

STATE OF NEW YORK

5979--A

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 -- recommitted to the Committee on Children and Families in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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 seventh undesignated paragraph of section 110 of the
2 domestic relations law, as added by chapter 522 of the laws of 1999, is
3 amended to read as follows:

4 It shall be unlawful to preclude a prospective adoptive parent or
5 parents [~~solely~~] on the basis of age, race, creed, color, national
6 origin, sexual orientation, gender identity or expression, military
7 status, sex, disability, predisposing genetic characteristics, familial
8 status, marital status, or domestic violence victim status, or that the
9 adoptor or adopters has had, or has cancer, or any other disease. Noth-
10 ing herein shall prevent the rejection of a prospective applicant based
11 upon his or her poor health or limited life expectancy.

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:

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

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3. Extrajudicial consents. (a) Whenever a consent is not executed or acknowledged before a judge or surrogate pursuant to subdivision two of this section such consent shall become irrevocable ~~[forty-five]~~ twenty-five days after the execution of the consent unless written notice of revocation thereof is received by the court in which the adoption proceeding is to be commenced within said ~~[forty-five]~~ twenty-five days.

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

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

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

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

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

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

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

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

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

(d) The adoptive parent may commence the adoption proceeding in a court of competent jurisdiction other than the court named in the

1 consent provided that such commencement is initiated more than [~~forty-~~
2 ~~five~~] ~~twenty-five~~ days after the consent is executed. Such commencement
3 shall not revive, extend or toll the period for revocation of a consent
4 pursuant to this section.

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

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

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

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

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

29 6. An authorized agency, as defined in paragraphs (a) and (c) of
30 subdivision ten of section three hundred seventy-one of this title, may
31 charge or accept a fee or other compensation to or from a person or
32 persons with whom it has placed out a child, for the reasonable and
33 necessary expenses of such placement; and no agency, association, corpo-
34 ration, institution, society or organization, except such an authorized
35 agency, and no person may or shall request, accept or receive any
36 compensation or thing of value, directly or indirectly, in connection
37 with the placing out or adoption of a child or for assisting a birth
38 parent, relative or guardian of a child in arranging for the placement
39 of the child for the purpose of adoption; and no person may or shall pay
40 or give to any person or to any agency, association, corporation, insti-
41 tution, society or organization, except such an authorized agency, any
42 compensation or thing of value in connection with the placing out or
43 adoption of a child or for assisting a birth parent, relative or guardi-
44 an of a child in arranging for the placement of the child for the
45 purpose of adoption. The prohibition set forth in this section applies
46 to any adoptive placement activity involving a child born in New York
47 state or brought into this state or involving a New York resident seek-
48 ing to bring a child into New York state for the purpose of adoption.

49 This subdivision shall not be construed to prevent the payment of
50 salaries or other compensation by an authorized agency to the officers
51 or employees thereof; nor shall it be construed to prevent the payment
52 by a person with whom a child has been placed out of reasonable and
53 actual medical fees or hospital charges for services rendered in
54 connection with the birth of such child or of other necessary expenses
55 incurred by the birth mother in connection with or as a result of her
56 pregnancy or the birth of the child, or of reasonable and actual nurs-

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