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I N S E N A T E

February 1, 2018

Introduced by Sen. LANZA -- 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 authorizing adoptees to obtain a certified copy of their birth certificate

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. ADOPTEE'S RIGHT TO A CERTIFIED COPY OF HIS OR HER BIRTH
4 CERTIFICATE. 1. THE LEGISLATURE HEREBY STATES ITS INTENTION TO ACKNOWLEDGE, SUPPORT AND ENCOURAGE THE LIFE-LONG HEALTH AND WELL-BEING NEEDS OF
5 PERSONS WHO HAVE BEEN AND WILL BE ADOPTED IN THIS STATE. THE LEGISLATURE
6 FURTHER RECOGNIZES THAT THE DENIAL OF ACCESS TO ACCURATE AND COMPLETE
7 MEDICAL AND SELF-IDENTIFYING DATA OF ANY ADOPTED PERSON, KNOWN AND
8 WILFULLY WITHHELD BY OTHERS, MAY RESULT IN SUCH PERSON SUCCUMBING TO
9 PREVENTABLE DISEASE, PREMATURE DEATH OR OTHERWISE UNHEALTHY LIFE, IS A
10 VIOLATION OF THAT PERSON'S HUMAN RIGHTS AND IS CONTRARY TO THE TENETS OF
11 GOVERNANCE. AS SUCH, THE PROVISIONS OF THIS SECTION SEEK TO ESTABLISH
12 CONSIDERATIONS UNDER THE LAW FOR ADOPTED PERSONS EQUAL TO SUCH CONSIDER-
13 ATIONS PERMITTED BY LAW TO ALL NON-ADOPTED PERSONS; THIS SECTION DOES SO
14 WHILE PROVIDING FOR THE PRIVACY OF AN ADOPTED PERSON AND HIS OR HER
15 BIRTH.
16
17 2. (A) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, WHEN AN ADOPTED
18 PERSON ATTAINS THE AGE OF EIGHTEEN YEARS, THAT PERSON SHALL HAVE THE
19 RIGHT TO RECEIPT OF A CERTIFIED COPY OF HIS OR HER ORIGINAL (LONG FORM,
20 LINE BY LINE VAULT COPY) BIRTH CERTIFICATE AND ANY CHANGE HIS OR HER
21 BIRTH PARENT OR PARENTS MAY HAVE ATTACHED TO THAT CERTIFICATE, AND/OR A
22 MEDICAL HISTORY FORM IF AVAILABLE, UPON APPLICATION, PRESENTATION OF
23 PROOF OF IDENTIFICATION AND THE PAYMENT OF A NOMINAL FEE.
24 (B) WHEN IT SHALL BE IMPOSSIBLE THROUGH GOOD-FAITH EFFORTS TO PROVIDE
25 A COPY OF AN ADULT ADOPTED PERSON'S ORIGINAL BIRTH CERTIFICATE (AS IN
26 THE CASE OF AN ADOPTED PERSON BORN OUTSIDE OF, BUT ADOPTED WITHIN, THE
27 STATE), THE ADULT ADOPTED PERSON SHALL HAVE THE RIGHT TO SECURE FROM A

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

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1 COURT OF COMPETENT JURISDICTION OR THE ADOPTION AGENCY, THE TRUE AND
2 CORRECT IDENTIFYING INFORMATION THAT WOULD HAVE APPEARED ON HIS OR HER
3 ORIGINAL BIRTH CERTIFICATE. IN SUCH CASE THE AGENCY SHALL BE HELD HARM-
4 LESS FROM ANY LIABILITY ARISING OUT OF THE DISCLOSURE.

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

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

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

18 (b) Thereafter, when a verified transcript or certification of birth
19 of such person is issued by the registrar, it shall be based upon the
20 new certificate, except when an order of a court of competent jurisdic-
21 tion shall require the issuance of a verified transcript or certifi-
22 cation based upon the original local record of birth OR UPON A WRITTEN
23 NOTARIZED REQUEST BY THE ADULT ADOPTED PERSON HIMSELF OR HERSELF ONCE
24 PROPER PROOF OF IDENTITY IS PROVIDED TO THE REGISTRAR.

25 S 4. Subdivision 7 of section 4138 of the public health law, as
26 amended by chapter 644 of the laws of 1988, is amended to read as
27 follows:

28 7. Whenever the commissioner makes a new birth certificate for any
29 person pursuant to the provisions of subdivision one of this section, he
30 OR SHE shall forward to such person, if eighteen years of age or more,
31 [or to the parents of such person,] a certified copy, a certified tran-
32 script [or] AND a certification of birth, [whichever he deems appropri-
33 ate under the circumstances,] without making any charge therefor.

34 S 5. Section 4138 of the public health law is amended by adding two
35 new subdivisions 8 and 9 to read as follows:

36 8. AN ADOPTED PERSON EIGHTEEN YEARS OF AGE OR OLDER, OR THE BIRTH
37 PARENT OR PARENTS, MAY SUBMIT TO THE REGISTRAR A NOTICE OF CHANGE OF
38 NAME AND/OR ADDRESS AND SUCH INFORMATION SHALL BE ATTACHED TO THE
39 ORIGINAL BIRTH CERTIFICATE OF THE ADOPTED PERSON.

40 9. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, WHEN AN ADOPTED PERSON
41 ATTAINS THE AGE OF EIGHTEEN YEARS, HE OR SHE SHALL HAVE THE RIGHT, UPON
42 APPLICATION, PROOF OF IDENTITY AND PAYMENT OF A NOMINAL FEE, TO A CERTI-
43 FIED COPY OF HIS OR HER ORIGINAL LONG FORM, LINE BY LINE, VAULT COPY
44 BIRTH CERTIFICATE AND/OR A MEDICAL HISTORY FORM, IF AVAILABLE.

45 S 6. Paragraph (b) of subdivision 3 of section 4138-d of the public
46 health law, as amended by chapter 181 of the laws of 2010, is amended to
47 read as follows:

48 (b) If the agency determines that the agency was involved in such
49 adoption, it shall transmit the registration to the adoption information
50 registry operated by the department and the agency shall release the
51 non-identifying information, as defined in section forty-one hundred
52 thirty-eight-c of this title, to the [adoptee registrant. The agency may
53 restrict the nature of the non-identifying information released pursuant
54 to this section upon a reasonable determination that disclosure of such
55 non-identifying information would not be in the adoptee's, the biolog-
56 ical sibling's or parent's best interest] ADOPTED PERSON.

1 S 7. Section 4104 of the public health law, as amended by chapter 153
2 of the laws of 2011, is amended to read as follows:

3 S 4104. Vital statistics; application of article. The provisions of
4 this article except for the provisions contained in paragraph (i) of
5 subdivision two and subdivision four of section four thousand one
6 hundred, section four thousand one hundred three, subdivision two of
7 section four thousand one hundred thirty-five, section four thousand one
8 hundred thirty-five-b, subdivision eight of section four thousand one
9 hundred seventy-four, paragraphs (b) and (e) of subdivision one, PARA-
10 GRAPH (B) OF SUBDIVISION THREE, AND SUBDIVISIONS FIVE, SEVEN, EIGHT AND
11 NINE of section four thousand one hundred thirty-eight, subdivision
12 eleven of section four thousand one hundred thirty-eight-c, PARAGRAPH
13 (B) OF SUBDIVISION THREE OF SECTION FOUR THOUSAND ONE HUNDRED
14 THIRTY-EIGHT-D, SECTION FOUR THOUSAND ONE HUNDRED THIRTY-EIGHT-E and
15 section four thousand one hundred seventy-nine of this article, shall
16 not apply to the city of New York.

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

20 1. If satisfied that the best interests of the adoptive child will be
21 promoted thereby, the judge or surrogate shall make an order approving
22 the adoption and directing that the adoptive child shall thenceforth be
23 regarded and treated in all respects as the child of the adoptive
24 parents or parent. In determining whether the best interests of the
25 adoptive child will be promoted by the adoption, the judge or surrogate
26 shall give due consideration to any assurance by a LOCAL commissioner of
27 social services that he OR SHE will provide necessary support and main-
28 tenance for the adoptive child pursuant to the social services law. Such
29 order shall contain the full name, date and place of birth and reference
30 to the schedule annexed to the petition containing the medical history
31 of the child in the body thereof and shall direct that the child's
32 medical history, heritage of the BIRTH parents, which shall include
33 nationality, ethnic background and race; education, which shall be the
34 number of years of school completed by the BIRTH parents at the time of
35 the birth AND ALSO AT THE TIME OF SURRENDER of the adoptive child;
36 general physical appearance of the BIRTH parents at the time of the
37 birth AND ALSO AT THE TIME OF SURRENDER of the adoptive child, which
38 shall include height, weight, color of hair, eyes, skin; occupation of
39 the BIRTH parents at the time of the birth AND ALSO AT THE TIME OF
40 SURRENDER of the adoptive child; health and medical history of the BIRTH
41 parents at the time of the birth AND ALSO AT THE TIME OF SURRENDER of
42 the adoptive child, including all available information setting forth
43 conditions or diseases believed to be hereditary, any drugs or medica-
44 tion taken during the pregnancy by the child's mother; and any other
45 information which may be a factor influencing the child's present or
46 future health, INCLUDING THE talents, hobbies and special interests of
47 THE BIRTH parents as contained in the petition, be furnished to the
48 adoptive parents. IN RECOGNITION OF THE IMPERATIVE LIFELONG IMPORTANCE
49 OF SUCH INFORMATION FOR THE HEALTH AND WELL-BEING OF THE ADOPTED PERSON,
50 IT SHALL BE THE DUTY OF THE LAW GUARDIAN AS PROVIDED FOR BY SECTIONS TWO
51 HUNDRED FORTY-ONE, TWO HUNDRED FORTY-TWO, TWO HUNDRED FORTY-NINE AND TWO
52 HUNDRED FORTY-NINE-A OF THE FAMILY COURT ACT TO ENSURE THE COMPREHENSIVE
53 COMPLETION AND FILING OF ALL THE ABOVE REFERENCED INFORMATION PRIOR TO
54 THE ACCEPTANCE OF THE TERMINATION OF PARENTAL RIGHTS OR THE ENTRY OF A
55 CERTIFICATE OF ADOPTION. IT SHALL BE DEEMED BY THAT LEGAL REPRESENTATIVE
56 THAT SUCH INFORMATION IS ALWAYS IN THE BEST INTEREST OF THE CHILD AND IS

1 A PROTECTED RIGHT. PRIOR TO TERMINATION OF DUTIES, SUCH LAW GUARDIAN
2 SHALL PROVIDE, AS DIRECTED BY SECTION FORTY-ONE HUNDRED THIRTY-EIGHT-C
3 OF THE PUBLIC HEALTH LAW AND SECTIONS THREE HUNDRED SEVENTY-THREE AND
4 THREE HUNDRED SEVENTY-THREE-A OF THE SOCIAL SERVICES LAW, TO THE RESPEC-
5 TIVE RESPONSIBLE PARTIES ALL SUCH COLLECTED DATA, AND PROVIDE AN AFFIDA-
6 VIT TO THE COURT REPORTING ALL DILIGENT EFFORTS TO OBTAIN SUCH DATA. A
7 COPY OF SUCH AFFIDAVIT SHALL BE APPENDED TO THE ORIGINAL AND ANY AND ALL
8 AMENDED BIRTH CERTIFICATES. If the judge or surrogate is also satisfied
9 that there is no reasonable objection to the change of name proposed,
10 the order shall direct that the name of the adoptive child be changed to
11 the name stated in the agreement of adoption and that henceforth he OR
12 SHE shall be known by that name. All such orders made by a family court
13 judge of Westchester county since September first, nineteen hundred
14 sixty-two, and on file in the office of the county clerk of such county
15 shall be transferred to the clerk of the family court of such county.
16 Such order and all the papers in the proceeding shall be filed in the
17 office of the court granting the adoption and the order shall be entered
18 in books which shall be kept under seal and which shall be indexed by
19 the name of the adoptive parents and by the full original name of the
20 child. Such order, including orders heretofore entered, shall be subject
21 to inspection and examination only as hereinafter provided. Notwith-
22 standing the fact that adoption records shall be sealed and secret, they
23 may be microfilmed and processed pursuant to an order of the court,
24 provided that such order provides that the confidentiality of such
25 records be maintained. If the confidentiality is violated, the person or
26 company violating it can be found guilty of contempt of court. The fact
27 that the adoptive child was born out of wedlock shall in no case appear
28 in such order. The written report of the investigation together with all
29 other papers pertaining to the adoption shall be kept by the judge or
30 surrogate as a permanent record of his OR HER court and such papers must
31 be sealed by him OR HER and withheld from inspection. No certified copy
32 of the order of adoption shall issue unless authorized by court order,
33 except that certified copies may issue to the agency or agencies in the
34 proceeding prior to the sealing of the papers. Before the record is
35 sealed, such order may be granted upon written ex parte application on
36 good cause shown and upon such conditions as the court may impose. After
37 the record is sealed, such order may be granted only upon notice as
38 hereinafter provided for disclosure or access and inspection of records.
39 The clerk upon request of a person or agency entitled thereto shall
40 issue certificates of adoption which shall contain only the new name of
41 the child and the date and place of birth of the child, the name of the
42 adoptive parents and the date when and court where the adoption was
43 granted, which certificate as to the facts recited therein shall have
44 the same force and effect as a certified copy of an order of adoption.

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

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

52 S 10. This act shall take effect January 15, 2019, provided, however,
53 that, effective immediately, the commissioner of health is directed to
54 promulgate such rules and regulations as may be necessary to carry out
55 the provisions of this act.