they  
4 may be microfilmed and processed pursuant to an order of the court,  
5 provided that such order provides that the confidentiality of such  
6 records be maintained. If the confidentiality is violated, the person or  
7 company violating it can be found guilty of contempt of court. The fact  
8 that the adoptive child was born out of wedlock shall in no case appear  
9 in such order. The written report of the investigation together with all  
10 other papers pertaining to the adoption shall be kept by the judge or  
11 surrogate as a permanent record of his OR HER court and such papers must  
12 be sealed by him OR HER and withheld from inspection. No certified copy  
13 of the order of adoption shall issue unless authorized by court order,  
14 except that certified copies may issue to the agency or agencies in the  
15 proceeding prior to the sealing of the papers. Before the record is  
16 sealed, such order may be granted upon written ex parte application on  
17 good cause shown and upon such conditions as the court may impose. After  
18 the record is sealed, such order may be granted only upon notice as  
19 hereinafter provided for disclosure or access and inspection of records.  
20 The clerk upon request of a person or agency entitled thereto shall  
21 issue certificates of adoption which shall contain only the new name of  
22 the child and the date and place of birth of the child, the name of the  
23 adoptive parents and the date when and court where the adoption was  
24 granted, which certificate as to the facts recited therein shall have  
25 the same force and effect as a certified copy of an order of adoption.

26 S 9. Section 114 of the domestic relations law is amended by adding a  
27 new subdivision 5 to read as follows:

28 5. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, WHEN AN ADOPTED PERSON  
29 ATTAINS THE AGE OF EIGHTEEN YEARS, SUCH ADOPTED PERSON SHALL HAVE THE  
30 RIGHT, UPON APPLICATION, PROOF OF IDENTITY AND PAYMENT OF A NOMINAL FEE,  
31 TO A CERTIFIED COPY OF HIS OR HER ORIGINAL LONG FORM, LINE BY LINE,  
32 VAULT COPY BIRTH CERTIFICATE AND/OR MEDICAL HISTORY FORM, IF AVAILABLE.

33 S 10. This act shall take effect January 15, 2019, provided, however,  
34 that, effective immediately, the commissioner of health is directed to  
35 promulgate such rules and regulations as may be necessary to carry out  
36 the provisions of this act.