

1438

2011-2012 Regular Sessions

I N S E N A T E

January 7, 2011

Introduced by Sens. MONTGOMERY, BONACIC, DILAN, HASSELL-THOMPSON, KRUEGER, LANZA, LARKIN, LAVALLE, OPPENHEIMER, PERKINS, ROBACH, SAVINO, SQUADRON, STAVISKY -- 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:

1 Section 1. The public health law is amended by adding a new section
2 4138-e to read as follows:
3 S 4138-E. BILL OF ADOPTEE RIGHTS. 1. THIS SECTION SHALL BE KNOWN AND
4 MAY BE CITED AS THE "BILL OF ADOPTEE RIGHTS".
5 2. THE LEGISLATURE HEREBY STATES ITS INTENTION TO ACKNOWLEDGE, SUPPORT
6 AND ENCOURAGE THE LIFE-LONG HEALTH AND WELL-BEING NEEDS OF PERSONS WHO
7 HAVE BEEN AND WILL BE ADOPTED IN THE STATE OF NEW YORK. THE LEGISLATURE
8 FURTHER RECOGNIZES THAT THE DENIAL OF ACCESS TO ACCURATE AND COMPLETE
9 MEDICAL AND SELF-IDENTIFYING DATA OF ANY ADOPTED PERSON, KNOWN AND
10 WILFULLY WITHHELD BY OTHERS, MAY RESULT IN SUCH PERSON SUCCUMBING TO
11 PREVENTABLE DISEASE, PREMATURE DEATH OR OTHERWISE UNHEALTHY LIFE, IS A
12 VIOLATION OF THAT PERSON'S HUMAN RIGHTS AND IS CONTRARY TO THE TENETS OF
13 GOVERNANCE. AS SUCH, THE PROVISIONS OF THIS SECTION SEEK TO ESTABLISH
14 CONSIDERATIONS UNDER THE LAW FOR ADOPTED PERSONS EQUAL TO SUCH CONSIDER-
15 ATIONS PERMITTED BY LAW TO ALL NON-ADOPTED PERSONS; THIS SECTION DOES SO
16 WHILE PROVIDING FOR THE PRIVACY OF AN ADOPTED PERSON AND HIS OR HER
17 BIRTH AND ADOPTIVE FAMILIES.
18 3. (A) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, WHEN AN ADOPTED
19 PERSON ATTAINS THE AGE OF EIGHTEEN YEARS, THAT PERSON SHALL HAVE THE
20 RIGHT TO RECEIPT OF A NON-CERTIFIED COPY OF HIS OR HER ORIGINAL (LONG
21 FORM, LINE BY LINE VAULT COPY) BIRTH CERTIFICATE AND ANY CHANGE HIS OR
22 HER BIRTH PARENT OR PARENTS MAY HAVE ATTACHED TO THAT CERTIFICATE,

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

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1 AND/OR A MEDICAL HISTORY FORM IF AVAILABLE, UPON APPLICATION, PRESENTA-
2 TION OF PROOF OF IDENTIFICATION AND THE PAYMENT OF A NOMINAL FEE.

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

11 4. A BIRTH PARENT MAY AT ANY TIME REQUEST FROM THE DEPARTMENT A
12 CONTACT PREFERENCE FORM THAT SHALL ACCOMPANY A BIRTH CERTIFICATE ISSUED
13 UNDER THIS TITLE. THE CONTACT PREFERENCE FORM SHALL PROVIDE THE FOLLOW-
14 ING INFORMATION TO BE COMPLETED AT THE OPTION OF THE BIRTH PARENT:

15 (A) I WOULD LIKE TO BE CONTACTED.

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

17 (C) I HAVE COMPLETED A MEDICAL HISTORY FORM AND HAVE FILED IT WITH THE
18 DEPARTMENT.

19 (D) PLEASE DO NOT CONTACT ME. IF I DECIDE LATER THAT I WOULD LIKE TO
20 BE CONTACTED, I WILL SUBMIT AN UPDATED CONTACT PREFERENCE FORM TO THE
21 DEPARTMENT.

22 THE MEDICAL HISTORY FORM SHALL BE IN A FORM PRESCRIBED BY THE DEPART-
23 MENT AND SHALL BE SUPPLIED TO THE BIRTH PARENT UPON REQUEST OF A CONTACT
24 PREFERENCE FORM FROM THE DEPARTMENT.

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

28 THE MEDICAL HISTORY FORM AND CONTACT PREFERENCE FORM ARE CONFIDENTIAL
29 COMMUNICATIONS FROM THE BIRTH PARENT TO THE PERSON NAMED ON THE SEALED
30 BIRTH CERTIFICATE AND SHALL BE PLACED IN SEPARATE SEALED ENVELOPES UPON
31 RECEIPT FROM THE BIRTH PARENT. THE SEALED ENVELOPES SHALL BE MATCHED
32 WITH AND PLACED IN THE FILE CONTAINING THE SEALED BIRTH CERTIFICATE.

33 THE SEALED ENVELOPES CONTAINING THE CONTACT PREFERENCE FORM AND
34 MEDICAL HISTORY FORM MAY BE RELEASED TO A PERSON REQUESTING HIS OR HER
35 OWN ORIGINAL BIRTH CERTIFICATE UNDER THIS TITLE. THE CONTACT PREFERENCE
36 FORM AND MEDICAL HISTORY FORM ARE PRIVATE COMMUNICATIONS FROM THE BIRTH
37 PARENT TO THE PERSON NAMED ON THE SEALED BIRTH CERTIFICATE AND NO COPIES
38 OF THE FORMS SHALL BE RETAINED BY THE DEPARTMENT. WHERE ONLY A MEDICAL
39 HISTORY FORM IS REQUESTED THE BIRTH CERTIFICATE AND CONTACT PREFERENCE
40 FORM SHALL NOT BE SENT, BUT MAY BE REQUESTED AT A LATER DATE.

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

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

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

54 (b) Thereafter, when a verified transcript or certification of birth
55 of such person is issued by the registrar, it shall be based upon the
56 new certificate, except when an order of a court of competent jurisdic-

tion 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 two new subdivisions 8 and 9 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 NON-CERTIFIED COPY OF HIS OR HER ORIGINAL LONG FORM, LINE BY LINE, VAULT COPY BIRTH CERTIFICATE AND/OR A MEDICAL HISTORY FORM, IF AVAILABLE.

S 6. Paragraph (b) of subdivision 3 of section 4138-d of the public health law, as amended by chapter 181 of the laws of 2010, 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 forty-one hundred thirty-eight-c of this title, to the [adoptee 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] ADOPTED PERSON.

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 AND NINE 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.

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

4 1. If satisfied that the best interests of the adoptive child will be
5 promoted thereby, the judge or surrogate shall make an order approving
6 the adoption and directing that the adoptive child shall thenceforth be
7 regarded and treated in all respects as the child of the adoptive
8 parents or parent. In determining whether the best interests of the
9 adoptive child will be promoted by the adoption, the judge or surrogate
10 shall give due consideration to any assurance by a LOCAL commissioner of
11 social services that he OR SHE will provide necessary support and main-
12 tenance for the adoptive child pursuant to the social services law. Such
13 order shall contain the full name, date and place of birth and reference
14 to the schedule annexed to the petition containing the medical history
15 of the child in the body thereof and shall direct that the child's
16 medical history, heritage of the BIRTH parents, which shall include
17 nationality, ethnic background and race; education, which shall be the
18 number of years of school completed by the BIRTH parents at the time of
19 the birth AND ALSO AT THE TIME OF SURRENDER of the adoptive child;
20 general physical appearance of the BIRTH parents at the time of the
21 birth AND ALSO AT THE TIME OF SURRENDER of the adoptive child, which
22 shall include height, weight, color of hair, eyes, skin; occupation of
23 the BIRTH parents at the time of the birth AND ALSO AT THE TIME OF
24 SURRENDER of the adoptive child; health and medical history of the BIRTH
25 parents at the time of the birth AND ALSO AT THE TIME OF SURRENDER of
26 the adoptive child, including all available information setting forth
27 conditions or diseases believed to be hereditary, any drugs or medica-
28 tion taken during the pregnancy by the child's mother; and any other
29 information which may be a factor influencing the child's present or
30 future health, INCLUDING THE talents, hobbies and special interests of
31 THE BIRTH parents as contained in the petition, be furnished to the
32 adoptive parents. IN RECOGNITION OF THE IMPERATIVE LIFELONG IMPORTANCE
33 OF SUCH INFORMATION FOR THE HEALTH AND WELL-BEING OF THE ADOPTED PERSON,
34 IT SHALL BE THE DUTY OF THE LAW GUARDIAN AS PROVIDED FOR BY SECTIONS TWO
35 HUNDRED FORTY-ONE, TWO HUNDRED FORTY-TWO, TWO HUNDRED FORTY-NINE AND TWO
36 HUNDRED FORTY-NINE-A OF THE FAMILY COURT ACT TO ENSURE THE COMPREHENSIVE
37 COMPLETION AND FILING OF ALL THE ABOVE REFERENCED INFORMATION PRIOR TO
38 THE ACCEPTANCE OF THE TERMINATION OF PARENTAL RIGHTS OR THE ENTRY OF A
39 CERTIFICATE OF ADOPTION. IT SHALL BE DEEMED BY THAT LEGAL REPRESENTATIVE
40 THAT SUCH INFORMATION IS ALWAYS IN THE BEST INTEREST OF THE CHILD AND IS
41 A PROTECTED RIGHT. PRIOR TO TERMINATION OF DUTIES, SUCH LAW GUARDIAN
42 SHALL PROVIDE, AS DIRECTED BY SECTION FORTY-ONE HUNDRED THIRTY-EIGHT-C
43 OF THE PUBLIC HEALTH LAW AND SECTIONS THREE HUNDRED SEVENTY-THREE AND
44 THREE HUNDRED SEVENTY-THREE-A OF THE SOCIAL SERVICES LAW, TO THE RESPEC-
45 TIVE RESPONSIBLE PARTIES ALL SUCH COLLECTED DATA, AND PROVIDE AN AFFIDA-
46 VIT TO THE COURT REPORTING ALL DILIGENT EFFORTS TO OBTAIN SUCH DATA. A
47 COPY OF SUCH AFFIDAVIT SHALL BE APPENDED TO THE ORIGINAL AND ANY AND ALL
48 AMENDED BIRTH CERTIFICATES. If the judge or surrogate is also satisfied
49 that there is no reasonable objection to the change of name proposed,
50 the order shall direct that the name of the adoptive child be changed to
51 the name stated in the agreement of adoption and that henceforth he OR
52 SHE shall be known by that name. All such orders made by a family court
53 judge of Westchester county since September first, nineteen hundred
54 sixty-two, and on file in the office of the county clerk of such county
55 shall be transferred to the clerk of the family court of such county.
56 Such order and all the papers in the proceeding shall be filed in the

1 office of the court granting the adoption and the order shall be entered
2 in books which shall be kept under seal and which shall be indexed by
3 the name of the adoptive parents and by the full original name of the
4 child. Such order, including orders heretofore entered, shall be subject
5 to inspection and examination only as hereinafter provided. Notwith-
6 standing the fact that adoption records shall be sealed and secret, they
7 may be microfilmed and processed pursuant to an order of the court,
8 provided that such order provides that the confidentiality of such
9 records be maintained. If the confidentiality is violated, the person or
10 company violating it can be found guilty of contempt of court. The fact
11 that the adoptive child was born out of wedlock shall in no case appear
12 in such order. The written report of the investigation together with all
13 other papers pertaining to the adoption shall be kept by the judge or
14 surrogate as a permanent record of his OR HER court and such papers must
15 be sealed by him OR HER and withheld from inspection. No certified copy
16 of the order of adoption shall issue unless authorized by court order,
17 except that certified copies may issue to the agency or agencies in the
18 proceeding prior to the sealing of the papers. Before the record is
19 sealed, such order may be granted upon written ex parte application on
20 good cause shown and upon such conditions as the court may impose. After
21 the record is sealed, such order may be granted only upon notice as
22 hereinafter provided for disclosure or access and inspection of records.
23 The clerk upon request of a person or agency entitled thereto shall
24 issue certificates of adoption which shall contain only the new name of
25 the child and the date and place of birth of the child, the name of the
26 adoptive parents and the date when and court where the adoption was
27 granted, which certificate as to the facts recited therein shall have
28 the same force and effect as a certified copy of an order of adoption.

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

31 5. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, WHEN AN ADOPTED PERSON
32 ATTAINS THE AGE OF EIGHTEEN YEARS, SUCH ADOPTED PERSON SHALL HAVE THE
33 RIGHT, UPON APPLICATION, PROOF OF IDENTITY AND PAYMENT OF A NOMINAL FEE,
34 TO A NON-CERTIFIED COPY OF HIS OR HER ORIGINAL LONG FORM, LINE BY LINE,
35 VAULT COPY BIRTH CERTIFICATE AND/OR MEDICAL HISTORY FORM, IF AVAILABLE.

36 S 10. This act shall take effect on the first of January next succeed-
37 ing the date on which it shall have become a law, provided, however,
38 that, effective immediately, the commissioner of health is directed to
39 promulgate such rules and regulations as may be necessary to carry out
40 the provisions of this act.