

1272

2009-2010 Regular Sessions

I N S E N A T E

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Introduced by Sens. MONTGOMERY, ADAMS, DIAZ, DUANE, HASSELL-THOMPSON, KRUEGER, SAMPSON, SCHNEIDERMAN, THOMPSON -- read twice and ordered printed, and when printed to be committed to the Committee on Children and Families

AN ACT to amend the social services law, in relation to the defense and indemnification of foster parents

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

1 Section 1. Title 1-A of article 6 of the social services law is
2 amended by adding a new section 394 to read as follows:
3 S 394. DEFENSE AND INDEMNIFICATION OF FOSTER PARENTS. 1. (A) WHERE A
4 SOCIAL SERVICES DISTRICT HAS, OR HAD, THE CARE, CUSTODY OR GUARDIANSHIP
5 OF A FOSTER CHILD, PURSUANT TO SECTION THREE HUNDRED EIGHTY-FOUR, THREE
6 HUNDRED EIGHTY-FOUR-A, OR THREE HUNDRED EIGHTY-FOUR-B OF THIS ARTICLE,
7 OR ARTICLE THREE, SEVEN OR TEN OF THE FAMILY COURT ACT, THE OFFICE OF
8 CHILDREN AND FAMILY SERVICES SHALL, UPON COMPLIANCE BY THE FOSTER PARENT
9 WITH THE PROVISIONS OF SUBDIVISION THREE OF THIS SECTION, PROVIDE FOR
10 THE LEGAL DEFENSE OF THE FOSTER PARENT AS DEFINED IN SECTION THREE
11 HUNDRED SEVENTY-ONE OF THIS ARTICLE, WITH WHOM THE CHILD IS OR WAS
12 PLACED PURSUANT TO SECTION THREE HUNDRED SEVENTY-FOUR OF THIS ARTICLE IN
13 ANY CIVIL ACTION OR PROCEEDING, STATE OR FEDERAL, BROUGHT BY OR ON
14 BEHALF OF SUCH PRESENT OR FORMER FOSTER CHILD, OR BY THE PARENT OR GUAR-
15 DIAN OF SUCH FOSTER CHILD OR FORMER FOSTER CHILD, FOR ANY CLAIM FOR
16 PROPERTY DAMAGE OR PERSONAL INJURY, ARISING OUT OF ANY ALLEGED ACT OR
17 OMISSION WHICH OCCURRED OR ALLEGEDLY OCCURRED WHILE THE FOSTER PARENT
18 WAS ACTING WITHIN THE SCOPE OF HIS OR HER DUTIES PURSUANT TO AN AGREE-
19 MENT BETWEEN THE FOSTER PARENT AND THE SOCIAL SERVICES DISTRICT OR
20 ANOTHER AUTHORIZED AGENCY.
21 (B) THE FOSTER PARENT SHALL BE ENTITLED TO BE REPRESENTED BY PRIVATE
22 COUNSEL OF HIS OR HER CHOICE IN ANY CIVIL ACTION OR PROCEEDING WHENEVER
23 THE CHIEF LEGAL OFFICER OF THE SOCIAL SERVICES DISTRICT OR OTHER COUNSEL

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

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1 DESIGNATED BY THE OFFICE OF CHILDREN AND FAMILY SERVICES OR THE SOCIAL
2 SERVICES DISTRICT DETERMINES THAT A CONFLICT OF INTEREST EXISTS BETWEEN
3 THE SOCIAL SERVICES DISTRICT AND THE FOSTER PARENT, OR WHENEVER A COURT,
4 UPON APPROPRIATE MOTION OR OTHERWISE BY A SPECIAL PROCEEDING, DETERMINES
5 THAT A CONFLICT OF INTEREST EXISTS AND THAT THE FOSTER PARENT IS ENTI-
6 TLED TO BE REPRESENTED BY COUNSEL OF HIS OR HER CHOICE; PROVIDED, HOWEV-
7 ER, THAT THE CHIEF LEGAL OFFICER OR OTHER COUNSEL DESIGNATED BY THE
8 OFFICE OF CHILDREN AND FAMILY SERVICES OR THE SOCIAL SERVICES DISTRICT
9 MAY REQUIRE, AS CONDITION TO PAYMENT OF THE FEES AND EXPENSES OF SUCH
10 REPRESENTATION, THAT MORE THAN ONE SUCH FOSTER PARENT BE REPRESENTED BY
11 THE SAME COUNSEL. ANY DISPUTE WITH RESPECT TO REPRESENTATION OF MULTIPLE
12 FOSTER PARENTS BY A SINGLE COUNSEL SHALL BE RESOLVED BY THE COURT UPON
13 MOTION OR BY WAY OF A SPECIAL PROCEEDING.

14 (C) REASONABLE ATTORNEYS' FEES AND LITIGATION EXPENSE SHALL BE PAID BY
15 THE OFFICE OF CHILDREN AND FAMILY SERVICES TO SUCH PRIVATE COUNSEL FROM
16 TIME TO TIME DURING THE PENDENCY OF THE CIVIL ACTION OR PROCEEDING UPON
17 REQUEST OF THE COMMISSIONER OF SUCH DISTRICT. ANY DISPUTE WITH RESPECT
18 TO THE AMOUNT OF LITIGATION EXPENSES OR THE REASONABLENESS OF ATTORNEYS'
19 FEES SHALL BE RESOLVED BY THE COURT UPON MOTION OR BY WAY OF A SPECIAL
20 PROCEEDING.

21 (D) WHERE THE FOSTER PARENT DELIVERS PROCESS AND A WRITTEN REQUEST FOR
22 A DEFENSE TO A SOCIAL SERVICES DISTRICT UNDER SUBDIVISION THREE OF THIS
23 SECTION, THE SOCIAL SERVICES DISTRICT SHALL TAKE THE NECESSARY STEPS ON
24 BEHALF OF THE FOSTER PARENT TO AVOID ENTRY OF A DEFAULT JUDGMENT PENDING
25 RESOLUTION OF ANY QUESTION PERTAINING TO THE OBLIGATION TO PROVIDE FOR A
26 DEFENSE.

27 2. (A) WHERE A SOCIAL SERVICES DISTRICT WHICH HAS, OR HAD, THE CARE,
28 CUSTODY OR GUARDIANSHIP OF A FOSTER CHILD, PURSUANT TO SECTION THREE
29 HUNDRED EIGHTY-FOUR, THREE HUNDRED EIGHTY-FOUR-A, OR THREE HUNDRED
30 EIGHTY-FOUR-B OF THIS ARTICLE, OR ARTICLE THREE, SEVEN OR TEN OF THE
31 FAMILY COURT ACT, THE OFFICE OF CHILDREN AND FAMILY SERVICES SHALL
32 INDEMNIFY AND SAVE HARMLESS THE FOSTER PARENT OR PARENTS IN THE AMOUNT
33 OF ANY JUDGMENT OBTAINED AGAINST THE FOSTER PARENTS AS SUCH TERM IS
34 DEFINED IN SECTION THREE HUNDRED SEVENTY-ONE OF THIS ARTICLE WITH WHOM
35 THE CHILD WAS PLACED PURSUANT TO SECTION THREE HUNDRED SEVENTY-FOUR OF
36 THIS ARTICLE, IN A STATE OR FEDERAL COURT, OR IN THE AMOUNT OF ANY
37 SETTLEMENT OF A CLAIM, BROUGHT BY OR ON BEHALF OF SUCH PRESENT OR FORMER
38 FOSTER CHILD, NOT TO EXCEED ONE HUNDRED THOUSAND DOLLARS PER HOUSEHOLD
39 FOR ONE OCCURRENCE AND NOT TO EXCEED THREE HUNDRED THOUSAND DOLLARS PER
40 HOUSEHOLD IN ANY ONE CALENDAR YEAR, FOR ANY CLAIM FOR PROPERTY DAMAGE OR
41 PERSONAL INJURY, ARISING OUT OF ANY ALLEGED ACT OR OMISSION WHICH
42 OCCURRED OR ALLEGEDLY OCCURRED WHILE THE FOSTER PARENT WAS ACTING WITHIN
43 THE SCOPE OF HIS OR HER DUTIES PURSUANT TO AN AGREEMENT BETWEEN THE
44 FOSTER PARENT AND THE SOCIAL SERVICES DISTRICT OR ANOTHER AUTHORIZED
45 AGENCY.

46 (B) THE DUTY TO INDEMNIFY AND SAVE HARMLESS PRESCRIBED BY THIS SUBDI-
47 VISION SHALL NOT ARISE WHERE THE INJURY OR DAMAGE RESULTED FROM GROSS
48 NEGLIGENCE, INTENTIONAL WRONGDOING OR RECKLESSNESS ON THE PART OF THE
49 FOSTER PARENT.

50 (C) NOTHING IN THIS SUBDIVISION SHALL AUTHORIZE THE OFFICE OF CHILDREN
51 AND FAMILY SERVICES TO INDEMNIFY OR SAVE HARMLESS A FOSTER PARENT WITH
52 RESPECT TO PUNITIVE OR EXEMPLARY DAMAGES, FINES OR PENALTIES.

53 (D) UPON ENTRY OF A FINAL JUDGMENT AGAINST THE FOSTER PARENT, OR UPON
54 THE SETTLEMENT OF THE CLAIM, AND IF NOT INCONSISTENT WITH THE PROVISIONS
55 OF THIS SECTION, THE AMOUNT OF SUCH JUDGMENT OR SETTLEMENT SHALL BE PAID
56 BY THE OFFICE OF CHILDREN AND FAMILY SERVICES. UPON ENTRY OF A FINAL

JUDGMENT AGAINST THE FOSTER PARENT, OR UPON THE SETTLEMENT OF THE CLAIM, WHERE THE FOSTER PARENT IS NOT REPRESENTED BY THE CHIEF LEGAL OFFICER OF THE SOCIAL SERVICES DISTRICT OR OTHER COUNSEL DESIGNATED BY THE OFFICE OF CHILDREN AND FAMILY SERVICES OR THE SOCIAL SERVICES DISTRICT, THE FOSTER PARENT SHALL SERVE A COPY OF SUCH JUDGMENT OR SETTLEMENT, PERSONALLY OR BY CERTIFIED OR REGISTERED MAIL, WITHIN THIRTY DAYS OF THE DATE OF ENTRY OR SETTLEMENT, UPON THE COMMISSIONER OR CHIEF LEGAL OFFICER OF THE SOCIAL SERVICES DISTRICT WHO SHALL FORWARD SUCH DOCUMENTATION TO THE OFFICE OF CHILDREN AND FAMILY SERVICES.

3. THE DUTY TO DEFEND OR INDEMNIFY AND SAVE HARMLESS PRESCRIBED BY THIS SECTION SHALL BE CONDITIONED UPON: (A) DELIVERY BY THE FOSTER PARENT TO THE COMMISSIONER OR CHIEF LEGAL OFFICER OF THE SOCIAL SERVICES DISTRICT OF A WRITTEN REQUEST TO PROVIDE FOR HIS OR HER DEFENSE TOGETHER WITH THE ORIGINAL OR A COPY OF ANY SUMMONS, COMPLAINT, PROCESS, NOTICE, DEMAND OR PLEADING WITHIN TEN DAYS AFTER HE OR SHE IS SERVED WITH SUCH DOCUMENT, (B) THE FULL COOPERATION OF THE FOSTER PARENT IN THE DEFENSE OF SUCH ACTION OR PROCEEDING, AND IN THE DEFENSE OF ANY ACTION OR PROCEEDING AGAINST THE SOCIAL SERVICES DISTRICT BASED UPON THE SAME ACT OR OMISSION UNLESS SUCH COOPERATION WOULD BE PREJUDICIAL TO THE INTERESTS OF THE FOSTER PARENT IN ANY OTHER ACTION OR PROCEEDING, AND IN THE PROSECUTION OF ANY APPEAL, AND (C) THE FULL COOPERATION OF THE FOSTER PARENT IN APPLYING FOR AND OBTAINING ALL INSURANCE BENEFITS OR REIMBURSEMENT AVAILABLE UNDER ANY EXISTING POLICY REGARDING THE ACT OR OMISSION.

4. IN THE EVENT OF ANY PAYMENT UNDER THIS SECTION, THE OFFICE OF CHILDREN AND FAMILY SERVICES SHALL BE SUBROGATED TO ALL OF THE RIGHTS OF RECOVERY THEREFOR OF THE FOSTER PARENT AGAINST ANY PERSON OR ORGANIZATION, AND THE FOSTER PARENT SHALL EXECUTE AND DELIVER INSTRUMENTS AND PAPERS AND DO WHATEVER ELSE IS NECESSARY TO SECURE SUCH RIGHTS.

5. ALL PAYMENTS MADE UNDER THE TERMS OF THIS SECTION, WHETHER FOR INSURANCE OR OTHERWISE, SHALL BE DEEMED TO BE FOR A PUBLIC PURPOSE AND SHALL BE AUDITED AND PAID IN THE SAME MANNER AS OTHER PUBLIC CHARGES.

6. THE PROVISIONS OF THIS SECTION SHALL NOT BE CONSTRUED TO IMPAIR, ALTER, LIMIT OR MODIFY THE RIGHTS AND OBLIGATIONS OF ANY INSURER UNDER ANY POLICY OF INSURANCE.

7. THE PROVISIONS OF THIS SECTION SHALL NOT APPLY IN ANY CIVIL ACTION OR PROCEEDING BROUGHT BY OR AT THE REQUEST OF A SOCIAL SERVICES DISTRICT OR AUTHORIZED AGENCY AGAINST A FOSTER PARENT.

S 2. Subdivision (d) of section 17 of the social services law, as amended by chapter 749 of the laws of 1989, is amended to read as follows:

(d) submit an annual report to the governor and the legislature prior to the fifteenth day of December of each year. Such annual report shall include the following: the affairs of the department and the status of welfare programs in the state with recommendations for the improvement and development of welfare programs; a report on the department's fair hearing system, as required by section twenty-two of this article; a written evaluation report on the delivery of child welfare services in the state, as required by subdivision five of section four hundred seven of this chapter; a report of the operations of the state central register of child abuse and maltreatment and the various local child protective services, as required by section four hundred twenty-six of this chapter; a report on the number and status and the findings of investigations of deaths of children pursuant to subdivision five of section twenty of this [chapter] ARTICLE; a report on the progress of the development and operation of the child care review system, as required by

1 subdivision nine of section four hundred forty-two of this chapter;
2 commencing before December fifteenth, nineteen hundred eighty-four and
3 terminating on December fifteenth, nineteen hundred eighty-nine, a
4 progress report on the planning and implementation of the teenage
5 services act as required by the provisions of section four hundred
6 nine-m of title four-B OF ARTICLE SIX of this chapter; an analysis of
7 the information contained in the registry of community facilities, as
8 required by paragraph (b) of subdivision two of section four hundred
9 sixty-three-a of this chapter; [and] a report on the operation of the
10 child support enforcement program, as required by chapter six hundred
11 eighty-five of the laws of nineteen hundred seventy-five; AND A REPORT
12 ON THE OPERATION OF THE FOSTER PARENT DEFENSE AND INDEMNIFICATION
13 PROGRAMS;

14 S 3. This act shall take effect on the first of January next succeed-
15 ing the date on which it shall have become a law; provided that the
16 amendments to title 1-A of article 6 of the social services law made by
17 section one of this act shall not affect the repeal of such title and
18 shall be deemed to be repealed therewith and shall only apply to acts or
19 omissions occurring after the effective date of this act; provided,
20 however, that the commissioner of the office of children and family
21 services shall, in consultation with the social services districts,
22 promulgate regulations prior to the effective date of this act, setting
23 forth the procedures for filing of claims, including time limits for
24 such filing and for response by the social services district, the deter-
25 mination of the fair market value of damaged property, and period for
26 payment; and provided further, that such commissioner shall, prior to
27 the effective date of this act, publicize his or her provisions to all
28 foster parents and to prospective foster parents in the state.