

7631--A

I N S E N A T E

February 1, 2018

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

AN ACT to amend the public health law and the domestic relations law, in relation to authorizing adoptees to obtain a certified copy of their birth certificate

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. ADOPTEE'S RIGHT TO A CERTIFIED COPY OF HIS OR HER BIRTH  
4 CERTIFICATE. 1. THE LEGISLATURE HEREBY STATES ITS INTENTION TO ACKNOWLEDGE,  
5 SUPPORT AND ENCOURAGE THE LIFE-LONG HEALTH AND WELL-BEING NEEDS OF  
6 PERSONS WHO HAVE BEEN AND WILL BE ADOPTED IN THIS STATE. THE LEGISLATURE  
7 FURTHER RECOGNIZES THAT THE DENIAL OF ACCESS TO ACCURATE AND COMPLETE  
8 MEDICAL AND SELF-IDENTIFYING DATA OF ANY ADOPTED PERSON, KNOWN AND  
9 WILFULLY WITHHELD BY OTHERS, MAY RESULT IN SUCH PERSON SUCCEUNING TO  
10 PREVENTABLE DISEASE, PREMATURE DEATH OR OTHERWISE UNHEALTHY LIFE, IS A  
11 VIOLATION OF THAT PERSON'S HUMAN RIGHTS AND IS CONTRARY TO THE TENETS OF  
12 GOVERNANCE. AS SUCH, THE PROVISIONS OF THIS SECTION SEEK TO ESTABLISH  
13 CONSIDERATIONS UNDER THE LAW FOR ADOPTED PERSONS EQUAL TO SUCH CONSIDER-  
14 ATIONS PERMITTED BY LAW TO ALL NON-ADOPTED PERSONS; THIS SECTION DOES SO  
15 WHILE PROVIDING FOR THE PRIVACY OF AN ADOPTED PERSON AND HIS OR HER  
16 BIRTH.

17 2. (A) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE COMMISSIONER,  
18 OR ANY PERSON AUTHORIZED BY HIM OR HER, SHALL ISSUE CERTIFIED COPIES OF  
19 ORIGINAL LONG FORM BIRTH CERTIFICATES UPON SPECIFIC REQUEST THEREFOR (I)  
20 BY AN ADOPTEE, IF EIGHTEEN YEARS OF AGE OR MORE, OR (II) IF THE ADOPTEE  
21 IS DECEASED, BY THE ADOPTEE'S DIRECT LINE DESCENDANTS, OR (III) BY  
22 LAWFUL REPRESENTATIVES OF SUCH ADOPTEE, OR LAWFUL REPRESENTATIVES OF  
23 SUCH DECEASED ADOPTEE'S DIRECT LINE DESCENDENTS, AS THE CASE MAY BE, OR  
24 (IV) AUTHORIZED REPRESENTATIVES OF A LOCAL SOCIAL SERVICES DISTRICT IF

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

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1 THE ADOPTEE IS IN THE CARE AND CUSTODY OR CUSTODY AND GUARDIANSHIP OF  
2 SUCH DISTRICT.

3 (B) WHEN IT SHALL BE IMPOSSIBLE THROUGH GOOD-FAITH EFFORTS TO PROVIDE  
4 A COPY OF AN ADULT ADOPTED PERSON'S ORIGINAL BIRTH CERTIFICATE (AS IN  
5 THE CASE OF AN ADOPTED PERSON BORN OUTSIDE OF, BUT ADOPTED WITHIN, THE  
6 STATE), THE ADULT ADOPTED PERSON SHALL HAVE THE RIGHT TO SECURE FROM A  
7 COURT OF COMPETENT JURISDICTION OR THE ADOPTION AGENCY, THE TRUE AND  
8 CORRECT IDENTIFYING INFORMATION THAT WOULD HAVE APPEARED ON HIS OR HER  
9 ORIGINAL BIRTH CERTIFICATE. IN SUCH CASE THE AGENCY SHALL BE HELD HARM-  
10 LESS FROM ANY LIABILITY ARISING OUT OF THE DISCLOSURE.

11 (C) FOR PURPOSES OF THIS SUBDIVISION:

12 (I) THE TERM "COMMISSIONER" SHALL INCLUDE THE COMMISSIONER OF HEALTH  
13 AND MENTAL HYGIENE OF THE CITY OF NEW YORK AND FOR RECORDS OF BIRTH  
14 PRIOR TO JANUARY FIRST, NINETEEN HUNDRED FOURTEEN, THE LOCAL REGISTRARS  
15 OF THE CITIES OF ALBANY, BUFFALO AND YONKERS; AND

16 (II) THE TERM "DEPARTMENT" SHALL INCLUDE THE DEPARTMENT OF HEALTH AND  
17 MENTAL HYGIENE OF THE CITY OF NEW YORK AND, FOR RECORDS OF BIRTH PRIOR  
18 TO JANUARY FIRST, NINETEEN HUNDRED FOURTEEN, THE OFFICE OF VITAL STATIS-  
19 TICS OF THE CITY OF ALBANY, THE OFFICE OF VITAL RECORDS OF THE CITY OF  
20 BUFFALO AND THE OFFICE OF CLERK OF THE CITY OF YONKERS.

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

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

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

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

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

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

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

52 8. AN ADOPTED PERSON EIGHTEEN YEARS OF AGE OR OLDER, OR THE BIRTH  
53 PARENT OR PARENTS, MAY SUBMIT TO THE REGISTRAR A NOTICE OF CHANGE OF  
54 NAME AND/OR ADDRESS AND SUCH INFORMATION SHALL BE ATTACHED TO THE  
55 ORIGINAL BIRTH CERTIFICATE OF THE ADOPTED PERSON.

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

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

9 (b) If the agency determines that the agency was involved in such  
10 adoption, it shall transmit the registration to the adoption information  
11 registry operated by the department and the agency shall release the  
12 non-identifying information, as defined in section forty-one hundred  
13 thirty-eight-c of this title, to the [adoptee registrant. The agency may  
14 restrict the nature of the non-identifying information released pursuant  
15 to this section upon a reasonable determination that disclosure of such  
16 non-identifying information would not be in the adoptee's, the biolog-  
17 ical sibling's or parent's best interest] ADOPTED PERSON.

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

20 S 4104. Vital statistics; application of article. The provisions of  
21 this article except for the provisions contained in paragraph (i) of  
22 subdivision two and subdivision four of section four thousand one  
23 hundred, section four thousand one hundred three, subdivision two of  
24 section four thousand one hundred thirty-five, section four thousand one  
25 hundred thirty-five-b, subdivision eight of section four thousand one  
26 hundred seventy-four, paragraphs (b) and (e) of subdivision one, PARA-  
27 GRAPH (B) OF SUBDIVISION THREE, AND SUBDIVISIONS FIVE, SEVEN, EIGHT AND  
28 NINE of section four thousand one hundred thirty-eight, subdivision  
29 eleven of section four thousand one hundred thirty-eight-c, PARAGRAPH  
30 (B) OF SUBDIVISION THREE OF SECTION FOUR THOUSAND ONE HUNDRED  
31 THIRTY-EIGHT-D, SECTION FOUR THOUSAND ONE HUNDRED THIRTY-EIGHT-E and  
32 section four thousand one hundred seventy-nine of this article, shall  
33 not apply to the city of New York.

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

37 1. If satisfied that the best interests of the adoptive child will be  
38 promoted thereby, the judge or surrogate shall make an order approving  
39 the adoption and directing that the adoptive child shall thenceforth be  
40 regarded and treated in all respects as the child of the adoptive  
41 parents or parent. In determining whether the best interests of the  
42 adoptive child will be promoted by the adoption, the judge or surrogate  
43 shall give due consideration to any assurance by a LOCAL commissioner of  
44 social services that he OR SHE will provide necessary support and main-  
45 tenance for the adoptive child pursuant to the social services law. Such  
46 order shall contain the full name, date and place of birth and reference  
47 to the schedule annexed to the petition containing the medical history  
48 of the child in the body thereof and shall direct that the child's  
49 medical history, heritage of the BIRTH parents, which shall include  
50 nationality, ethnic background and race; education, which shall be the  
51 number of years of school completed by the BIRTH parents at the time of  
52 the birth AND ALSO AT THE TIME OF SURRENDER of the adoptive child;  
53 general physical appearance of the BIRTH parents at the time of the  
54 birth AND ALSO AT THE TIME OF SURRENDER of the adoptive child, which  
55 shall include height, weight, color of hair, eyes, skin; occupation of  
56 the BIRTH parents at the time of the birth AND ALSO AT THE TIME OF

1 SURRENDER of the adoptive child; health and medical history of the BIRTH  
2 parents at the time of the birth AND ALSO AT THE TIME OF SURRENDER of  
3 the adoptive child, including all available information setting forth  
4 conditions or diseases believed to be hereditary, any drugs or medica-  
5 tion taken during the pregnancy by the child's mother; and any other  
6 information which may be a factor influencing the child's present or  
7 future health, INCLUDING THE talents, hobbies and special interests of  
8 THE BIRTH parents as contained in the petition, be furnished to the  
9 adoptive parents. IN RECOGNITION OF THE IMPERATIVE LIFELONG IMPORTANCE  
10 OF SUCH INFORMATION FOR THE HEALTH AND WELL-BEING OF THE ADOPTED PERSON,  
11 IT SHALL BE THE DUTY OF THE LAW GUARDIAN AS PROVIDED FOR BY SECTIONS TWO  
12 HUNDRED FORTY-ONE, TWO HUNDRED FORTY-TWO, TWO HUNDRED FORTY-NINE AND TWO  
13 HUNDRED FORTY-NINE-A OF THE FAMILY COURT ACT TO ENSURE THE COMPREHENSIVE  
14 COMPLETION AND FILING OF ALL THE ABOVE REFERENCED INFORMATION PRIOR TO  
15 THE ACCEPTANCE OF THE TERMINATION OF PARENTAL RIGHTS OR THE ENTRY OF A  
16 CERTIFICATE OF ADOPTION. IT SHALL BE DEEMED BY THAT LEGAL REPRESENTATIVE  
17 THAT SUCH INFORMATION IS ALWAYS IN THE BEST INTEREST OF THE CHILD AND IS  
18 A PROTECTED RIGHT. PRIOR TO TERMINATION OF DUTIES, SUCH LAW GUARDIAN  
19 SHALL PROVIDE, AS DIRECTED BY SECTION FORTY-ONE HUNDRED THIRTY-EIGHT-C  
20 OF THE PUBLIC HEALTH LAW AND SECTIONS THREE HUNDRED SEVENTY-THREE AND  
21 THREE HUNDRED SEVENTY-THREE-A OF THE SOCIAL SERVICES LAW, TO THE RESPEC-  
22 TIVE RESPONSIBLE PARTIES ALL SUCH COLLECTED DATA, AND PROVIDE AN AFFIDA-  
23 VIT TO THE COURT REPORTING ALL DILIGENT EFFORTS TO OBTAIN SUCH DATA. A  
24 COPY OF SUCH AFFIDAVIT SHALL BE APPENDED TO THE ORIGINAL AND ANY AND ALL  
25 AMENDED BIRTH CERTIFICATES. If the judge or surrogate is also satisfied  
26 that there is no reasonable objection to the change of name proposed,  
27 the order shall direct that the name of the adoptive child be changed to  
28 the name stated in the agreement of adoption and that henceforth he OR  
29 SHE shall be known by that name. All such orders made by a family court  
30 judge of Westchester county since September first, nineteen hundred  
31 sixty-two, and on file in the office of the county clerk of such county  
32 shall be transferred to the clerk of the family court of such county.  
33 Such order and all the papers in the proceeding shall be filed in the  
34 office of the court granting the adoption and the order shall be entered  
35 in books which shall be kept under seal and which shall be indexed by  
36 the name of the adoptive parents and by the full original name of the  
37 child. Such order, including orders heretofore entered, shall be subject  
38 to inspection and examination only as hereinafter provided. Notwith-  
39 standing the fact that adoption records shall be sealed and secret, they  
40 may be microfilmed and processed pursuant to an order of the court,  
41 provided that such order provides that the confidentiality of such  
42 records be maintained. If the confidentiality is violated, the person or  
43 company violating it can be found guilty of contempt of court. The fact  
44 that the adoptive child was born out of wedlock shall in no case appear  
45 in such order. The written report of the investigation together with all  
46 other papers pertaining to the adoption shall be kept by the judge or  
47 surrogate as a permanent record of his OR HER court and such papers must  
48 be sealed by him OR HER and withheld from inspection. No certified copy  
49 of the order of adoption shall issue unless authorized by court order,  
50 except that certified copies may issue to the agency or agencies in the  
51 proceeding prior to the sealing of the papers. Before the record is  
52 sealed, such order may be granted upon written ex parte application on  
53 good cause shown and upon such conditions as the court may impose. After  
54 the record is sealed, such order may be granted only upon notice as  
55 hereinafter provided for disclosure or access and inspection of records.  
56 The clerk upon request of a person or agency entitled thereto shall

1 issue certificates of adoption which shall contain only the new name of  
2 the child and the date and place of birth of the child, the name of the  
3 adoptive parents and the date when and court where the adoption was  
4 granted, which certificate as to the facts recited therein shall have  
5 the same force and effect as a certified copy of an order of adoption.

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

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

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