

909--A

2013-2014 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 9, 2013

Introduced by M. of A. WEPRIN, BORELLI, MOSLEY, OTIS, BENEDETTO, GARBARINO, HOOPER, TITUS, GOLDFEDER, ROSA, SEPULVEDA, ORTIZ, MAYER, AUBRY, PICHARDO, CUSICK, BRINDISI, SKOUFIS -- Multi-Sponsored by -- M. of A. ARROYO, BARRETT, BROOK-KRASNY, BUTLER, CAMARA, CERETTO, CLARK, COLTON, COOK, CURRAN, DINOWITZ, DIPIETRO, DUPREY, ENGLEBRIGHT, FAHY, FARRELL, GALEF, GIGLIO, GJONAJ, GOTTFRIED, GRAF, GUNTHER, HAWLEY, JOHNS, KATZ, KELLNER, KOLB, LALOR, LAVINE, LIFTON, P. LOPEZ, LUPARDO, LUPINACCI, MAGEE, MAGNARELLI, MALLIOTAKIS, McDONALD, McDONOUGH, McKEVITT, MILLER, MILLMAN, MONTESANO, MOYA, OAKS, PALMESANO, PALUMBO, PAULIN, PEOPLES-STOKES, PERRY, PRETLOW, RA, RAIA, RAMOS, RIVERA, ROBERTS, ROBINSON, RODRIGUEZ, ROSENTHAL, RYAN, SCARBOROUGH, SCHIMEL, SIMANOWITZ, SKARTADOS, SOLAGES, STEC, THIELE, TITONE, WALTER, WEISENBERG, WRIGHT, ZEBROWSKI -- read once and referred to the Committee on Health -- recommitted to the Committee on Health in accordance with Assembly Rule 3, sec. 2 -- reported and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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

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

1 Section 1. Legislative findings. The legislature hereby states its
2 intention to acknowledge, support and encourage the life-long health and
3 well-being of persons who have been and will be adopted in the state of
4 New York. The legislature further recognizes that the inability to
5 access accurate and complete medical and self-identifying data of any
6 adopted person may result in such person succumbing to preventable
7 disease, premature death or otherwise unhealthy life. As such, the
8 provisions of this act seek to establish considerations under the law
9 for adopted persons to access their birth information while providing

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

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1 for the privacy of an adopted person and his or her birth and adoptive
2 families.

3 S 2. Subdivision 2 of section 114 of the domestic relations law, as
4 amended by chapter 559 of the laws of 1992 and as designated by chapter
5 601 of the laws of 1994, is amended to read as follows:

6 2. No person, including the attorney for the adoptive parents shall
7 disclose the surname of the child directly or indirectly to the adoptive
8 parents except upon order of the court. No person shall be allowed
9 access to such sealed records and order and any index thereof except
10 upon an order of a judge or surrogate of the court in which the order
11 was made or of a justice of the supreme court. [No] EXCEPT AS PROVIDED
12 IN SUBDIVISIONS FOUR AND FIVE OF THIS SECTION, NO order for disclosure
13 or access and inspection shall be granted except on good cause shown and
14 on due notice to the adoptive parents and to such additional persons as
15 the court may direct. Nothing contained herein shall be deemed to
16 require the state commissioner of health or his OR HER designee to
17 secure a court order authorizing disclosure of information contained in
18 adoption or birth records requested pursuant to the authority of section
19 forty-one hundred thirty-eight-c or section forty-one hundred thirty-
20 eight-d of the public health law; upon the receipt of such request for
21 information, the court shall transmit the information authorized to be
22 released thereunder to the state commissioner of health or his OR HER
23 designee.

24 S 3. Section 114 of the domestic relations law is amended by adding a
25 new subdivision 5 to read as follows:

26 5. NOTWITHSTANDING ANY INCONSISTENT PROVISION OF LAW: (A) AN ADOPTED
27 PERSON WHO HAS ATTAINED THE AGE OF EIGHTEEN YEARS MAY APPLY TO THE COURT
28 IN WHICH THE ORDER OF ADOPTION WAS MADE, OR TO THE SUPREME COURT, TO
29 REQUEST AN ORDER RELEASING A NON-CERTIFIED COPY OF HIS OR HER ORIGINAL
30 LONG FORM BIRTH CERTIFICATE, OR WHERE NO BIRTH CERTIFICATE IS AVAILABLE,
31 THE IDENTIFYING INFORMATION OF HIS OR HER BIRTH PARENT OR PARENTS, IN
32 ACCORDANCE WITH THIS SUBDIVISION. SUCH APPLICATION SHALL INCLUDE SUFFI-
33 CIENT PROOF OF IDENTITY OF SUCH ADOPTED PERSON.

34 (B) UPON RECEIPT OF AN APPLICATION PURSUANT TO PARAGRAPH (A) OF THIS
35 SUBDIVISION, THE COURT SHALL PROVIDE THE STATE DEPARTMENT OF HEALTH, OR
36 ORDER THAT SUCH DEPARTMENT BE PROVIDED, WITH THE IDENTIFYING INFORMATION
37 OF THE ADOPTED PERSON'S BIRTH PARENT OR PARENTS AND DIRECT THE DEPART-
38 MENT OF HEALTH TO MAKE A REASONABLE AND GOOD FAITH EFFORT, DOCUMENTED IN
39 WRITING AND COMPLETED WITHIN ONE HUNDRED TWENTY DAYS, TO NOTIFY THE
40 BIRTH PARENT OR PARENTS AND ADVISE SUCH PARENT OR PARENTS THAT THE
41 ADOPTED PERSON HAS MADE AN APPLICATION PURSUANT TO THIS SUBDIVISION.
42 SUCH NOTIFICATION AND ADVISORY GIVEN SHALL COMPLY WITH ANY TERMS AND
43 CONDITIONS SET FORTH BY THE COURT AND SHALL BE MADE BY MEANS DESIGNED TO
44 BE SENSITIVE TO THE PERSONAL NATURE OF THE MATTER. THE DEPARTMENT OF
45 HEALTH SHALL, BEFORE MAKING EFFORTS TO NOTIFY THE BIRTH PARENT OR
46 PARENTS, DETERMINE WHETHER SUCH PARENT OR PARENTS HAVE ALREADY FILED A
47 WRITTEN CONFIRMATION WITH THE COURT OR THE DEPARTMENT OF HEALTH PURSUANT
48 TO PARAGRAPH (H) OF THIS SUBDIVISION OR A BIRTH PARENT REGISTRATION
49 CONSENT FORM WITH THE ADOPTION INFORMATION REGISTRY PURSUANT TO SUBDIVI-
50 SION TEN OF SECTION FORTY-ONE HUNDRED THIRTY-EIGHT-C OF THE PUBLIC
51 HEALTH LAW. WHERE SUCH CONFIRMATION OR CONSENT FORM IS ON FILE, THE
52 DEPARTMENT OF HEALTH SHALL NOTIFY THE COURT AND NO SUCH EFFORTS TO NOTI-
53 FY THE PARENT SHALL BE MADE.

54 (C) UPON NOTIFICATION PURSUANT TO PARAGRAPH (B) OF THIS SUBDIVISION,
55 OR EARLIER AT THE DISCRETION OF THE BIRTH PARENT PURSUANT TO PARAGRAPH
56 (H) OF THIS SUBDIVISION, SUCH BIRTH PARENT MAY COMPLETE A WRITTEN AND

1 NOTARIZED CONFIRMATION THAT HE OR SHE WISHES TO MAINTAIN CONFIDENTIALITY
2 OF IDENTIFYING INFORMATION, OR THAT HE OR SHE CONSENTS TO THE RELEASE OF
3 IDENTIFYING INFORMATION.

4 (D) UPON RECEIPT OF SUCH WRITTEN CONFIRMATION, OR WHERE THE PARENT HAS
5 COMPLETED A BIRTH PARENT REGISTRATION CONSENT FORM PURSUANT TO SUBDIVI-
6 SION TEN OF SECTION FORTY-ONE HUNDRED THIRTY-EIGHT-C OF THE PUBLIC
7 HEALTH LAW, THE DEPARTMENT OF HEALTH SHALL NOTIFY THE COURT AND PROVIDE
8 THE COURT WITH THE WRITTEN CONFIRMATION OR CONSENT FORM, AS THE CASE MAY
9 BE, COMPLETED BY THE BIRTH PARENT. WHERE SUCH CONSENT FORM HAS BEEN
10 REVOKED BY A BIRTH PARENT, THE DEPARTMENT OF HEALTH SHALL SO NOTIFY THE
11 COURT AND SUCH REVOCATION SHALL BE CONSIDERED BY THE COURT AS A REQUEST
12 FOR CONTINUED CONFIDENTIALITY OF IDENTIFYING INFORMATION.

13 (I) IF THE BIRTH PARENT CONSENTS TO THE RELEASE OF IDENTIFYING INFOR-
14 MATION, THE COURT SHALL (A) ORDER THE RELEASE OF A NON-CERTIFIED COPY OF
15 THE LONG-FORM BIRTH CERTIFICATE TO THE ADOPTED PERSON, OR (B) WHEN SUCH
16 BIRTH CERTIFICATE IS NOT AVAILABLE, ORDER THAT THE IDENTIFYING INFORMA-
17 TION BE MADE AVAILABLE TO THE ADOPTED PERSON.

18 (II) IF THE BIRTH PARENT REQUESTS CONTINUED CONFIDENTIALITY, THE COURT
19 SHALL DIRECT THE RELEASE OF A NON-CERTIFIED COPY OF THE BIRTH CERTIF-
20 ICATE WITH THE IDENTIFYING INFORMATION REGARDING SUCH PARENT REDACTED,
21 AND SHALL PROVIDE SUCH ADOPTED PERSON WITH SUCH REDACTED COPY AND FILE A
22 COPY OF THE REDACTED VERSION IN THE COURT RECORD. SUCH REDACTED COPY
23 SHALL INCLUDE NON-IDENTIFYING INFORMATION AS THAT TERM IS DEFINED IN
24 SUBDIVISION THREE OF SECTION FORTY-ONE HUNDRED THIRTY-EIGHT-C OF THE
25 PUBLIC HEALTH LAW.

26 (III) WHERE THERE ARE TWO IDENTIFIED BIRTH PARENTS AND ONLY ONE SUCH
27 PARENT HAS REQUESTED CONFIDENTIALITY, THE IDENTIFYING INFORMATION
28 REGARDING THE OTHER PARENT MAY, IN THE DISCRETION OF THE COURT, BE
29 RELEASED TO THE ADOPTED PERSON IN ACCORDANCE WITH THIS SUBDIVISION. THE
30 CONSENT OF ONE PARENT SHALL NOT BE CONSTRUED TO BE CONSENT BY THE OTHER
31 PARENT.

32 THE COURT SHALL ISSUE A WRITTEN ORDER WHEN MAKING A DETERMINATION
33 PURSUANT TO SUBPARAGRAPHS (II) AND (III) OF THIS PARAGRAPH.

34 (E) (I) IF AFTER REASONABLE AND GOOD FAITH EFFORTS PURSUANT TO PARA-
35 GRAPH (A) OF THIS SUBDIVISION, THE BIRTH PARENT IS UNABLE TO BE NOTIFIED
36 OR DOES NOT RESPOND TO SUCH NOTIFICATION, THE DEPARTMENT OF HEALTH SHALL
37 SO NOTIFY THE COURT. UNLESS THE COURT, IN ITS DISCRETION, FOR GOOD CAUSE
38 SPECIFIED IN ITS ORDER, DETERMINES THAT THE RELEASE OF SUCH BIRTH
39 CERTIFICATE OR IDENTIFYING INFORMATION WOULD BE CLEARLY DETRIMENTAL TO
40 THE WELFARE OF THE BIRTH OR ADOPTIVE PARENTS, THE COURT SHALL: (A)
41 RELEASE, OR DIRECT THE RELEASE OF, AN UNREDACTED, NON-CERTIFIED COPY OF
42 THE LONG-FORM BIRTH CERTIFICATE TO THE ADOPTED PERSON, OR (B) IF SUCH
43 BIRTH CERTIFICATE IS NOT AVAILABLE, RELEASE OR DIRECT THE RELEASE OF THE
44 IDENTIFYING INFORMATION THAT WOULD HAVE APPEARED ON THE ORIGINAL
45 LONG-FORM BIRTH CERTIFICATE. FOR THE PURPOSES OF THIS PARAGRAPH, GOOD
46 CAUSE SHALL INCLUDE, BUT IS NOT LIMITED TO, EVIDENCE CONCERNING THE
47 WISHES OF THE BIRTH PARENT REGARDING CONFIDENTIALITY AS EXPRESSED AT THE
48 TIME OF THE ADOPTION OR SURRENDER. THE COURT SHALL ISSUE A WRITTEN ORDER
49 WHEN MAKING A DETERMINATION PURSUANT TO THIS PARAGRAPH.

50 (II) WHERE THE COURT DETERMINES NOT TO RELEASE AN UNREDACTED BIRTH
51 CERTIFICATE PURSUANT TO SUBPARAGRAPH (I) OF THIS PARAGRAPH, THE COURT
52 SHALL DIRECT THE RELEASE OF A NON-CERTIFIED COPY OF THE BIRTH CERTIF-
53 ICATE WITH THE IDENTIFYING INFORMATION REGARDING THE BIRTH PARENT OR
54 PARENTS REDACTED, AND SHALL PROVIDE SUCH ADOPTED PERSON WITH SUCH
55 REDACTED COPY.

(F) UPON THE CONSENT OF A BIRTH PARENT TO RELEASE IDENTIFYING INFORMATION PURSUANT TO THIS SUBDIVISION, THE DEPARTMENT OF HEALTH SHALL PROVIDE SUCH PARENT WITH A CONTACT PREFERENCE FORM THAT SHALL, IF COMPLETED BY THE BIRTH PARENT, ACCOMPANY A COPY OF A BIRTH CERTIFICATE OR OTHER IDENTIFYING INFORMATION PROVIDED TO THE ADOPTED PERSON UNDER THIS SUBDIVISION AND BE FILED WITH THE ADOPTION INFORMATION REGISTRY ESTABLISHED BY SECTION FORTY-ONE HUNDRED THIRTY-EIGHT-C OF THE PUBLIC HEALTH LAW. THE CONTACT PREFERENCE FORM SHALL INCLUDE THE FOLLOWING CONTENT TO BE COMPLETED AT THE OPTION OF THE BIRTH PARENT:

(I) I AM WILLING TO OR WOULD LIKE TO BE CONTACTED.

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

(III) I HAVE COMPLETED A MEDICAL HISTORY FORM AND HAVE FILED IT WITH THE DEPARTMENT OF HEALTH.

(IV) PLEASE DO NOT CONTACT ME. IF I DECIDE LATER THAT I WOULD LIKE TO BE CONTACTED, I WILL SUBMIT AN UPDATED CONTACT PREFERENCE FORM TO THE COURT OR THE DEPARTMENT OF HEALTH.

(V) ADD ANY ADDITIONAL INFORMATION HERE (IF DESIRED):

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

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 SEPARATE SEALED ENVELOPES UPON RECEIPT FROM THE BIRTH PARENT.

THE SEALED ENVELOPES CONTAINING THE CONTACT PREFERENCE FORM AND MEDICAL HISTORY FORM SHALL BE RELEASED TO A PERSON REQUESTING HIS OR HER BIRTH CERTIFICATE UNDER THIS SUBDIVISION OR HIS OR HER AGENT, SUCH AS HIS OR HER ATTORNEY, WITH APPROPRIATE AUTHORIZATION. THE CONTACT PREFERENCE FORM AND MEDICAL HISTORY FORM ARE PRIVATE COMMUNICATIONS FROM THE BIRTH PARENT TO THE PERSON NAMED ON THE SEALED BIRTH CERTIFICATE AND NO COPIES OF THE FORMS SHALL BE RETAINED BY THE COURT.

(G) THE DEPARTMENT OF HEALTH SHALL DEVELOP AN AFFIRMATIVE INFORMATION CAMPAIGN AND WIDELY DISSEMINATE TO THE PUBLIC, THROUGH ITS WEBSITE, PUBLIC SERVICE ANNOUNCEMENTS AND OTHER MEANS, IN MULTIPLE LANGUAGES AND THROUGH MULTIPLE OUTLETS, INFORMATION CONCERNING THE ADOPTION INFORMATION REGISTRY ESTABLISHED BY SECTION FORTY-ONE HUNDRED THIRTY-EIGHT-C OF THE PUBLIC HEALTH LAW AND THE PROVISIONS OF THIS SUBDIVISION, INCLUDING, BUT NOT LIMITED TO, THE MEANS BY WHICH A BIRTH PARENT MAY FILE A WRITTEN CONFIRMATION PURSUANT TO PARAGRAPH (H) OF THIS SUBDIVISION WITH THE COURT THAT ORDERED THE ADOPTION OR THE DEPARTMENT OF HEALTH THAT HE OR SHE WISHES TO MAINTAIN THE CONFIDENTIALITY OF IDENTIFYING INFORMATION, OR CONSENTS TO THE RELEASE OF SUCH IDENTIFYING INFORMATION.

(H) A BIRTH PARENT MAY, AT ANY TIME, FILE A WRITTEN AND NOTARIZED CONFIRMATION WITH THE COURT THAT ORDERED THE ADOPTION OR WITH THE DEPARTMENT OF HEALTH INDICATING THAT HE OR SHE WISHES TO MAINTAIN CONFIDENTIALITY OF IDENTIFYING INFORMATION OR THAT HE OR SHE CONSENTS TO THE RELEASE OF IDENTIFYING INFORMATION. THE DEPARTMENT OF HEALTH SHALL NOTIFY THE COURT AND PROVIDE THE COURT WITH A COPY OF SUCH WRITTEN CONFIRMATION. THE COURT SHALL HONOR SUCH WRITTEN CONFIRMATION UNLESS IT IS WITHDRAWN OR MODIFIED, IN NOTARIZED WRITING, BY THE BIRTH PARENT.

(I) FOR THE PURPOSES OF THIS SUBDIVISION, "ADOPTED PERSON" SHALL INCLUDE A PERSON WHO WAS SURRENDERED AS DESCRIBED IN SUBDIVISION SEVEN OF ARTICLE SECTION ONE HUNDRED NINE OF THIS ARTICLE.

S 4. Subdivision 10 of section 4138-c of the public health law, as added by chapter 435 of the laws of 2008, is amended and a new subdivision 10-a is added to read as follows:

1 10. The commissioner is directed to develop an adoption information
2 registry birth parent registration consent form to be completed at the
3 time of surrender or consent to adoption. Such form shall include check-
4 off boxes to be appropriately marked by the biological parent or parents
5 whose consent is necessary for the relinquishment of such child indicat-
6 ing whether or not such parent consents to the receipt of identifying
7 information AND A NON-CERTIFIED COPY OF THE ORIGINAL BIRTH CERTIFICATE
8 by the child to be adopted. A copy of such form shall be sent to the
9 department with copies of the original and amended birth certificates.
10 Such form shall state that it is the responsibility of the birth parent
11 to update the registry with any changes in contact information. The form
12 shall additionally advise the biological parents of the adoption medical
13 information sub-registry and the procedures by which a birth parent may
14 provide medical information to the sub-registry. Notwithstanding any
15 inconsistent provision of law to the contrary, the commissioner is
16 directed to develop any rules and regulations necessary to expedite the
17 transfer of information from any agency, court or department necessary
18 to implement this subdivision.

19 10-A. NOTWITHSTANDING ANY INCONSISTENT PROVISION OF LAW TO THE CONTRA-
20 RY, FOR SURRENDERS OCCURRING AND ORDERS OF ADOPTIONS ENTERED AFTER THE
21 EFFECTIVE DATE OF THE CHAPTER OF THE LAWS OF TWO THOUSAND FOURTEEN THAT
22 ADDED THIS SUBDIVISION, WHERE THE BIOLOGICAL PARENT OR PARENTS WHOSE
23 CONSENT IS NECESSARY FOR THE RELINQUISHMENT OF SUCH CHILD CONSENTS TO
24 THE RELEASE OF A NON-CERTIFIED COPY OF THE CHILD'S ORIGINAL BIRTH
25 CERTIFICATE OR DOES NOT AFFIRMATIVELY REQUEST, ON THE FORM DESCRIBED IN
26 SUBDIVISION TEN OF THIS SECTION, THAT SUCH ORIGINAL BIRTH CERTIFICATE
27 REMAIN CONFIDENTIAL, THE SURRENDERED OR ADOPTED PERSON SHALL, AFTER
28 ATTAINING THE AGE OF EIGHTEEN AND UPON APPLICATION TO THE DEPARTMENT AND
29 ADEQUATE PROOF OF IDENTITY, HAVE THE RIGHT TO RECEIVE A NON-CERTIFIED
30 COPY OF THEIR ORIGINAL BIRTH CERTIFICATE.

31 S 5. This act shall take effect January 15, 2015, provided, however,
32 that paragraphs (g) and (h) of subdivision 5 of section 114 of the
33 domestic relations law, as added by section three of this act, shall
34 take effect on the thirtieth day after such effective date.