

5964--A

2015-2016 Regular Sessions

I N S E N A T E

June 14, 2015

Introduced by Sens. LANZA, AVELLA -- read twice and ordered printed, and when printed to be committed to the Committee on Rules -- recommitted to the Committee on Children and Families 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:

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
10 for the privacy of an adopted person and his or her birth and adoptive
11 families.

12 S 2. Subdivision 2 of section 114 of the domestic relations law, as
13 amended by chapter 559 of the laws of 1992 and as designated by chapter
14 601 of the laws of 1994, is amended to read as follows:

15 2. No person, including the attorney for the adoptive parents shall
16 disclose the surname of the child directly or indirectly to the adoptive
17 parents except upon order of the court. No person shall be allowed
18 access to such sealed records and order and any index thereof except
19 upon an order of a judge or surrogate of the court in which the order
20 was made or of a justice of the supreme court. [No] EXCEPT AS PROVIDED
21 IN SUBDIVISIONS FOUR AND FIVE OF THIS SECTION, NO order for disclosure
22 or access and inspection shall be granted except on good cause shown and

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

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1 on due notice to the adoptive parents and to such additional persons as
2 the court may direct. Nothing contained herein shall be deemed to
3 require the state commissioner of health or his OR HER designee to
4 secure a court order authorizing disclosure of information contained in
5 adoption or birth records requested pursuant to the authority of section
6 forty-one hundred thirty-eight-c or section forty-one hundred thirty-
7 eight-d of the public health law; upon the receipt of such request for
8 information, the court shall transmit the information authorized to be
9 released thereunder to the state commissioner of health or his OR HER
10 designee.

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

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

21 (B) UPON RECEIPT OF AN APPLICATION PURSUANT TO PARAGRAPH (A) OF THIS
22 SUBDIVISION, THE COURT SHALL PROVIDE THE DEPARTMENT OF HEALTH, OR ORDER
23 THAT SUCH DEPARTMENT BE PROVIDED, WITH THE IDENTIFYING INFORMATION OF
24 THE ADOPTED PERSON'S BIRTH PARENT OR PARENTS AND DIRECT THE DEPARTMENT
25 OF HEALTH TO MAKE A REASONABLE AND GOOD FAITH EFFORT, DOCUMENTED IN
26 WRITING AND COMPLETED WITHIN ONE HUNDRED TWENTY DAYS, TO NOTIFY THE
27 BIRTH PARENT OR PARENTS AND ADVISE SUCH PARENT OR PARENTS THAT THE
28 ADOPTED PERSON HAS MADE AN APPLICATION PURSUANT TO THIS SUBDIVISION.
29 SUCH NOTIFICATION AND ADVISORY GIVEN SHALL COMPLY WITH ANY TERMS AND
30 CONDITIONS SET FORTH BY THE COURT AND SHALL BE MADE BY MEANS DESIGNED TO
31 BE SENSITIVE TO THE PERSONAL NATURE OF THE MATTER. SUCH NOTIFICATION
32 SHALL ALSO INCLUDE AN ADVISORY TO SUCH PARENT OR PARENTS ABOUT THE
33 ADOPTION MEDICAL INFORMATION REGISTRY ESTABLISHED BY SECTION FORTY-ONE
34 HUNDRED THIRTY-EIGHT-C OF THE PUBLIC HEALTH LAW AND THE PROCEDURES BY
35 WHICH A BIRTH PARENT MAY PROVIDE MEDICAL INFORMATION TO THE REGISTRY.
36 THE DEPARTMENT OF HEALTH SHALL, BEFORE MAKING EFFORTS TO NOTIFY THE
37 BIRTH PARENT OR PARENTS, DETERMINE WHETHER SUCH PARENT OR PARENTS HAVE
38 ALREADY FILED A WRITTEN CONFIRMATION WITH THE COURT OR THE DEPARTMENT OF
39 HEALTH PURSUANT TO PARAGRAPH (H) OF THIS SUBDIVISION OR A BIRTH PARENT
40 REGISTRATION CONSENT FORM WITH THE ADOPTION INFORMATION REGISTRY PURSU-
41 ANT TO SUBDIVISION TEN OF SECTION FORTY-ONE HUNDRED THIRTY-EIGHT-C OF
42 THE PUBLIC HEALTH LAW. WHERE SUCH CONFIRMATION OR CONSENT FORM IS ON
43 FILE, THE DEPARTMENT OF HEALTH SHALL NOTIFY THE COURT AND NO SUCH
44 EFFORTS TO NOTIFY THE PARENT SHALL BE MADE.

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

51 (D) UPON RECEIPT OF SUCH WRITTEN CONFIRMATION, OR WHERE THE PARENT HAS
52 COMPLETED A BIRTH PARENT REGISTRATION CONSENT FORM PURSUANT TO SUBDIVI-
53 SION TEN OF SECTION FORTY-ONE HUNDRED THIRTY-EIGHT-C OF THE PUBLIC
54 HEALTH LAW, THE DEPARTMENT OF HEALTH SHALL NOTIFY THE COURT AND PROVIDE
55 THE COURT WITH THE WRITTEN CONFIRMATION OR CONSENT FORM, AS THE CASE MAY
56 BE, COMPLETED BY THE BIRTH PARENT. WHERE SUCH CONSENT FORM HAS BEEN

1 REVOKED BY A BIRTH PARENT, THE DEPARTMENT OF HEALTH SHALL SO NOTIFY THE
2 COURT AND SUCH REVOCATION SHALL BE CONSIDERED BY THE COURT AS A REQUEST
3 FOR CONTINUED CONFIDENTIALITY OF IDENTIFYING INFORMATION.

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

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

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

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

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

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

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

56 (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 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

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

9 10-A. NOTWITHSTANDING ANY INCONSISTENT PROVISION OF LAW TO THE CONTRA-
10 RY, FOR SURRENDERS OCCURRING AND ORDERS OF ADOPTIONS ENTERED AFTER THE
11 EFFECTIVE DATE OF THIS SUBDIVISION, WHERE THE BIOLOGICAL PARENT OR
12 PARENTS WHOSE CONSENT IS NECESSARY FOR THE RELINQUISHMENT OF SUCH CHILD
13 CONSENTS TO THE RELEASE OF A NON-CERTIFIED COPY OF THE CHILD'S ORIGINAL
14 BIRTH CERTIFICATE OR DOES NOT AFFIRMATIVELY REQUEST, ON THE FORM
15 DESCRIBED IN SUBDIVISION TEN OF THIS SECTION, THAT SUCH ORIGINAL BIRTH
16 CERTIFICATE REMAIN CONFIDENTIAL, THE SURRENDERED OR ADOPTED PERSON
17 SHALL, AFTER ATTAINING THE AGE OF EIGHTEEN AND UPON APPLICATION TO THE
18 DEPARTMENT AND ADEQUATE PROOF OF IDENTITY, HAVE THE RIGHT TO RECEIVE A
19 NON-CERTIFIED COPY OF THEIR ORIGINAL BIRTH CERTIFICATE.

20 S 5. This act shall take effect April 15, 2017, provided, however,
21 that paragraphs (g) and (h) of subdivision 5 of section 114 of the
22 domestic relations law, as added by section three of this act, shall
23 take effect on the thirtieth day after such effective date.