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

2490--B

2013-2014 Regular Sessions

I N S E N A T E

January 17, 2013

Introduced by Sens. LANZA, ADDABBO, AVELLA, BALL, BRESLIN, CARLUCCI, DILAN, ESPAILLAT, FLANAGAN, GIANARIS, GOLDEN, HASSELL-THOMPSON, HOYLMAN, KRUEGER, LARKIN, LATIMER, LAVALLE, LITTLE, MONTGOMERY, PARKER, PERALTA, PERKINS, ROBACH, SAMPSON, SAVINO, SEWARD, STAVISKY -- read twice and ordered printed, and when printed to be committed to the Committee on Health -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- recommitted to the Committee on Health in accordance with Senate Rule 6, sec. 8 -- 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:

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

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

2. No person, including the attorney for the adoptive parents shall disclose the surname of the child directly or indirectly to the adoptive parents except upon order of the court. No person shall be allowed

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

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access to such sealed records and order and any index thereof except upon an order of a judge or surrogate of the court in which the order was made or of a justice of the supreme court. [No] EXCEPT AS PROVIDED IN SUBDIVISIONS FOUR AND FIVE OF THIS SECTION, NO order for disclosure or access and inspection shall be granted except on good cause shown and on due notice to the adoptive parents and to such additional persons as the court may direct. Nothing contained herein shall be deemed to require the state commissioner of health or his OR HER designee to secure a court order authorizing disclosure of information contained in adoption or birth records requested pursuant to the authority of section forty-one hundred thirty-eight-c or section forty-one hundred thirty-eight-d of the public health law; upon the receipt of such request for information, the court shall transmit the information authorized to be released thereunder to the state commissioner of health or his OR HER designee.

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

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

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

(C) UPON NOTIFICATION PURSUANT TO PARAGRAPH (B) OF THIS SUBDIVISION, OR EARLIER AT THE DISCRETION OF THE BIRTH PARENT PURSUANT TO PARAGRAPH (H) OF THIS SUBDIVISION, SUCH BIRTH PARENT MAY COMPLETE A WRITTEN AND NOTARIZED CONFIRMATION THAT HE OR SHE WISHES TO MAINTAIN CONFIDENTIALITY OF IDENTIFYING INFORMATION, OR THAT HE OR SHE CONSENTS TO THE RELEASE OF IDENTIFYING INFORMATION.

(D) UPON RECEIPT OF SUCH WRITTEN CONFIRMATION, OR WHERE THE PARENT HAS COMPLETED A BIRTH PARENT REGISTRATION CONSENT FORM PURSUANT TO SUBDIVISION TEN OF SECTION FORTY-ONE HUNDRED THIRTY-EIGHT-C OF THE PUBLIC HEALTH LAW, THE DEPARTMENT OF HEALTH SHALL NOTIFY THE COURT AND PROVIDE THE COURT WITH THE WRITTEN CONFIRMATION OR CONSENT FORM, AS THE CASE MAY

BE, COMPLETED BY THE BIRTH PARENT. WHERE SUCH CONSENT FORM HAS BEEN REVOKED BY A BIRTH PARENT, THE DEPARTMENT OF HEALTH SHALL SO NOTIFY THE COURT AND SUCH REVOCATION SHALL BE CONSIDERED BY THE COURT AS A REQUEST FOR CONTINUED CONFIDENTIALITY OF IDENTIFYING INFORMATION.

(I) IF THE BIRTH PARENT CONSENTS TO THE RELEASE OF IDENTIFYING INFORMATION, THE COURT SHALL (A) ORDER THE RELEASE OF A NON-CERTIFIED COPY OF THE LONG-FORM BIRTH CERTIFICATE TO THE ADOPTED PERSON, OR (B) WHEN SUCH BIRTH CERTIFICATE IS NOT AVAILABLE, ORDER THAT THE IDENTIFYING INFORMATION BE MADE AVAILABLE TO THE ADOPTED PERSON.

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

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

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

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

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

10. The commissioner is directed to develop an adoption information registry birth parent registration consent form to be completed at the time of surrender or consent to adoption. Such form shall include check-off boxes to be appropriately marked by the biological parent or parents whose consent is necessary for the relinquishment of such child indicating whether or not such parent consents to the receipt of identifying information AND A NON-CERTIFIED COPY OF THE ORIGINAL BIRTH CERTIFICATE by the child to be adopted. A copy of such form shall be sent to the department with copies of the original and amended birth certificates.

Such form shall state that it is the responsibility of the birth parent to update the registry with any changes in contact information. The form shall additionally advise the biological parents of the adoption medical information sub-registry and the procedures by which a birth parent may provide medical information to the sub-registry. Notwithstanding any inconsistent provision of law to the contrary, the commissioner is directed to develop any rules and regulations necessary to expedite the transfer of information from any agency, court or department necessary to implement this subdivision.

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

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