

STATE OF NEW YORK

5979

2019-2020 Regular Sessions

IN SENATE

May 16, 2019

Introduced by Sen. MAYER -- read twice and ordered printed, and when printed to be committed to the Committee on Children and Families

AN ACT to amend the domestic relations law and the social services law, in relation to certain time periods and prospective applicants in adoption proceedings

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The closing paragraph of section 110 of the domestic
2 relations law, as added by chapter 522 of the laws of 1999, is amended
3 to read as follows:

4 It shall be unlawful to preclude a prospective adoptive parent or
5 parents solely on the basis that the adoptor or adopters has had, or has
6 cancer, or any other disease. Nothing herein shall prevent the rejection
7 of a prospective applicant based upon his or her poor health or limited
8 life expectancy, age, race, creed, color, national origin, sexual orien-
9 tation, gender identity or expression, military status, sex, disability,
10 predisposing genetic characteristics, familial status, marital status,
11 or domestic violence victim status.

12 § 2. Subdivisions 3 and 4 and paragraph (a) and the opening paragraph
13 of paragraph (b) of subdivision 6 of section 115-b of the domestic
14 relations law, subdivision 3 and the opening paragraph of paragraph (b)
15 of subdivision 6 as amended and subdivision 4 as added by chapter 817 of
16 the laws of 1986, paragraph (c) of subdivision 4 as amended by chapter
17 680 of the laws of 2007, paragraph (d) of subdivision 4 as relettered by
18 chapter 371 of the laws of 1994, and paragraph (a) of subdivision 6 as
19 amended by chapter 557 of the laws of 1988, are amended to read as
20 follows:

21 3. Extrajudicial consents. (a) Whenever a consent is not executed or
22 acknowledged before a judge or surrogate pursuant to subdivision two of
23 this section such consent shall become irrevocable [~~forty-five~~ twenty-
24 five days after the execution of the consent unless written notice of

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

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1 revocation thereof is received by the court in which the adoption
2 proceeding is to be commenced within said ~~forty-five~~ twenty-five days.

3 (b) Notwithstanding that such written notice is received within said
4 ~~forty-five~~ twenty-five days, the notice of revocation shall be given
5 effect only if the adoptive parents fail to oppose such revocation, as
6 provided in subdivision six of this section, or, if they oppose such
7 revocation and the court as provided in subdivision six of this section
8 has determined that the best interests of the child will be served by
9 giving force and effect to such revocation.

10 4. (a) In any case where a consent is not executed or acknowledged
11 before a judge or surrogate pursuant to subdivision two of this section,
12 the consent shall state, in conspicuous print of at least eighteen point
13 type:

14 (i) the name and address of the court in which the adoption proceeding
15 has been or is to be commenced; and

16 (ii) that the consent may be revoked within ~~forty-five~~ twenty-five
17 days of the execution of the document and where the consent is not
18 revoked within said ~~forty-five~~ twenty-five days no proceeding may be
19 maintained by the parent for the return of the custody of the child; and

20 (iii) that such revocation must be in writing and received by the
21 court where the adoption proceeding is to be commenced within ~~forty-~~
22 ~~five~~ twenty-five days of the execution of said consent; and

23 (iv) that, if the adoptive parents contest the revocation, timely
24 notice of the revocation will not necessarily result in the return of
25 the child to the parent's custody, and that the rights of the parent to
26 custody of the child shall not be superior to those of the adoptive
27 parents but that a hearing will be required before a judge pursuant to
28 the provisions of this section to determine: (1) whether the notice of
29 revocation was timely and properly given; and if necessary, (2) whether
30 the best interests of the child will be served by: (A) returning custody
31 of the child to the parent; or (B) by continuing the adoption proceeding
32 commenced by the adoptive parents; or (C) by disposition other than
33 adoption by the adoptive parents; or (D) by placement of the child with
34 an authorized agency, and if any such determination is made, the court
35 shall make such disposition of the custody of the child as will best
36 serve the interests of the child; and

37 (v) that the parent has the right to legal representation of the
38 parent's own choosing; the right to obtain supportive counseling and may
39 have the right to have the court appoint an attorney pursuant to section
40 two hundred sixty-two of the family court act, section four hundred
41 seven of the surrogate's court procedure act, or section thirty-five of
42 the judiciary law.

43 (b) Such consent shall be executed or acknowledged before a notary
44 public or other officer authorized to take proof of deeds.

45 (c) A copy of such consent shall be given to such parent upon the
46 execution thereof. The consent shall include the following statement:
47 "I, (name of consenting parent), this ____ day of _____,
48 have received a copy of this consent. (Signature of consenting parent)".
49 Such consenting parent shall so acknowledge the delivery and the date of
50 the delivery in writing on the consent.

51 (d) The adoptive parent may commence the adoption proceeding in a
52 court of competent jurisdiction other than the court named in the
53 consent provided that such commencement is initiated more than ~~forty-~~
54 ~~five~~ twenty-five days after the consent is executed. Such commencement
55 shall not revive, extend or toll the period for revocation of a consent
56 pursuant to this section.

(a) A parent may revoke his consent to adoption only by giving notice, in writing, of such revocation, no later than ~~[forty-five]~~ twenty-five days after the execution of the consent, or twenty days after the receipt of a notice of denial, withdrawal or removal pursuant to paragraph (a) of subdivision four of section seventeen hundred twenty-five of the surrogate's court procedure act, whichever is later, to the court in which the adoption proceeding has been or is to be commenced. Such notice shall set forth the name and address of the court in which the adoption proceeding is to be commenced, the address of the parent and may, in addition, set forth the name and address of the attorney for the parent.

If, within ~~[forty-five]~~ twenty-five days of the execution of the consent, the court has received such notice of revocation, the court shall promptly notify the adoptive parents and their attorney, by certified mail, of the receipt by the court of such notice of revocation.

§ 3. Subdivision 3 of section 373 of the social services law is amended to read as follows:

3. In appointing guardians of children, and in granting orders of adoption of children, the court shall, when practicable, appoint as such guardians, and give custody through adoption, ~~[only]~~ to a person or persons of the same religious faith as that of the child.

§ 4. Subdivision 6 of section 374 of the social services law, as amended by chapter 305 of the laws of 2008, is amended to read as follows:

6. An authorized agency, as defined in paragraphs (a) and (c) of subdivision ten of section three hundred seventy-one of this title, may charge or accept a fee or other compensation to or from a person or persons with whom it has placed out a child, for the reasonable and necessary expenses of such placement; and no agency, association, corporation, institution, society or organization, except such an authorized agency, and no person may or shall request, accept or receive any compensation or thing of value, directly or indirectly, in connection with the placing out or adoption of a child or for assisting a birth parent, relative or guardian of a child in arranging for the placement of the child for the purpose of adoption; and no person may or shall pay or give to any person or to any agency, association, corporation, institution, society or organization, except such an authorized agency, any compensation or thing of value in connection with the placing out or adoption of a child or for assisting a birth parent, relative or guardian of a child in arranging for the placement of the child for the purpose of adoption. The prohibition set forth in this section applies to any adoptive placement activity involving a child born in New York state or brought into this state or involving a New York resident seeking to bring a child into New York state for the purpose of adoption.

This subdivision shall not be construed to prevent the payment of salaries or other compensation by an authorized agency to the officers or employees thereof; nor shall it be construed to prevent the payment by a person with whom a child has been placed out of reasonable and actual medical fees or hospital charges for services rendered in connection with the birth of such child or of other necessary expenses incurred by the birth mother in connection with or as a result of her pregnancy or the birth of the child, or of reasonable and actual nursing, medical or hospital fees for the care of such child, if such payment is made to the physician, nurse or hospital who or which rendered the services or to the birth mother of the child, or to prevent the receipt of such payment by such physician, nurse, hospital or birth

1 mother. This subdivision shall not be construed to prevent the payment
2 by an adoptive parent, as defined in section one hundred nine of the
3 domestic relations law, of the birth mother's reasonable and actual
4 expenses for housing, maternity clothing, clothing for the child and
5 transportation for a reasonable period not to exceed [~~sixty~~] one hundred
6 eighty days prior to the birth and the later of thirty days after the
7 birth or thirty days after the parental consent to the adoption, unless
8 a court determines, in writing, that exceptional circumstances exist
9 which require the payment of the birth mother's expenses beyond the time
10 periods stated in this sentence; provided, however, that any such
11 payments made to the birth mother shall not exceed ten thousand dollars.
12 This subdivision shall not be construed to prevent the payment by an
13 adoptive parent, as defined in section one hundred nine of the domestic
14 relations law, of reasonable and actual legal fees charged for consulta-
15 tion and legal advice, preparation of papers and representation and
16 other legal services rendered in connection with an adoption proceeding
17 or of necessary disbursements incurred for or in an adoption proceeding.
18 No attorney or law firm shall serve as the attorney for, or provide any
19 legal services to both the birth parent and adoptive parent in regard to
20 the placing out of a child for adoption or in an adoption proceeding. No
21 attorney or law firm shall serve as the attorney for, or provide any
22 legal services to, both an authorized agency and adoptive parent or both
23 an authorized agency and birth parent where the authorized agency
24 provides adoption services to such birth parent or adoptive parent,
25 where the authorized agency provides foster care for the child, or where
26 the authorized agency is directly or indirectly involved in the placing
27 out of such child for adoption.
28 § 5. This act shall take effect on the thirtieth day after it shall
29 have become a law.