

3255

2009-2010 Regular Sessions

I N S E N A T E

March 13, 2009

Introduced by Sen. DUANE -- (at request of the Department of Health) --
read twice and ordered printed, and when printed to be committed to
the Committee on Health

AN ACT to amend the public health law, in relation to birth certificates
for children born in foreign countries; and registration for the
adoption information registry; and repealing certain provisions of
such law relating thereto

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

1 Section 1. Section 4138-b of the public health law, as added by chap-
2 ter 329 of the laws of 2008, is amended to read as follows:
3 S 4138-b. Birth certificate: foreign country adoption. Whenever the
4 adoption or finalization of a foreign adoption or recognition of a
5 foreign adoption of a child UNDER THE AGE OF EIGHTEEN AT THE TIME OF
6 ADOPTION pursuant to section one hundred eleven-c of the domestic
7 relations law has been reported to the [local registrar] COMMISSIONER,
8 the [registrar] COMMISSIONER shall [issue] FILE a birth certificate for
9 the child PROVIDED THERE IS NO OTHER BIRTH CERTIFICATE OR OTHER BIRTH
10 RECORD ON FILE OTHER THAN IN THE COUNTRY WHERE SUCH CHILD WAS BORN AND
11 PROVIDED, FURTHER, THAT A CERTIFICATE OF BIRTH DATA DOES NOT EXIST FOR
12 THAT PERSON. Such birth certificate shall be [issued and] filed upon
13 receipt of: proof that the adoptive parent [or child is] WAS a resident
14 of this state AT THE TIME OF ADOPTION; a copy of the adoption documents
15 of the jurisdiction or country in which the child was adopted; a certi-
16 fied translation of the foreign adoption documents, evidence of the date
17 and place of the child's birth; and evidence of IR-3 immigrant visa
18 status, or a successor immigrant visa status. The birth certificate
19 shall include the child's name, sex, date of birth, time of birth, place
20 of birth, mother's maiden name, and father's name. IF A BIRTH CERTIF-
21 ICATE HAS BEEN ISSUED PURSUANT TO THE PROVISIONS OF THIS SECTION, A
22 CERTIFICATE OF BIRTH DATA MAY NOT BE ISSUED.

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

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1 S 2. Subdivisions 2, 4, 5 and 6 of section 4138-c of the public health
2 law, subdivision 2 as amended by chapter 435 of the laws of 2008, subdivi-
3 sion 4 as amended by chapter 588 of the laws of 1999, and paragraph
4 (a) of subdivision 4 and subdivisions 5 and 6 as amended by chapter 469
5 of the laws of 2007, are amended to read as follows:

6 2. The registry shall accept, at any time, and maintain the verified
7 registration transmitted by an agency pursuant to section forty-one
8 hundred thirty-eight-d of this [article] TITLE, or of the birth parents
9 of an adoptee if such adoptee was born in this state. The registry shall
10 not accept nor maintain the registration of an adoptee sooner than eigh-
11 teen years after the adoptee's birth, or in the case of registration by
12 a biological sibling of an adoptee, no sooner than the longer of eigh-
13 teen years after the biological sibling's birth or eighteen years after
14 the adoptee's birth; provided, however, that any person whose registra-
15 tion was accepted may withdraw such registration prior to the release of
16 any identifying information. The adoptee registrant, and the biological
17 sibling registrant, shall include as part of the registration the iden-
18 tification, including the name and address, of known biological siblings
19 of the adoptee. The adoptee may upon registration or any time thereafter
20 elect not to have release of information by the authorized agency
21 involved in such adoption. The department shall establish an authorized
22 agency fee schedule for search costs and registry costs and services
23 provided by such agency in gathering and forwarding information pursuant
24 to this section. The fee schedule may also include costs for disseminat-
25 ing information about the registry and the adoption medical information
26 sub-registry to the public. Such publications or brochures may include
27 information as to identifying and non-identifying information, how to
28 register and fees charged to the registrants, and any other information
29 deemed appropriate.

30 4. Upon acceptance of a registration [by an adoptee or by the biolog-
31 ical sibling of an adoptee] pursuant to this section, the department
32 shall search the records of the department to determine whether the
33 adoptee's adoption occurred within the state.

34 (a) If the department determines that the adoption occurred within the
35 state, it shall notify the court wherein the adoption occurred to submit
36 to the department non-identifying information as may be contained in the
37 records of the court and the names of the birth parents of the adoptee.
38 Notwithstanding any other provision of law to the contrary, the court
39 shall thereupon transmit to the department non-identifying information
40 as may be contained in the records of the court, and the names of the
41 birth parents of the adoptee, provided that, if the court determines
42 from its records that the adoption was from an authorized agency, the
43 court shall submit to the department only the name and address of such
44 authorized agency and the names of the birth parents of the adoptee. In
45 such cases, unless the adoptee registrant [or the biological sibling
46 registrant] shall have elected otherwise, the department shall notify
47 the authorized agency whose name was provided by the court to release
48 promptly to the adoptee [or biological sibling registrant] all non-iden-
49 tifying information as may be contained in the agency records. Such
50 agency shall thereafter promptly release the non-identifying information
51 to the adoptee registrant. If the adoptee registrant shall have elected
52 not to have the information released to him or her by the authorized
53 agency, the agency shall submit promptly to the department all non-iden-
54 tifying information as may be contained in the agency records. In any
55 case where the agency records are incomplete, no longer exist or are
56 otherwise unavailable, the department shall so notify the court. The

1 court shall thereupon promptly submit such non-identifying information
2 as may be contained in their records. If no authorized agency was
3 involved or if the adoptee registrant shall have elected not to have
4 release of information by the authorized agency involved in such
5 adoption, the department shall release the non-identifying information
6 to the adoptee registrant. The department and/or an authorized agency
7 may restrict the nature of the non-identifying information released
8 pursuant to this section upon a reasonable determination that disclosure
9 of such non-identifying information would not be in the adoptee's,
10 biological sibling's, or parent's best interest.

11 (b) If the department determines that the adoption did not occur with-
12 in the state, it shall notify the adoptee registrant that no record
13 exists of the adoption occurring within the state.

14 5. Upon acceptance of a registration pursuant to this section, the
15 department shall search the registry to determine whether the adoptee,
16 any biological sibling of the adoptee, or birth parents of the adoptee
17 is also registered.

18 (a) If the department determines the adoptee is not in contact with a
19 biological sibling under the age of eighteen and that there is a corre-
20 sponding registration for the adoptee, for [each] EITHER of the birth
21 parents, and/or for the biological sibling registrant, it shall notify
22 the court wherein the adoption occurred and the department shall notify
23 all such persons that a corresponding match has been made and request
24 such persons' final consent to the release of identifying information.

25 (b) If the department determines that there is no corresponding regis-
26 tration for the adoptee, for [each] EITHER of the birth parents, and/or
27 for a biological sibling of the adoptee, it shall notify the registering
28 person that no corresponding match has been made. The department shall
29 not solicit or request the consent of the non-registered person or
30 persons.

31 6. Upon receipt of a final consent by the adoptee, by [each] EITHER of
32 the birth parents, and/or by a biological sibling of the adoptee, the
33 department shall, unless the adoptee or biological sibling registrant
34 shall elect otherwise, if an authorized agency was involved in such
35 adoption, release identifying information to such agency; such agency
36 shall thereafter promptly release identifying information ABOUT THE
37 CONSENTING REGISTRANTS to [all] the CONSENTING registrants. If no
38 authorized agency was involved, or if any registrant shall have elected
39 not to have release of the information by the authorized agency involved
40 in such adoption the department shall release identifying information to
41 [all] the CONSENTING registrants. Such identifying information shall be
42 limited to the names and addresses of the CONSENTING registrants and
43 shall not include any other information contained in the adoption or
44 birth records. However, nothing in this section shall be construed to
45 prevent the release of adoption records as otherwise permitted by law.

46 S 3. Subdivision 9 of section 4138-c of the public health law is
47 REPEALED.

48 S 4. Subdivisions 3, 4, and 5 of section 4138-d of the public health
49 law, subdivisions 3 and 4 as amended by chapter 588 of the laws of 1999,
50 the opening paragraph of subdivision 4 as separately amended by chapter
51 504 of the laws of 1999 and paragraphs (a) and (b) of subdivision 4 and
52 subdivision 5 as amended by chapter 469 of the laws of 2007, are amended
53 to read as follows:

54 3. Upon acceptance of a registration [by an adoptee or the biological
55 sibling registrant] pursuant to this section, the agency shall search

1 the records of the agency to determine whether the agency was involved
2 in such adoption.

3 (a) If the agency determines that the agency was not involved in such
4 adoption, it shall notify the registrant that no record exists of the
5 adoption and refer the registrant to the department's adoption informa-
6 tion registry operated pursuant to section forty-one hundred thirty-
7 eight-c of this [article] TITLE.

8 (b) If the agency determines that the agency was involved in such
9 adoption, it shall transmit the registration to the adoption information
10 registry operated by the department and the agency shall release the
11 non-identifying information, as defined in section [four thousand one]
12 FORTY-ONE hundred thirty-eight-c of this [article] TITLE, to the adoptee
13 registrant [or the biological sibling 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.

18 4. Upon acceptance of a registration pursuant to this section, the
19 department shall search the records of the department to determine
20 whether the adoptee's adoption occurred within the state. The department
21 shall establish an authorized agency fee schedule for search costs and
22 registry costs of an authorized agency.

23 (a) If the department determines that there is a corresponding regis-
24 tration for the adoptee, for [each] EITHER of the birth parents and/or
25 for a biological sibling of the adoptee, it shall notify the court wher-
26 ein the adoption occurred and the department shall notify the agency
27 that a corresponding match has been made. The agency shall notify all
28 such [persons] REGISTRANTS that a corresponding match has been made and
29 request such persons' final consent to the release of identifying infor-
30 mation.

31 (b) If the department determines that there is no corresponding regis-
32 tration for the adoptee, for EITHER OF the birth parents and/or for a
33 biological sibling of the adoptee, it shall notify the agency which
34 shall notify the registering person that no corresponding match has been
35 made. The agency shall not solicit or request the consent of the non-re-
36 gistered person or persons.

37 5. Upon receipt of a final consent by the adoptee, by [each] EITHER of
38 the birth parents and/or by a biological sibling of the adoptee, the
39 agency shall release identifying information ABOUT THE CONSENTING REGIS-
40 TRANTS to [all] the CONSENTING registrants. Such identifying information
41 shall be limited to the names and addresses of the CONSENTING regis-
42 trants and shall not include any other information contained in the
43 adoption or birth records. However, nothing in this section shall be
44 construed to prevent the release of adoption records as otherwise
45 permitted by law.

46 S 5. Subdivision 9 of section 4138-d of the public health law is
47 REPEALED.

48 S 6. This act shall take effect immediately.