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

8498

2009-2010 Regular Sessions

I N A S S E M B L Y

May 21, 2009

Introduced by M. of A. GOTTFRIED -- (at request of the Department of Health) -- read once and referred 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 ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Section 4138-b of the public health law, as added by chapter 329 of the laws of 2008, is amended to read as follows:

S 4138-b. Birth certificate: foreign country adoption. Whenever the adoption or finalization of a foreign adoption or recognition of a foreign adoption of a child UNDER THE AGE OF EIGHTEEN AT THE TIME OF ADOPTION pursuant to section one hundred eleven-c of the domestic relations law has been reported to the [local registrar] COMMISSIONER, the [registrar] COMMISSIONER shall [issue] FILE a birth certificate for the child PROVIDED THERE IS NO OTHER BIRTH CERTIFICATE OR OTHER BIRTH RECORD ON FILE OTHER THAN IN THE COUNTRY WHERE SUCH CHILD WAS BORN AND PROVIDED, FURTHER, THAT A CERTIFICATE OF BIRTH DATA DOES NOT EXIST FOR THAT PERSON. Such birth certificate shall be [issued and] filed upon receipt of: proof that the adoptive parent [or child is] WAS a resident of this state AT THE TIME OF ADOPTION; a copy of the adoption documents of the jurisdiction or country in which the child was adopted; a certified translation of the foreign adoption documents, evidence of the date and place of the child's birth; and evidence of IR-3 immigrant visa status, or a successor immigrant visa status. The birth certificate shall include the child's name, sex, date of birth, time of birth, place of birth, mother's maiden name, and father's name. IF A BIRTH CERTIFICATE HAS BEEN ISSUED PURSUANT TO THE PROVISIONS OF THIS SECTION, A CERTIFICATE OF BIRTH DATA MAY NOT BE ISSUED.

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

LBD07530-08-9

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

2. The registry shall accept, at any time, and maintain the verified registration transmitted by an agency pursuant to section forty-one hundred thirty-eight-d of this [article] TITLE, or of the birth parents of an adoptee if such adoptee was born in this state. The registry shall not accept nor maintain the registration of an adoptee sooner than eighteen years after the adoptee's birth, or in the case of registration by a biological sibling of an adoptee, no sooner than the longer of eighteen years after the biological sibling's birth or eighteen years after the adoptee's birth; provided, however, that any person whose registration was accepted may withdraw such registration prior to the release of any identifying information. The adoptee registrant, and the biological sibling registrant, shall include as part of the registration the identification, including the name and address, of known biological siblings of the adoptee. The adoptee may upon registration or any time thereafter elect not to have release of information by the authorized agency involved in such adoption. The department shall establish an authorized agency fee schedule for search costs and registry costs and services provided by such agency in gathering and forwarding information pursuant to this section. The fee schedule may also include costs for disseminating information about the registry and the adoption medical information sub-registry to the public. Such publications or brochures may include information as to identifying and non-identifying information, how to register and fees charged to the registrants, and any other information deemed appropriate.

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

(a) If the department determines that the adoption occurred within the state, it shall notify the court wherein the adoption occurred to submit to the department non-identifying information as may be contained in the records of the court and the names of the birth parents of the adoptee. Notwithstanding any other provision of law to the contrary, the court shall thereupon transmit to the department non-identifying information as may be contained in the records of the court, and the names of the birth parents of the adoptee, provided that, if the court determines from its records that the adoption was from an authorized agency, the court shall submit to the department only the name and address of such authorized agency and the names of the birth parents of the adoptee. In such cases, unless the adoptee registrant [or the biological sibling registrant] shall have elected otherwise, the department shall notify the authorized agency whose name was provided by the court to release promptly to the adoptee [or biological sibling registrant] all non-identifying information as may be contained in the agency records. Such agency shall thereafter promptly release the non-identifying information to the adoptee registrant. If the adoptee registrant shall have elected not to have the information released to him or her by the authorized agency, the agency shall submit promptly to the department all non-identifying information as may be contained in the agency records. In any case where the agency records are incomplete, no longer exist or are otherwise unavailable, the department shall so notify the court. The

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

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

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

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

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

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

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

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

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

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

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

(b) If the agency determines that the agency was involved in such adoption, it shall transmit the registration to the adoption information registry operated by the department and the agency shall release the non-identifying information, as defined in section [four thousand one] FORTY-ONE hundred thirty-eight-c of this [article] TITLE, to the adoptee registrant [or the biological sibling registrant]. The agency may restrict the nature of the non-identifying information released pursuant to this section upon a reasonable determination that disclosure of such non-identifying information would not be in the adoptee's, the biological sibling's or parent's best interest.

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

(a) If the department determines that there is a corresponding registration for the adoptee, for [each] EITHER of the birth parents and/or for a biological sibling of the adoptee, it shall notify the court wherein the adoption occurred and the department shall notify the agency that a corresponding match has been made. The agency shall notify all such [persons] REGISTRANTS that a corresponding match has been made and request such persons' final consent to the release of identifying information.

(b) If the department determines that there is no corresponding registration for the adoptee, for EITHER OF the birth parents and/or for a biological sibling of the adoptee, it shall notify the agency which shall notify the registering person that no corresponding match has been made. The agency shall not solicit or request the consent of the non-registered person or persons.

5. Upon receipt of a final consent by the adoptee, by [each] EITHER of the birth parents and/or by a biological sibling of the adoptee, the agency shall release identifying information ABOUT THE CONSENTING REGISTRANTS to [all] the CONSENTING registrants. Such identifying information shall be limited to the names and addresses of the CONSENTING registrants and shall not include any other information contained in the adoption or birth records. However, nothing in this section shall be construed to prevent the release of adoption records as otherwise permitted by law.

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

S 6. This act shall take effect immediately.