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I N S E N A T E

January 23, 2018

Introduced by Sen. LANZA -- read twice and ordered printed, and when printed to be committed 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 SUCCUMBING 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.