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

1698

2009-2010 Regular Sessions

I N S E N A T E

February 5, 2009

Introduced by Sens. LARKIN, DeFRANCISCO, KRUEGER, LAVALLE, PERKINS, SEWARD, VOLKER -- read twice and ordered printed, and when printed to be committed to the Committee on Health

AN ACT to amend the public health law and the domestic relations law, in relation to enacting the "bill of adoptee rights"

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. BILL OF ADOPTEE RIGHTS. 1. THIS SECTION SHALL BE KNOWN AND MAY BE CITED AS THE "BILL OF ADOPTEE RIGHTS".

2. THE LEGISLATURE HEREBY STATES ITS INTENTION TO ACKNOWLEDGE, SUPPORT AND ENCOURAGE THE LIFE-LONG HEALTH AND WELL-BEING NEEDS OF ADULTS WHO HAVE BEEN AND WILL BE ADOPTED IN THE STATE OF NEW YORK. THE LEGISLATURE FURTHER RECOGNIZES THAT THE DENIAL OF ACCESS TO ACCURATE AND COMPLETE MEDICAL AND SELF-IDENTIFYING DATA OF ANY RESIDENT, KNOWN AND WILFULLY WITHHELD BY OTHERS, MAY RESULT IN THAT RESIDENT SUCCUMBING TO PREVENTABLE DISEASE, PREMATURE DEATH OR OTHERWISE UNHEALTHY LIFE, IS A VIOLATION OF THAT RESIDENT'S CIVIL RIGHTS AND IS CONTRARY TO THE TENETS OF GOVERNANCE. AS SUCH, THE PROVISIONS OF THIS SECTION SEEK TO ESTABLISH CONSIDERATIONS UNDER THE LAW FOR ADOPTED PERSONS EQUAL TO SUCH CONSIDERATIONS PERMITTED BY LAW TO ALL NON-ADOPTED RESIDENTS; THIS SECTION DOES SO WHILE PROVIDING FOR THE NEED OF PRIVACY FOR THAT ADOPTED RESIDENT AND HIS OR HER BIRTH AND ADOPTIVE FAMILIES.

3. (A) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, WHEN AN ADOPTED PERSON ATTAINS THE AGE OF EIGHTEEN YEARS, THAT PERSON SHALL HAVE THE RIGHT TO RECEIPT OF A CERTIFIED COPY OF HIS OR HER ORIGINAL (LONG FORM, LINE BY LINE VAULT COPY) BIRTH CERTIFICATE AND ANY CHANGE HIS OR HER BIRTH PARENT OR PARENTS MAY HAVE ATTACHED TO THAT CERTIFICATE, UPON APPLICATION, PRESENTATION OF PROOF OF IDENTIFICATION AND THE PAYMENT OF A NOMINAL FEE.

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

LBD02252-01-9

(B) WHEN IT SHALL BE IMPOSSIBLE THROUGH GOOD-FAITH EFFORTS TO PROVIDE A COPY OF AN ADULT ADOPTED PERSON'S ORIGINAL BIRTH CERTIFICATE (AS IN THE CASE OF AN ADOPTED PERSON BORN OUTSIDE OF, BUT ADOPTED WITHIN, THE STATE OF NEW YORK), THE ADULT ADOPTED PERSON SHALL HAVE THE RIGHT TO SECURE FROM A COURT OF COMPETENT JURISDICTION OR THE ADOPTION AGENCY THE TRUE AND CORRECT IDENTIFYING INFORMATION THAT WOULD HAVE APPEARED ON HIS OR HER ORIGINAL BIRTH CERTIFICATE. IN SUCH CASE THE AGENCY SHALL BE HELD HARMLESS FROM ANY LIABILITY ARISING OUT OF THE DISCLOSURE.

4. (A) A BIRTH PARENT MAY AT ANY TIME REQUEST FROM THE DEPARTMENT A CONTACT PREFERENCE FORM THAT SHALL ACCOMPANY A BIRTH CERTIFICATE ISSUED UNDER THIS TITLE. THE CONTACT PREFERENCE FORM SHALL PROVIDE THE FOLLOWING INFORMATION TO BE COMPLETED AT THE OPTION OF THE BIRTH PARENT:

(1) I WOULD LIKE TO BE CONTACTED.

(2) I WOULD PREFER TO BE CONTACTED ONLY THROUGH AN INTERMEDIARY.

(3) I PREFER NOT TO BE CONTACTED AT THIS TIME. IF I DECIDE LATER THAT I WOULD LIKE TO BE CONTACTED, I WILL SUBMIT AN UPDATED CONTACT PREFERENCE FORM TO THE DEPARTMENT. I HAVE COMPLETED AN UPDATED MEDICAL HISTORY FORM AND HAVE FILED IT WITH THE DEPARTMENT.

THE MEDICAL HISTORY FORM SHALL BE IN A FORM PRESCRIBED BY THE DEPARTMENT AND SHALL BE SUPPLIED TO THE BIRTH PARENT UPON REQUEST OF A CONTACT PREFERENCE FORM FROM THE DEPARTMENT.

ONLY THOSE PERSONS WHO ARE AUTHORIZED TO PROCESS APPLICATIONS MADE UNDER THIS TITLE MAY PROCESS CONTACT PREFERENCE AND MEDICAL HISTORY FORMS.

THE MEDICAL HISTORY FORM AND CONTACT PREFERENCE FORM ARE CONFIDENTIAL COMMUNICATIONS FROM THE BIRTH PARENT TO THE PERSON NAMED ON THE SEALED BIRTH CERTIFICATE AND SHALL BE PLACED IN A SEALED ENVELOPE UPON RECEIPT FROM THE BIRTH PARENT. THE SEALED ENVELOPE SHALL BE MATCHED WITH AND PLACED IN THE FILE CONTAINING THE SEALED BIRTH CERTIFICATE.

THE SEALED ENVELOPE CONTAINING THE CONTACT PREFERENCE FORM AND MEDICAL HISTORY FORM SHALL BE RELEASED TO A PERSON REQUESTING HIS OR HER OWN ORIGINAL BIRTH CERTIFICATE UNDER THIS TITLE. THE CONTACT PREFERENCE FORM AND MEDICAL HISTORY FORM ARE A PRIVATE COMMUNICATION FROM THE BIRTH PARENT TO THE PERSON NAMED ON THE SEALED BIRTH CERTIFICATE AND NO COPIES OF THE FORMS SHALL BE RETAINED BY THE DEPARTMENT.

(B) UPON RECEIPT OF UPDATED HEALTH INFORMATION, THE DEPARTMENT SHALL PROVIDE NOTICE OF ITS RECEIPT TO THE ADOPTIVE PARENT OR PARENTS OF A MINOR CHILD OR DIRECTLY TO THE ADOPTED PERSON WHO HAS ATTAINED THE AGE OF EIGHTEEN, AS PROVIDED BY SECTION FORTY-ONE HUNDRED THIRTY-EIGHT-C OF THIS TITLE. SAID NOTIFICATION WILL INCLUDE INSTRUCTIONS FOR RETRIEVAL OF SAID INFORMATION, WHICH SHALL BE NON-IDENTIFYING.

5. WITHIN TWO YEARS FOLLOWING THE EFFECTIVE DATE OF THIS SECTION, THE GOVERNOR SHALL APPOINT A VOLUNTARY CITIZENS TASK FORCE TO REVIEW, ASSESS AND REPORT ON THE PROGRESS AND ADMINISTRATION OF INITIATIVES ESTABLISHED PURSUANT TO THIS SECTION. THE TASK FORCE, WHICH SHALL CONSIST OF EQUAL NUMBERS OF ADOPTED PERSONS, BIRTH PARENTS, ADOPTIVE PARENTS AND ADOPTION PROFESSIONALS, SHALL MAKE RECOMMENDATIONS TO IMPROVE THE ADMINISTRATION OF THE INITIATIVES ESTABLISHED IN THIS SECTION. THE TASK FORCE SHALL HAVE FULL ACCESS TO THE DEPARTMENT'S, THE OFFICE OF CHILDREN AND FAMILY SERVICES' AND THE FAMILY AND SURROGATE COURTS' FILES OF NON-IDENTIFYING STATISTICAL DATA, INCLUDING THE METHODS OF ITS COLLECTION AND STANDARDS FOR QUALITY CONTROL. WITHIN ONE YEAR OF ITS CREATION, THE TASK FORCE WILL SUBMIT A WRITTEN REPORT TO THE LEGISLATURE AND THE PUBLIC INCLUDING, BUT NOT LIMITED TO, THE FOLLOWING:

(A) THE NUMBER OF ORIGINAL CERTIFIED BIRTH CERTIFICATES REQUESTED BY ADOPTED PERSONS;

(B) THE NUMBER OF ORIGINAL CERTIFIED BIRTH CERTIFICATES PROVIDED TO ADOPTED PERSONS;

(C) THE NUMBER OF CONTACT PREFERENCES FILED BY BIRTH PARENT OR PARENTS; AND

(D) THE NUMBER OF CONTACT PREFERENCES RESCINDED BY BIRTH PARENT OR PARENTS.

S 2. Subdivision 5 of section 4138 of the public health law, as amended by chapter 201 of the laws of 1972, is amended to read as follows:

5. Thereafter, when a certified copy or certified transcript of the certificate of birth of such a person, or a certification of birth for such person is issued, it shall be based upon the new certificate of birth, except when an order of a court of competent jurisdiction shall require the issuance of a copy of the original certificate of birth OR UPON A WRITTEN NOTARIZED REQUEST BY THE ADULT ADOPTED PERSON HIMSELF OR HERSELF ONCE PROPER PROOF OF IDENTITY IS PROVIDED TO THE REGISTRAR.

S 3. Paragraph (b) of subdivision 3 of section 4138 of the public health law, as added by chapter 201 of the laws of 1972, is amended to read as follows:

(b) Thereafter, when a verified transcript or certification of birth of such person is issued by the registrar, it shall be based upon the new certificate, except when an order of a court of competent jurisdiction shall require the issuance of a verified transcript or certification based upon the original local record of birth OR UPON A WRITTEN NOTARIZED REQUEST BY THE ADULT ADOPTED PERSON HIMSELF OR HERSELF ONCE PROPER PROOF OF IDENTITY IS PROVIDED TO THE REGISTRAR.

S 4. Subdivision 7 of section 4138 of the public health law, as amended by chapter 644 of the laws of 1988, is amended to read as follows:

7. Whenever the commissioner makes a new birth certificate for any person pursuant to the provisions of subdivision one of this section, he OR SHE shall forward to such person, if eighteen years of age or more, [or to the parents of such person,] a certified copy, a certified transcript [or] AND a certification of birth, [whichever he deems appropriate under the circumstances,] without making any charge therefor.

S 5. Section 4138 of the public health law is amended by adding three new subdivisions 8, 9 and 10 to read as follows:

8. (A) AN ADOPTED PERSON EIGHTEEN YEARS OF AGE OR OLDER, OR THE BIRTH PARENT OR PARENTS, MAY SUBMIT TO THE REGISTRAR A NOTICE OF CHANGE OF NAME AND/OR ADDRESS AND SUCH INFORMATION SHALL BE ATTACHED TO THE ORIGINAL BIRTH CERTIFICATE OF THE ADOPTED PERSON.

(B) THE REGISTRAR SHALL DISCLOSE TO THE BIRTH PARENT OR PARENTS AT SUCH PARENT'S OR PARENTS' REQUEST, THE MOST CURRENT NAME AND ADDRESS OF AN ADOPTED PERSON IF THAT ADOPTED PERSON HAS REQUESTED SO BY FILING A NOTARIZED LETTER WITH THE REGISTRAR.

9. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, WHEN AN ADOPTED PERSON ATTAINS THE AGE OF EIGHTEEN YEARS, HE OR SHE SHALL HAVE THE RIGHT, UPON APPLICATION, PROOF OF IDENTITY AND PAYMENT OF A NOMINAL FEE, TO A CERTIFIED COPY OF HIS OR HER ORIGINAL LONG FORM, LINE BY LINE, VAULT COPY BIRTH CERTIFICATE.

10. THE DEPARTMENT SHALL ACCEPT ADDITIONAL INFORMATION FROM BIRTH RELATIVES OF AN ADOPTED PERSON AND SHALL UPDATE ITS RECORDS CONTINUOUSLY, USING INFORMATION RECEIVED FROM SUCH BIRTH RELATIVES. WITHIN NINETY DAYS OF RECEIPT, THIS DATA WILL BE PROVIDED TO THE ADOPTIVE PARENT OR PARENTS OF A MINOR CHILD OR DIRECTLY TO AN ADOPTED PERSON WHO HAS ATTAINED THE AGE OF EIGHTEEN OR TO HIS OR HER LEGAL REPRESENTATIVE.

S 6. Paragraph (b) of subdivision 3 of section 4138-d of the public health law, as amended by chapter 588 of the laws of 1999, is amended to read as follows:

(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 hundred thirty-eight-c of this [article] TITLE, to the [adoptee registrant] ADOPTED PERSON 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.]

S 7. Section 4104 of the public health law, as amended by chapter 435 of the laws of 2008, is amended to read as follows:

S 4104. Vital statistics; application of article. The provisions of this article except for the provisions contained in paragraph (i) of subdivision two of section four thousand one hundred, section four thousand one hundred three, subdivision two of section four thousand one hundred thirty-five, section four thousand one hundred thirty-five-b, subdivision eight of section four thousand one hundred seventy-four, paragraphs (b) and (e) of subdivision one, PARAGRAPH (B) OF SUBDIVISION THREE, AND SUBDIVISIONS FIVE, SEVEN, EIGHT, NINE AND TEN of section four thousand one hundred thirty-eight, subdivision eleven of section four thousand one hundred thirty-eight-c, PARAGRAPH (B) OF SUBDIVISION THREE OF SECTION FOUR THOUSAND ONE HUNDRED THIRTY-EIGHT-D, SECTION FOUR THOUSAND ONE HUNDRED THIRTY-EIGHT-E and section four thousand one hundred seventy-nine of this article, shall not apply to the city of New York.

S 8. Subdivision 1 of section 114 of the domestic relations law, as amended by chapter 751 of the laws of 1989 and designated by chapter 601 of the laws of 1994, is amended to read as follows:

1. If satisfied that the best interests of the adoptive child will be promoted thereby, the judge or surrogate shall make an order approving the adoption and directing that the adoptive child shall thenceforth be regarded and treated in all respects as the child of the adoptive parents or parent. In determining whether the best interests of the adoptive child will be promoted by the adoption, the judge or surrogate shall give due consideration to any assurance by a LOCAL commissioner of social services that he OR SHE will provide necessary support and maintenance for the adoptive child pursuant to the social services law. Such order shall contain the full name, date and place of birth and reference to the schedule annexed to the petition containing the medical history of the child in the body thereof and shall direct that the child's medical history, heritage of the BIRTH parents, which shall include nationality, ethnic background and race; education, which shall be the number of years of school completed by the BIRTH parents at the time of the birth AND ALSO AT THE TIME OF SURRENDER of the adoptive child; general physical appearance of the BIRTH parents at the time of the birth AND ALSO AT THE TIME OF SURRENDER of the adoptive child, which shall include height, weight, color of hair, eyes, skin; occupation of the BIRTH parents at the time of the birth AND ALSO AT THE TIME OF SURRENDER of the adoptive child; health and medical history of the BIRTH parents at the time of the birth AND ALSO AT THE TIME OF SURRENDER of the adoptive child, including all available information setting forth conditions or diseases believed to be hereditary, any drugs or medication taken during the pregnancy by the child's mother; and any other

information which may be a factor influencing the child's present or future health, INCLUDING THE talents, hobbies and special interests of THE BIRTH parents as contained in the petition, be furnished to the adoptive parents. IN RECOGNITION OF THE IMPERATIVE LIFELONG IMPORTANCE OF SUCH INFORMATION FOR THE HEALTH AND WELL-BEING OF THE ADOPTED PERSON, IT SHALL BE THE DUTY OF THE LAW GUARDIAN AS PROVIDED FOR BY SECTIONS TWO HUNDRED FORTY-ONE, TWO HUNDRED FORTY-TWO, TWO HUNDRED FORTY-NINE AND TWO HUNDRED FORTY-NINE-A OF THE FAMILY COURT ACT AND/OR THE GUARDIAN AD LITEM AS PROVIDED FOR BY SECTIONS FOUR HUNDRED TWO, FOUR HUNDRED THREE AND FOUR HUNDRED FOUR OF THE SURROGATE'S COURT PROCEDURE ACT TO ENSURE THE COMPREHENSIVE COMPLETION AND FILING OF ALL THE ABOVE REFERENCED INFORMATION PRIOR TO THE ACCEPTANCE OF THE TERMINATION OF PARENTAL RIGHTS OR THE ENTRY OF A CERTIFICATE OF ADOPTION. IT SHALL BE DEEMED BY THAT LEGAL REPRESENTATIVE THAT SUCH INFORMATION IS ALWAYS IN THE BEST INTEREST OF THE CHILD AND A PROTECTED RIGHT. PRIOR TO TERMINATION OF DUTIES, SUCH LAW GUARDIAN OR GUARDIAN AD LITEM SHALL PROVIDE, AS DIRECTED BY SECTION FORTY-ONE HUNDRED THIRTY-EIGHT-C OF THE PUBLIC HEALTH LAW AND SECTIONS THREE HUNDRED SEVENTY-THREE AND THREE HUNDRED SEVENTY-THREE-A OF THE SOCIAL SERVICES LAW, TO THE RESPECTIVE RESPONSIBLE PARTIES ALL SUCH COLLECTED DATA, AND PROVIDE AN AFFIDAVIT TO THE COURT REPORTING ALL DILIGENT EFFORTS TO OBTAIN SUCH DATA. A COPY OF THAT AFFIDAVIT SHALL BE APPENDED TO THE ORIGINAL AND ANY AND ALL AMENDED BIRTH CERTIFICATES. If the judge or surrogate is also satisfied that there is no reasonable objection to the change of name proposed, the order shall direct that the name of the adoptive child be changed to the name stated in the agreement of adoption and that henceforth he OR SHE shall be known by that name. All such orders made by a family court judge of Westchester county since September first, nineteen hundred sixty-two, and on file in the office of the county clerk of such county shall be transferred to the clerk of the family court of such county. Such order and all the papers in the proceeding shall be filed in the office of the court granting the adoption and the order shall be entered in books which shall be kept under seal and which shall be indexed by the name of the adoptive parents and by the full original name of the child. Such order, including orders heretofore entered, shall be subject to inspection and examination only as hereinafter provided. Notwithstanding the fact that adoption records shall be sealed and secret, they may be microfilmed and processed pursuant to an order of the court, provided that such order provides that the confidentiality of such records be maintained. If the confidentiality is violated, the person or company violating it can be found guilty of contempt of court. The fact that the adoptive child was born out of wedlock shall in no case appear in such order. The written report of the investigation together with all other papers pertaining to the adoption shall be kept by the judge or surrogate as a permanent record of his OR HER court and such papers must be sealed by him OR HER and withheld from inspection. No certified copy of the order of adoption shall issue unless authorized by court order, except that certified copies may issue to the agency or agencies in the proceeding prior to the sealing of the papers. Before the record is sealed, such order may be granted upon written ex parte application on good cause shown and upon such conditions as the court may impose. After the record is sealed, such order may be granted only upon notice as hereinafter provided for disclosure or access and inspection of records. The clerk upon request of a person or agency entitled thereto shall issue certificates of adoption which shall contain only the new name of the child and the date and place of birth of the child, the name of the

adoptive parents and the date when and court where the adoption was granted, which certificate as to the facts recited therein shall have the same force and effect as a certified copy of an order of adoption.

S 9. Section 114 of the domestic relations law is amended by adding a new subdivision 5 to read as follows:

5. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, WHEN AN ADOPTED PERSON ATTAINS THE AGE OF EIGHTEEN YEARS, SUCH ADOPTED PERSON SHALL HAVE THE RIGHT, UPON APPLICATION, PROOF OF IDENTITY AND PAYMENT OF A NOMINAL FEE, TO A CERTIFIED COPY OF HIS OR HER ORIGINAL LONG FORM, LINE BY LINE, VAULT COPY BIRTH CERTIFICATE.

S 10. This act shall take effect one year after it shall have become a law, provided, however, that, effective immediately, the commissioner of health is directed to promulgate such rules and regulations as may be necessary to carry out the provisions of this act.