

3255--A

Cal. No. 438

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 -- reported favorably from said committee, ordered to first and second report, ordered to a third reading -- reported favorably from said committee and committed to the Committee on Rules -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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:

1 Section 1. Section 4138-a of the public health law is REPEALED and a
2 new section 4138-a is added to read as follows:
3 S 4138-A. CERTIFICATE OF BIRTH DATA. ANY EXISTING CERTIFICATE OF BIRTH
4 DATA SHALL CONTINUE TO BE EFFECTIVE.
5 S 2. Section 4138-b of the public health law, as added by chapter 329
6 of the laws of 2008, is amended to read as follows:
7 S 4138-b. Birth certificate: foreign country adoption. Whenever the
8 adoption or finalization of a foreign adoption or recognition of a
9 foreign adoption of a child pursuant to section one hundred eleven-c of
10 the domestic relations law has been reported to the [local registrar]
11 COMMISSIONER, the [registrar] COMMISSIONER shall [issue] FILE a birth
12 certificate for the child PROVIDED THERE IS NO OTHER BIRTH CERTIFICATE
13 OR OTHER BIRTH RECORD ON FILE OTHER THAN IN THE COUNTRY WHERE SUCH CHILD
14 WAS BORN AND PROVIDED, FURTHER, THAT A CERTIFICATE OF BIRTH DATA DOES
15 NOT EXIST FOR THAT PERSON. Such birth certificate shall be [issued and]
16 filed upon receipt of: proof that the adoptive parent [or child is] WAS
17 a resident of this state AT THE TIME OF ADOPTION; a copy of the adoption
18 documents of the jurisdiction or country in which the child was adopted;

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

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1 a certified translation of the foreign adoption documents, evidence of
2 the date and place of the child's birth; and evidence of IR-3 OR IR-4
3 immigrant visa status, or a successor immigrant visa status. The birth
4 certificate shall include the child's name, sex, date of birth, time of
5 birth, place of birth, mother's maiden name, and father's name. A BIRTH
6 CERTIFICATE FOR A FOREIGN COUNTRY ADOPTION WHICH HAS BEEN FILED BY A
7 LOCAL REGISTRAR AND ALL SUPPORTING DOCUMENTATION SHALL BE SUBMITTED BY
8 THE LOCAL REGISTRAR TO THE COMMISSIONER WHO SHALL FILE A NEW BIRTH
9 CERTIFICATE PURSUANT TO THIS SECTION.

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

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

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

43 (a) If the department determines that the adoption occurred within the
44 state, it shall notify the court wherein the adoption occurred to submit
45 to the department non-identifying information as may be contained in the
46 records of the court and the names of the birth parents of the adoptee.
47 Notwithstanding any other provision of law to the contrary, the court
48 shall thereupon transmit to the department non-identifying information
49 as may be contained in the records of the court, and the names of the
50 birth parents of the adoptee, provided that, if the court determines
51 from its records that the adoption was from an authorized agency, the
52 court shall submit to the department only the name and address of such
53 authorized agency and the names of the birth parents of the adoptee. In
54 such cases, unless the adoptee registrant [or the biological sibling
55 registrant] shall have elected otherwise, the department shall notify
56 the authorized agency whose name was provided by the court to release

1 promptly to the adoptee [or biological sibling registrant] all non-iden-
2 tifying information as may be contained in the agency records. Such
3 agency shall thereafter promptly release the non-identifying information
4 to the adoptee registrant. If the adoptee registrant shall have elected
5 not to have the information released to him or her by the authorized
6 agency, the agency shall submit promptly to the department all non-iden-
7 tifying information as may be contained in the agency records. In any
8 case where the agency records are incomplete, no longer exist or are
9 otherwise unavailable, the department shall so notify the court. The
10 court shall thereupon promptly submit such non-identifying information
11 as may be contained in their records. If no authorized agency was
12 involved or if the adoptee registrant shall have elected not to have
13 release of information by the authorized agency involved in such
14 adoption, the department shall release the non-identifying information
15 to the adoptee registrant. The department and/or an authorized agency
16 may restrict the nature of the non-identifying information released
17 pursuant to this section upon a reasonable determination that disclosure
18 of such non-identifying information would not be in the adoptee's,
19 biological sibling's, or parent's best interest.

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

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

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

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

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

55 S 4. Subdivision 9 of section 4138-c of the public health law is
56 REPEALED.

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

7 3. Upon acceptance of a registration [by an adoptee or the biological
8 sibling registrant] pursuant to this section, the agency shall search
9 the records of the agency to determine whether the agency was involved
10 in such adoption.

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

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

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

31 (a) If the department determines that there is a corresponding regis-
32 tration for the adoptee, for [each] EITHER of the birth parents and/or
33 for a biological sibling of the adoptee, it shall notify the court wher-
34 ein the adoption occurred and the department shall notify the agency
35 that a corresponding match has been made. The agency shall notify all
36 such [persons] REGISTRANTS that a corresponding match has been made and
37 request such persons' final consent to the release of identifying infor-
38 mation.

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

45 5. Upon receipt of a final consent by the adoptee, by [each] EITHER of
46 the birth parents and/or by a biological sibling of the adoptee, the
47 agency shall release identifying information ABOUT THE CONSENTING REGIS-
48 TRANTS to [all] the CONSENTING registrants. Such identifying information
49 shall be limited to the names and addresses of the CONSENTING regis-
50 trants and shall not include any other information contained in the
51 adoption or birth records. However, nothing in this section shall be
52 construed to prevent the release of adoption records as otherwise
53 permitted by law.

54 S 6. Subdivision 9 of section 4138-d of the public health law is
55 REPEALED.

56 S 7. This act shall take effect immediately.