

7631--B

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 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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, THE COMMISSIONER OR
18 A LOCAL REGISTRAR OR ANY PERSON AUTHORIZED BY THE COMMISSIONER OR A
19 LOCAL REGISTRAR, UPON APPLICATION, PROOF OF IDENTITY AND PAYMENT OF A
20 NOMINAL FEE, SHALL ISSUE CERTIFIED COPIES OF ORIGINAL LONG FORM LINE BY
21 LINE, VAULT COPY BIRTH CERTIFICATES AND ANY CHANGE ATTACHED TO THAT
22 CERTIFICATE BY A BIRTH PARENT OR PARENTS, AND, IF AVAILABLE, MEDICAL
23 HISTORY FORMS UPON SPECIFIC REQUEST THEREFOR (I) BY AN ADOPTED PERSON,
24 IF EIGHTEEN YEARS OF AGE OR MORE, OR (II) IF THE ADOPTED PERSON IS

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

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1 DECEASED, THE ADOPTED PERSON'S DIRECT LINE DESCENDANTS, OR (III) THE
2 LAWFUL REPRESENTATIVES OF SUCH ADOPTED PERSON, OR LAWFUL REPRESENTATIVES
3 OF SUCH DECEASED ADOPTED PERSON'S DIRECT LINE DESCENDANTS, AS THE CASE
4 MAY BE.

5 (B) WHEN IT SHALL BE IMPOSSIBLE THROUGH GOOD-FAITH EFFORTS TO PROVIDE
6 A COPY OF AN ADULT ADOPTED PERSON'S ORIGINAL BIRTH CERTIFICATE (AS IN
7 THE CASE OF AN ADOPTED PERSON BORN OUTSIDE OF, BUT ADOPTED WITHIN, THE
8 STATE), THE TRUE AND CORRECT IDENTIFYING INFORMATION THAT WOULD HAVE
9 APPEARED ON SUCH ORIGINAL BIRTH CERTIFICATE SHALL BE PROVIDED BY A COURT
10 OF COMPETENT JURISDICTION OR THE ADOPTION AGENCY, UPON SPECIFIC REQUEST
11 THEREFOR, TO: (I) THE ADULT ADOPTED PERSON, IF EIGHTEEN YEARS OF AGE OR
12 MORE, OR (II) IF THE ADOPTED PERSON IS DECEASED, THE ADOPTED PERSON'S
13 DIRECT LINE DESCENDANTS, OR (III) LAWFUL REPRESENTATIVES OF SUCH ADOPTED
14 PERSON, OR LAWFUL REPRESENTATIVES OF SUCH DECEASED ADOPTED PERSON'S
15 DIRECT LINE DESCENDANTS, AS THE CASE MAY BE. IN SUCH CASE THE AGENCY
16 SHALL BE HELD HARMLESS FROM ANY LIABILITY ARISING OUT OF THE DISCLOSURE.

17 (C) FOR PURPOSES OF THIS SUBDIVISION:

18 (I) THE TERM "COMMISSIONER" SHALL INCLUDE THE COMMISSIONER OF HEALTH
19 AND MENTAL HYGIENE OF THE CITY OF NEW YORK AND FOR RECORDS OF BIRTH
20 PRIOR TO JANUARY FIRST, NINETEEN HUNDRED FOURTEEN, THE LOCAL REGISTRARS
21 OF THE CITIES OF ALBANY, BUFFALO AND YONKERS; AND

22 (II) THE TERM "DEPARTMENT" SHALL INCLUDE THE DEPARTMENT OF HEALTH AND
23 MENTAL HYGIENE OF THE CITY OF NEW YORK AND, FOR RECORDS OF BIRTH PRIOR
24 TO JANUARY FIRST, NINETEEN HUNDRED FOURTEEN, THE OFFICE OF VITAL STATIS-
25 TICS OF THE CITY OF ALBANY, THE OFFICE OF VITAL RECORDS OF THE CITY OF
26 BUFFALO AND THE OFFICE OF CLERK OF THE CITY OF YONKERS.

27 S 2. Subdivision 4 of section 4138 of the public health law, as
28 amended by chapter 559 of the laws of 1992, is amended to read as
29 follows:

30 4. The commissioner may make a microfilm or other suitable copy of the
31 original certificate of birth and all papers pertaining to the new
32 certificate of birth. In such event, the original certificate and papers
33 may be destroyed. All undestroyed certificates and papers and copies
34 thereof shall be confidential and the contents thereof shall not be
35 released or otherwise divulged except by order of a court of competent
36 jurisdiction or pursuant to section forty-one hundred thirty-eight-c
37 [or], forty-one hundred thirty-eight-d OR FORTY-ONE HUNDRED
38 THIRTY-EIGHT-E of this [article] TITLE.

39 S 3. Subdivision 5 of section 4138 of the public health law, as
40 amended by chapter 201 of the laws of 1972, is amended to read as
41 follows:

42 5. Thereafter, when a certified copy or certified transcript of the
43 certificate of birth of such a person, or a certification of birth for
44 such person is issued, it shall be based upon the new certificate of
45 birth, except when an order of a court of competent jurisdiction shall
46 require the issuance of a copy of the original certificate of birth OR
47 UPON APPLICATION BY AN ADOPTED PERSON EIGHTEEN YEARS OF AGE OR MORE ONCE
48 PROPER PROOF OF IDENTITY IS PROVIDED TO THE REGISTRAR.

49 S 4. Paragraph (b) of subdivision 3 of section 4138 of the public
50 health law, as added by chapter 201 of the laws of 1972, is amended to
51 read as follows:

52 (b) Thereafter, when a verified transcript or certification of birth
53 of such person is issued by the registrar, it shall be based upon the
54 new certificate, except when an order of a court of competent jurisdic-
55 tion shall require the issuance of a verified transcript or certifi-
56 cation based upon the original local record of birth OR UPON APPLICA-

1 TION BY AN ADOPTED PERSON EIGHTEEN YEARS OF AGE OR MORE ONCE PROPER
2 PROOF OF IDENTITY IS PROVIDED TO THE REGISTRAR.

3 S 5. Subdivision 7 of section 4138 of the public health law, as
4 amended by chapter 644 of the laws of 1988, is amended to read as
5 follows:

6 7. Whenever the commissioner makes a new birth certificate for any
7 person pursuant to the provisions of subdivision one of this section, he
8 OR SHE shall forward to (I) such person, if eighteen years of age or
9 more, [or to the parents of such person,] OR (II) IF THE ADOPTEE IS
10 DECEASED, THE ADOPTEE'S DIRECT LINE DESCENDANTS, OR (III) LAWFUL REPRE-
11 SENTATIVES OF SUCH ADOPTEE, OR LAWFUL REPRESENTATIVES OF SUCH DECEASED
12 ADOPTEE'S DIRECT LINE DESCENDANTS, AS THE CASE MAY BE, a certified copy,
13 a certified transcript [or] AND a certification of birth, [whichever he
14 deems appropriate under the circumstances,] without making any charge
15 therefor.

16 S 6. Section 4138 of the public health law is amended by adding a new
17 subdivision 8 to read as follows:

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

22 S 7. Paragraph (b) of subdivision 3 of section 4138-d of the public
23 health law, as amended by chapter 181 of the laws of 2010, is amended to
24 read as follows:

25 (b) If the agency determines that the agency was involved in such
26 adoption, it shall transmit the registration to the adoption information
27 registry operated by the department and the agency shall release the
28 non-identifying information, as defined in section forty-one hundred
29 thirty-eight-c of this title, to the [adoptee registrant. The agency may
30 restrict the nature of the non-identifying information released pursuant
31 to this section upon a reasonable determination that disclosure of such
32 non-identifying information would not be in the adoptee's, the biolog-
33 ical sibling's or parent's best interest] ADOPTED PERSON.

34 S 8. Section 4104 of the public health law, as amended by chapter 153
35 of the laws of 2011, is amended to read as follows:

36 S 4104. Vital statistics; application of article. The provisions of
37 this article except for the provisions contained in paragraph (i) of
38 subdivision two and subdivision four of section four thousand one
39 hundred, section four thousand one hundred three, subdivision two of
40 section four thousand one hundred thirty-five, section four thousand one
41 hundred thirty-five-b, subdivision eight of section four thousand one
42 hundred seventy-four, paragraphs (b) and (e) of subdivision one, PARA-
43 GRAPH (B) OF SUBDIVISION THREE, AND SUBDIVISIONS FIVE, SEVEN AND EIGHT
44 of section four thousand one hundred thirty-eight, subdivision eleven of
45 section four thousand one hundred thirty-eight-c, PARAGRAPH (B) OF
46 SUBDIVISION THREE OF SECTION FOUR THOUSAND ONE HUNDRED THIRTY-EIGHT-D,
47 SECTION FOUR THOUSAND ONE HUNDRED THIRTY-EIGHT-E and section four thou-
48 sand one hundred seventy-nine of this article, shall not apply to the
49 city of New York.

50 S 9. Subdivision 1 of section 114 of the domestic relations law, as
51 amended by chapter 751 of the laws of 1989 and designated by chapter 601
52 of the laws of 1994, is amended to read as follows:

53 1. If satisfied that the best interests of the adoptive child will be
54 promoted thereby, the judge or surrogate shall make an order approving
55 the adoption and directing that the adoptive child shall thenceforth be
56 regarded and treated in all respects as the child of the adoptive

1 parents or parent. In determining whether the best interests of the
2 adoptive child will be promoted by the adoption, the judge or surrogate
3 shall give due consideration to any assurance by a LOCAL commissioner of
4 social services that he OR SHE will provide necessary support and main-
5 tenance for the adoptive child pursuant to the social services law. Such
6 order shall contain the full name, date and place of birth and reference
7 to the schedule annexed to the petition containing the medical history
8 of the child in the body thereof and shall direct that the child's
9 medical history, heritage of the BIRTH parents, which shall include
10 nationality, ethnic background and race; education, which shall be the
11 number of years of school completed by the BIRTH parents at the time of
12 the birth AND ALSO AT THE TIME OF SURRENDER of the adoptive child;
13 general physical appearance of the BIRTH parents at the time of the
14 birth AND ALSO AT THE TIME OF SURRENDER of the adoptive child, which
15 shall include height, weight, color of hair, eyes, skin; occupation of
16 the BIRTH parents at the time of the birth AND ALSO AT THE TIME OF
17 SURRENDER of the adoptive child; health and medical history of the BIRTH
18 parents at the time of the birth AND ALSO AT THE TIME OF SURRENDER of
19 the adoptive child, including all available information setting forth
20 conditions or diseases believed to be hereditary, any drugs or medica-
21 tion taken during the pregnancy by the child's mother; and any other
22 information which may be a factor influencing the child's present or
23 future health, INCLUDING THE talents, hobbies and special interests of
24 THE BIRTH parents as contained in the petition, be furnished to the
25 adoptive parents. If the judge or surrogate is also satisfied that
26 there is no reasonable objection to the change of name proposed, the
27 order shall direct that the name of the adoptive child be changed to the
28 name stated in the agreement of adoption and that henceforth he OR SHE
29 shall be known by that name. All such orders made by a family court
30 judge of Westchester county since September first, nineteen hundred
31 sixty-two, and on file in the office of the county clerk of such county
32 shall be transferred to the clerk of the family court of such county.
33 Such order and all the papers in the proceeding shall be filed in the
34 office of the court granting the adoption and the order shall be entered
35 in books which shall be kept under seal and which shall be indexed by
36 the name of the adoptive parents and by the full original name of the
37 child. Such order, including orders heretofore entered, shall be subject
38 to inspection and examination only as hereinafter provided. Notwith-
39 standing the fact that adoption records shall be sealed and secret, they
40 may be microfilmed and processed pursuant to an order of the court,
41 provided that such order provides that the confidentiality of such
42 records be maintained. If the confidentiality is violated, the person or
43 company violating it can be found guilty of contempt of court. The fact
44 that the adoptive child was born out of wedlock shall in no case appear
45 in such order. The written report of the investigation together with all
46 other papers pertaining to the adoption shall be kept by the judge or
47 surrogate as a permanent record of his OR HER court and such papers must
48 be sealed by him OR HER and withheld from inspection. No certified copy
49 of the order of adoption shall issue unless authorized by court order,
50 except that certified copies may issue to the agency or agencies in the
51 proceeding prior to the sealing of the papers. Before the record is
52 sealed, such order may be granted upon written ex parte application on
53 good cause shown and upon such conditions as the court may impose. After
54 the record is sealed, such order may be granted only upon notice as
55 hereinafter provided for disclosure or access and inspection of records.
56 The clerk upon request of a person or agency entitled thereto shall

1 issue certificates of adoption which shall contain only the new name of
2 the child and the date and place of birth of the child, the name of the
3 adoptive parents and the date when and court where the adoption was
4 granted, which certificate as to the facts recited therein shall have
5 the same force and effect as a certified copy of an order of adoption.

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