S T A T E O F N E W Y O R K

3865

2009-2010 Regular Sessions

I N S E N A T E

April 2, 2009

Introduced by Sen. MONTGOMERY -- (at request of the Office of Court Administration) -- 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 notices to non-marital fathers in adoption, surrenders and termination of parental rights proceedings and consents to adoptions in family and surrogate's courts

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

Section 1. Paragraphs (d) and (e) of subdivision 1 of section 111 of the domestic relations law, as amended by chapter 575 of the laws of 1980, are amended to read as follows:

(d) Of the father, whether adult or infant, of a child born out-of-wedlock and [placed with the adoptive parents] more than six months [after birth] OLD AT THE TIME OF THE FILING OF A PETITION TO TERMINATE PARENTAL RIGHTS, APPLICATION TO EXECUTE A JUDICIAL SURRENDER, PETITION FOR APPROVAL OF AN EXTRA-JUDICIAL SURRENDER OR EXTRA-JUDICIAL CONSENT TO ADOPTION OR PETITION FOR ADOPTION, WHICHEVER IS EARLIEST, but only if such father shall have:

(I) BEEN NAMED AS THE FATHER ON THE CHILD'S BIRTH CERTIFICATE; OR

(II) BEEN ADJUDICATED AS THE FATHER BY A COURT IN THE STATE OF NEW YORK; OR

(III) BEEN ADJUDICATED BY A COURT OF ANOTHER STATE OR TERRITORY OF THE UNITED STATES TO BE THE FATHER OF THE CHILD, WHEN A CERTIFIED COPY OF THE COURT ORDER HAS BEEN FILED WITH THE PUTATIVE FATHER REGISTRY, PURSUANT TO SECTION THREE HUNDRED SEVENTY-TWO-C OF THE SOCIAL SERVICES LAW; OR

(IV) ACKNOWLEDGED PATERNITY IN A FORM DULY EXECUTED PURSUANT TO SECTION FORTY-ONE HUNDRED THIRTY-FIVE-B OF THE PUBLIC HEALTH LAW OR IN A FORM RECOGNIZED BY THE STATE OR TERRITORY OF THE UNITED STATES IN WHICH

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

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IT WAS EXECUTED TO HAVE THE FORCE AND EFFECT OF AN ORDER OF PATERNITY OR FILIATION; OR

(V) maintained substantial and continuous or repeated contact with the child as manifested by [: (i)] the payment by the father toward the support of the child of a fair and reasonable sum, according to the father's means, and either

[(ii)] A. the father's visiting the child at least [monthly] TWICE PER MONTH when physically and financially able to do so and not prevented from doing so by the person or authorized agency having lawful custody of the child, or

[(iii)] B. the father's regular communication with the child or with the person or agency having the care or custody of the child, when physically and financially unable to visit the child or prevented from doing so by the person or authorized agency having lawful custody of the child. [The] FOR PURPOSES OF THIS SUBPARAGRAPH, THE subjective intent of the father, whether expressed or otherwise, unsupported by evidence of acts specified in this paragraph manifesting such intent, shall not preclude a determination that the father failed to maintain substantial and continuous or repeated contact with the child. In making such a determination, the court shall not require a showing of diligent efforts by any person or agency to encourage the father to perform the acts specified in this paragraph.

(VI) A father, whether adult or infant, of a child born out-of-wedlock, who openly lived with the child for a period of six months [within the one year period] immediately preceding the EARLIER OF THE placement of the child for adoption OR PLACEMENT OF THE CHILD IN FOSTER CARE and who during such period openly held himself out to be the father of such child shall be deemed to have maintained substantial and continuous contact with the child for the purpose of this [subdivision] PARAGRAPH.

(e) Of the father, whether adult or infant, of a child born out-of-wedlock who is under the age of six months [at the time he is placed for adoption] OLD AT THE TIME OF THE FILING OF A PETITION TO TERMINATE PARENTAL RIGHTS, APPLICATION TO EXECUTE A JUDICIAL SURRENDER, PETITION FOR APPROVAL OF AN EXTRA-JUDICIAL SURRENDER OR EXTRA-JUDICIAL CONSENT TO ADOPTION OR PETITION FOR ADOPTION, WHICHEVER IS EARLIEST, but only if: (i) such father openly lived with the child or the child's mother for a continuous period of six months immediately preceding the placement of the child for adoption; and (ii) such father openly held himself out to be the father of such child during such period; and (iii) such father paid a fair and reasonable sum, in accordance with his means, for the medical, hospital and nursing expenses incurred in connection with the mother's pregnancy or with the birth of the child.

S 2. Subdivisions 1 and 2 of section 111-a of the domestic relations law, subdivision 1 as amended by chapter 353 of the laws of 1993, subdivision 2 as added by chapter 665 of the laws of 1976, paragraph (e) of subdivision 2 as amended by chapter 862 of the laws of 1977 and paragraphs (f) and (g) as amended and paragraph and (h) of subdivision 2 as added by chapter 575 of the laws of 1980, are amended to read as follows:

1. Notwithstanding any inconsistent provisions of this or any other law, and in addition to the notice requirements of any law pertaining to persons other than those specified in subdivision two of this section, notice as provided herein shall be given to the persons specified in subdivision two of this section of any adoption proceeding initiated pursuant to this article or of any proceeding initiated pursuant to section one hundred fifteen-b OF THIS ARTICLE relating to the revocation

of an adoption consent, when such proceeding involves a child born out-of-wedlock provided, however, that such notice shall not be required to be given to any person who previously has been given notice of any [proceeding] PETITION TO TERMINATE PARENTAL RIGHTS, APPLICATION TO EXECUTE A JUDICIAL SURRENDER, PETITION FOR APPROVAL OF AN EXTRA-JUDICIAL SURRENDER OR EXTRA-JUDICIAL CONSENT TO ADOPTION involving the child[, pursuant to section three hundred eighty-four-c of the social services law,] and provided further that notice in an adoption proceeding, pursuant to this section shall not be required to be given to any person who has previously received notice of any proceeding pursuant to section one hundred fifteen-b OF THIS ARTICLE. In addition to such other requirements as may be applicable to the petition in any proceeding in which notice must be given pursuant to this section, the petition shall set forth the names and last known addresses of all persons required to be given notice of the proceeding, pursuant to this section, and there shall be shown by the petition or by affidavit or other proof satisfactory to the court that there are no persons other than those set forth in the petition who are entitled to notice. For the purpose of determining persons entitled to notice of adoption proceedings initiated pursuant to this article, persons specified in subdivision two of this section shall not include any person who has been convicted of rape in the first degree involving forcible compulsion, under subdivision one of section 130.35 of the penal law, when the child who is the subject of the proceeding was conceived as a result of such rape.

2. Persons entitled to notice, pursuant to subdivision one of this section, shall include:

(a) [any person adjudicated by a court in this state to be the father of the child;

(b) any person adjudicated by a court of another state or territory of the United States to be the father of the child, when a certified copy of the court order has been filed with the putative father registry, pursuant to section three hundred seventy-two-c of the social services law;

(c)] any person who has timely filed an unrevoked notice of intent to claim paternity of the child, pursuant to section three hundred seventy-two-c of the social services law;

[(d) any person who is recorded on the child's birth certificate as the child's father;

(e)] (B) any person who is openly living with the child and the child's mother at the time the proceeding is initiated and who is holding himself out to be the child's father;

[(f)] (C) any person who has been identified as the child's father by the mother in written, sworn statement;

[(g)] (D) any person who was married to the child's mother within six months subsequent to the birth of the child and prior to the execution of a surrender instrument or the initiation of a proceeding pursuant to section three hundred eighty-four-b of the social services law; [and

(h) any person who has filed with the putative father registry an instrument acknowledging paternity of the child, pursuant to section 4-1.2 of the estates, powers and trusts law]

(E) ANY PERSON WHO, SUBSEQUENT TO THE CHILD'S MOST RECENT ENTRY INTO FOSTER CARE, HAS FILED AND SERVED A CUSTODY PETITION UPON THE AGENCY HAVING CARE AND CUSTODY OF THE CHILD AND WHO APPEARED IN COURT ON THAT PETITION ON THE DATE FOR RETURN OF PROCESS; AND

(F) ANY PERSON IDENTIFIED AS THE FATHER IN AN ORDER OF PATERNITY OR FILIATION OR AN ACKNOWLEDGEMENT OF PATERNITY IN ANOTHER COUNTRY THAT HAS

BEEN DETERMINED BY THE COURT TO BE ENTITLED TO COMITY IN THIS STATE, PROVIDED THAT IN SUCH CASE, THE COURT SHALL DETERMINE WHETHER SUCH PERSON IS ENTITLED TO CONSENT TO THE ADOPTION PURSUANT TO SECTION ONE HUNDRED ELEVEN OF THIS TITLE OR IS SOLELY ENTITLED TO NOTICE PURSUANT TO THIS SECTION.

S 3. Subdivisions 1 and 2 of section 384-c of the social services law, subdivision 1 as amended by chapter 18 of the laws of 1979, subdivision 2 as added by chapter 665 of the laws of 1976, paragraph (e) of subdivision 2 as amended by chapter 862 of the laws of 1977 and paragraphs (f) and (g) as amended and paragraph (h) of subdivision 2 as added by chapter 575 of the laws of 1980, are amended to read as follows:

1. Notwithstanding any inconsistent provision of this or any other law, and in addition to the notice requirements of any law pertaining to persons other than those specified in subdivision two of this section, notice as provided herein shall be given to the persons specified in subdivision two of this section of any [proceeding initiated pursuant to sections three hundred fifty-eight-a, three hundred eighty-four, and three hundred eighty-four-b of this chapter,] PETITION TO TERMINATE PARENTAL RIGHTS, APPLICATION TO EXECUTE A JUDICIAL SURRENDER, PETITION FOR APPROVAL OF AN EXTRA-JUDICIAL SURRENDER OR EXTRA-JUDICIAL CONSENT TO ADOPTION involving [a] THE child IF THE CHILD WAS born out-of-wedlock. Persons specified in subdivision two of this section shall not include any person who has been convicted of rape in the first degree involving forcible compulsion, under subdivision one of section 130.35 of the penal law, when the child who is the subject of the proceeding was conceived as a result of such rape.

2. Persons entitled to notice, pursuant to subdivision one of this section, shall include:

(a) [any person adjudicated by a court in this state to be the father of the child;

(b) any person adjudicated by a court of another state or territory of the United States to be the father of the child, when a certified copy of the court order has been filed with the putative father registry, pursuant to section three hundred seventy-two-c of this chapter;

(c)] any person who has timely filed an unrevoked notice of intent to claim paternity of the child, pursuant to section three hundred seventy-two-c of this chapter;

[(d) any person who is recorded on the child's birth certificate as the child's father;

(e)] (B) any person who is openly living with the child and the child's mother at the time the proceeding is initiated or at the time the child was placed in the care of an authorized agency, and who is holding himself out to be the child's father;

[(f)] (C) any person who has been identified as the child's father by the mother in written, sworn statement;

[(g)] (D) any person who was married to the child's mother within six months subsequent to the birth of the child and prior to the execution of a surrender instrument or the initiation of a proceeding pursuant to section three hundred eighty-four-b OF THIS CHAPTER; [and

(h) any person who has filed with the putative father registry an instrument acknowledging paternity of the child, pursuant to section 4-1.2 of the estates, powers and trusts law]

(E) ANY PERSON WHO, SUBSEQUENT TO THE CHILD'S MOST RECENT ENTRY INTO FOSTER CARE, HAS FILED AND SERVED A CUSTODY PETITION UPON THE AGENCY HAVING CARE AND CUSTODY OF THE CHILD AND WHO APPEARED IN COURT ON THAT PETITION ON THE DATE FOR RETURN OF PROCESS; AND

(F) ANY PERSON IDENTIFIED AS THE FATHER IN AN ORDER OF PATERNITY OR FILIATION OR AN ACKNOWLEDGMENT OF PATERNITY IN ANOTHER COUNTRY THAT HAS BEEN DETERMINED BY THE COURT TO BE ENTITLED TO COMITY IN THIS STATE, PROVIDED THAT IN SUCH CASE, THE COURT SHALL DETERMINE WHETHER SUCH PERSON IS ENTITLED TO CONSENT TO THE ADOPTION PURSUANT TO SECTION ONE HUNDRED ELEVEN OF THE DOMESTIC RELATIONS LAW OR IS SOLELY ENTITLED TO NOTICE PURSUANT TO THIS SECTION AND SECTION ONE HUNDRED ELEVEN-A OF THE DOMESTIC RELATIONS LAW.

S 4. This act shall take effect on the ninetieth day after it shall have become a law and shall apply to petitions for adoption, termination of parental rights, approvals of extra-judicial surrenders or extra-judicial consents to adoption or applications to execute judicial surrenders filed on or after such effective date; provided, however, that this act shall not apply to cases in which judicial determinations had been made prior to such effective date regarding putative fathers entitled to consent to adopt or to notice of adoption, termination of parental rights, approvals of extra-judicial surrenders or extra-judicial consents to adoption or applications to execute judicial surrenders.