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

1108

2009-2010 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 7, 2009

Introduced by M. of A. DelMONTE -- read once and referred to the Committee on Judiciary

AN ACT to amend the public health law, in relation to establishing a voluntary confidential intermediary adoption program to help in the search for a birth parent or adopted person

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

Section 1. The public health law is amended by adding a new section 4138-e to read as follows:

S 4138-E. VOLUNTARY CONFIDENTIAL INTERMEDIARY ADOPTION PROGRAM. 1. A VOLUNTARY CONFIDENTIAL INTERMEDIARY ADOPTION PROGRAM SHALL BE ESTABLISHED AND MAINTAINED BY THE DEPARTMENT. UNDER SUCH PROGRAM, AN ADOPTED PERSON OVER THE AGE OF TWENTY-ONE YEARS, OR AN ADOPTED PERSON UNDER THE AGE OF TWENTY-ONE YEARS WITH THE PERMISSION OF AN ADOPTIVE PARENT, OR A BIRTH PARENT OR MEMBER OF THE BIRTH PARENT'S FAMILY AFTER THE ADOPTEE HAS REACHED THE AGE OF TWENTY-ONE YEARS MAY PETITION THE FAMILY COURT TO APPOINT A CONFIDENTIAL INTERMEDIARY WHO SHALL BE AN INDIVIDUAL WITH NO RELATION OR CONNECTION TO THE PETITIONER AND WHO HAS COMPLETED ALL THE REQUIREMENTS FOR CONFIDENTIAL INTERMEDIARIES UNDER THIS SECTION AND AS ESTABLISHED BY THE DEPARTMENT.

2. IF A FAMILY COURT DECIDES TO APPOINT A CONFIDENTIAL INTERMEDIARY, SUCH INTERMEDIARY SHALL SEARCH FOR AND DISCREETLY CONTACT THE BIRTH PARENT OR ADOPTED PERSON, OR IF THEY ARE NOT ALIVE OR CANNOT BE LOCATED WITHIN ONE YEAR, THE INTERMEDIARY MAY ATTEMPT TO LOCATE MEMBERS OF THE BIRTH PARENT OR ADOPTED PERSON'S FAMILY. THESE FAMILY MEMBERS SHALL BE LIMITED TO THE NATURAL GRANDPARENTS OF THE ADULT ADOPTEE, A BROTHER OR SISTER OF A NATURAL PARENT, OR THE CHILD OF A NATURAL PARENT. THE COURT, FOR GOOD CAUSE SHOWN, MAY ALLOW A RELATIVE MORE DISTANT IN DEGREE TO PETITION FOR DISCLOSURE.

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

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3. CONFIDENTIAL INTERMEDIARIES APPOINTED UNDER THIS SECTION SHALL COMPLETE TRAINING PROVIDED BY THE DEPARTMENT, A LICENSED ADOPTION SERVICE OR ANOTHER COURT-APPROVED ENTITY AND FILE AN OATH OF CONFIDENTIALITY AND A CERTIFICATE OF COMPLETION OF TRAINING WITH THE FAMILY COURT OF EVERY COUNTY IN WHICH THEY SERVE AS INTERMEDIARIES. ANY COST INCURRED FOR SUCH TRAINING SHALL BE BORNE BY THE CONFIDENTIAL INTERMEDIARY. THE COURT MAY DISMISS AN INTERMEDIARY IF THE INTERMEDIARY ENGAGES IN CONDUCT WHICH VIOLATES PROFESSIONAL OR ETHICAL STANDARDS.

4. THE CONFIDENTIAL INTERMEDIARY SHALL SIGN A STATEMENT OF CONFIDENTIALITY WHICH SHALL BE FILED WITH THE DEPARTMENT WHICH STATES THE FOLLOWING:

I, ..., SIGNING UNDER PENALTY OF CONTEMPT OF COURT, STATE: "AS A CONDITION OF APPOINTMENT AS A CONFIDENTIAL INTERMEDIARY, I AFFIRM THAT, WHEN ADOPTION RECORDS ARE OPENED TO ME:

I WILL NOT DISCLOSE TO THE PETITIONER, DIRECTLY OR INDIRECTLY, ANY IDENTIFYING INFORMATION IN THE RECORDS WITHOUT FURTHER ORDER FROM THE COURT.

I WILL CONDUCT A DILIGENT SEARCH FOR THE PERSON BEING SOUGHT AND MAKE A DISCREET AND CONFIDENTIAL INQUIRY AS TO WHETHER THAT PERSON WILL CONSENT TO BEING PUT IN CONTACT WITH THE PETITIONER, AND I WILL REPORT BACK TO THE COURT THE RESULTS OF MY SEARCH AND INQUIRY.

IF THE PERSON SOUGHT CONSENTS TO BE PUT IN CONTACT WITH THE PETITIONER, I WILL ATTEMPT TO OBTAIN A DATED, WRITTEN CONSENT FROM THE PERSON, AND ATTACH THE ORIGINAL OF THE CONSENT TO MY REPORT TO THE COURT. IF THE PERSON SOUGHT DOES NOT CONSENT TO THE DISCLOSURE OF HIS OR HER IDENTITY, I SHALL REPORT THE REFUSAL OF CONSENT TO THE COURT.

I WILL NOT MAKE ANY CHARGE OR ACCEPT ANY COMPENSATION FOR MY SERVICES EXCEPT AS APPROVED BY THE COURT, OR AS REIMBURSEMENT FROM THE PETITIONER FOR ACTUAL EXPENSES INCURRED IN CONDUCTING THE SEARCH. THESE EXPENSES WILL BE LISTED IN MY REPORT TO THE COURT.

I RECOGNIZE THAT UNAUTHORIZED RELEASE OF CONFIDENTIAL INFORMATION MAY SUBJECT ME TO CIVIL LIABILITY UNDER STATE LAW, AND SUBJECTS ME TO BEING FOUND IN CONTEMPT OF COURT."

5. THE CONFIDENTIAL INTERMEDIARY SHALL BE ENTITLED TO REIMBURSEMENT FROM THE PETITIONER FOR ACTUAL EXPENSES IN CONDUCTING THE SEARCH. THE COURT MAY AUTHORIZE A REASONABLE FEE IN ADDITION TO THESE EXPENSES.

6. IF THE CONFIDENTIAL INTERMEDIARY IS UNABLE TO LOCATE THE PERSON BEING SOUGHT WITHIN ONE YEAR, THE CONFIDENTIAL INTERMEDIARY SHALL MAKE A RECOMMENDATION TO THE COURT AS TO WHETHER OR NOT A FURTHER SEARCH IS WARRANTED, AND THE REASONS FOR THIS RECOMMENDATION.

7. IN THE CASE OF A PETITION FILED ON BEHALF OF A NATURAL PARENT OR OTHER BLOOD RELATIVE OF THE ADOPTEE, WRITTEN CONSENT OF ANY LIVING ADOPTIVE PARENT SHALL BE OBTAINED PRIOR TO CONTACT WITH THE ADOPTEE IF THE ADOPTEE:

(A) IS LESS THAN TWENTY-FIVE YEARS OF AGE AND IS RESIDING WITH THE ADOPTIVE PARENT; OR

(B) IS LESS THAN TWENTY-FIVE YEARS OF AGE AND IS A DEPENDENT OF THE ADOPTIVE PARENT.

8. IF THE CONFIDENTIAL INTERMEDIARY LOCATES THE PERSON BEING SOUGHT, A DISCREET AND CONFIDENTIAL INQUIRY SHALL BE MADE AS TO WHETHER OR NOT THAT PERSON WILL CONSENT TO HAVING HIS OR HER PRESENT IDENTITY DISCLOSED TO THE PETITIONER. THE IDENTITY OF THE PETITIONER SHALL NOT BE DISCLOSED TO THE PARTY BEING SOUGHT. IF THE PARTY BEING SOUGHT CONSENTS TO THE DISCLOSURE OF HIS OR HER IDENTITY, THE CONFIDENTIAL INTERMEDIARY SHALL OBTAIN THE CONSENT IN WRITING AND SHALL INCLUDE THE ORIGINAL OF THE CONSENT IN THE REPORT FILED WITH THE COURT. IF THE PARTY BEING SOUGHT

REFUSES DISCLOSURE OF HIS OR HER IDENTITY, THE CONFIDENTIAL INTERMEDIARY SHALL REPORT THE REFUSAL TO THE COURT AND SHALL REFRAIN FROM FURTHER AND SUBSEQUENT INQUIRY WITHOUT JUDICIAL APPROVAL.

9. (A) IF THE CONFIDENTIAL INTERMEDIARY OBTAINS FROM THE PERSON BEING SOUGHT WRITTEN CONSENT FOR DISCLOSURE OF HIS OR HER IDENTITY TO THE PETITIONER, THE COURT MAY THEN ORDER THAT THE NAME AND OTHER IDENTIFYING INFORMATION OF THAT PERSON BE RELEASED TO THE PETITIONER.

(B) IF THE PERSON BEING SOUGHT IS DECEASED, THE COURT MAY ORDER DISCLOSURE OF THE IDENTITY OF THE DECEASED TO THE PETITIONER.

(C) IF THE CONFIDENTIAL INTERMEDIARY IS UNABLE TO CONTACT THE PERSON BEING SOUGHT WITHIN ONE YEAR, THE COURT MAY ORDER THAT THE SEARCH BE CONTINUED FOR A SPECIFIED TIME OR BE TERMINATED.

S 2. This act shall take effect on the one hundred twentieth day after it shall have become a law; provided, however, that effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized and directed to be made and completed on or before such effective date.