STATE OF NEW YORK

3419

2019-2020 Regular Sessions

IN SENATE

February 6, 2019

Introduced by Sen. MONTGOMERY -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations

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:

Section 1. The public health law is amended by adding a new section 4138-e to read as follows:

§ 4138-e. Adoptee's right to a certified copy of his or her birth certificate. 1. The legislature hereby states its intention to acknowledge, support and encourage the life-long health and well-being needs of persons who have been and will be adopted in this state. The legislature further recognizes that the denial of access to accurate and complete medical and self-identifying data of any adopted person, known and wilfully withheld by others, may result in such person succumbing to preventable disease, premature death or otherwise unhealthy life, is a violation of that person's human rights and is contrary to the tenets of government. As such, the provisions of this section seek to establish considerations under the law for adopted persons equal to such considerations permitted by law to all non-adopted persons; this section does so while providing for the privacy of an adopted person and his or her birth.

2. (a) Notwithstanding any other provision of law, the commissioner or a local registrar or any person authorized by the commissioner or a local registrar, upon application, proof of identity and payment of a nominal fee, shall issue certified copies of original long form line by line, vault copy birth certificates, including any change attached to that certificate by a birth parent or parents, and any information provided to the commissioner or a local registrar pursuant to subdivi-

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

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sion one of section one hundred fourteen of the domestic relations law, to (i) an adopted person, if eighteen years of age or more, or (ii) if the adopted person is deceased, the adopted person's direct line descendants, or (iii) the lawful representatives of such adopted person, or lawful representatives of such deceased adopted person's direct line descendants, as the case may be.

(b) When it shall be impossible for the commissioner or a local registrar to provide a copy of an adult adopted person's original long form birth certificate (as may occur in the case of an adopted person born outside of, but adopted within, the state and such certificate is not part of the records of the commissioner or a local registrar), the true and correct information about the adopted person and the adopted person's birth parents, including their identifying information, that would have appeared on such original birth certificate shall be provided to: (i) the adopted person, if eighteen years of age or more, or (ii) if the adopted person is deceased, the adopted person's direct line descendants, or (iii) the lawful representatives of such adopted person, or lawful representatives of such deceased adopted person's direct line descendants, as the case may be by any authorized agency as defined in paragraphs (a) and (b) of subdivision ten of section three hundred seventy-one of the social services law. In such case, the agency shall be held harmless from any liability arising out of the disclosure.

(c) For purposes of this subdivision, the term "commissioner" shall include the state commissioner of health, the commissioner of health and mental hygiene of the city of New York and for records of birth prior to January first, nineteen hundred fourteen, the local registrars of the cities of Albany, Buffalo and Yonkers.

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

4. The commissioner may make a microfilm or other suitable copy of the original certificate of birth and all papers pertaining to the new certificate of birth. In such event, the original certificate and papers may be destroyed. All undestroyed certificates and papers and copies thereof shall be confidential and the contents thereof shall not be released or otherwise divulged except by order of a court of competent jurisdiction or pursuant to section forty-one hundred thirty-eight-c [~~or~~], forty-one hundred thirty-eight-d or forty-one hundred thirty-eight-e of this [~~article~~] title.

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

5. Thereafter, when a certified copy or certified transcript of the certificate of birth of such a person, or a certification of birth for such person is issued, it shall be based upon the new certificate of birth, except when an order of a court of competent jurisdiction shall require the issuance of a copy of the original certificate of birth or application is made pursuant to section four thousand one hundred thirty-eight-e of this title.

§ 4. Paragraph (a) of subdivision 3 of section 4138 of the public health law, as amended by chapter 201 of the laws of 1972, is amended to read as follows:

(a) When a new certificate of birth is made the commissioner shall substitute such new certificate for the certificate of birth then on file, if any, and shall send the registrar of the district in which the birth occurred a copy of the new certificate of birth. The registrar

shall make a copy of the new certificate for the local record and hold the contents of the original local record confidential along with all papers and copies pertaining thereto. It shall not be released or otherwise divulged except by order of a court of competent jurisdiction **or pursuant to section four thousand one hundred thirty-eight-e of this title**.

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

(b) Thereafter, when a verified transcript or certification of birth of such person is issued by the registrar, it shall be based upon the new certificate, except when an order of a court of competent jurisdiction shall require the issuance of a verified transcript or certification based upon the original local record of birth **or application is made pursuant to section four thousand one hundred thirty-eight-e of this title**.

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

8. An adopted person eighteen years of age or older, or the birth parent or parents, may submit to the registrar a notice of change of name and/or address and such information shall be attached to the original birth certificate of the adopted person.

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

(b) If the agency determines that the agency was involved in such adoption, it shall transmit the registration to the adoption information registry operated by the department and the agency shall release the non-identifying information, as defined in section forty-one hundred thirty-eight-c of this title, to the [~~adoptee registrant. The agency may restrict the nature of the non-identifying information released pursuant to this section upon a reasonable determination that disclosure of such non-identifying information would not be in the adoptee's, the biological sibling's or parent's best interest~~] **adopted person**.

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

§ 4104. Vital statistics; application of article. The provisions of this article except for the provisions contained in paragraph (i) of subdivision two and subdivision four of section four thousand one hundred, section four thousand one hundred three, subdivision two of section four thousand one hundred thirty-five, section four thousand one hundred thirty-five-b, subdivision eight of section four thousand one hundred seventy-four, paragraphs (b) and (e) of subdivision one**, paragraph (a) and (b) of subdivision three, and subdivisions five and eight** of section four thousand one hundred thirty-eight, subdivision eleven of section four thousand one hundred thirty-eight-c, **paragraph (b) of subdivision three of section four thousand one hundred thirty-eight-d, section four thousand one hundred thirty-eight-e** and section four thousand one hundred seventy-nine of this article, shall not apply to the city of New York.

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

1. If satisfied that the best interests of the adoptive child will be promoted thereby**,** the judge or surrogate shall make an order approving the adoption and directing that the adoptive child shall thenceforth be

regarded and treated in all respects as the child of the adoptive parents or parent. In determining whether the best interests of the adoptive child will be promoted by the adoption, the judge or surrogate shall give due consideration to any assurance by a **local** commissioner of social services that he **or she** will provide necessary support and maintenance for the adoptive child pursuant to the social services law. Such order shall contain the full name, date and place of birth and reference to the schedule annexed to the petition containing the medical history of the child in the body thereof and shall direct that the child's medical history, heritage of the **birth** parents, which shall include nationality, ethnic background and race; education, which shall be the number of years of school completed by the **birth** parents at the time of the birth **and also at the time of surrender** of the adoptive child; general physical appearance of the **birth** parents at the time of the birth **and also at the time of surrender** of the adoptive child, which shall include height, weight, color of hair, eyes, skin; occupation of the **birth** parents at the time of the birth **and also at the time of surrender** of the adoptive child; health and medical history of the **birth** parents at the time of the birth **and also at the time of surrender** of the adoptive child, including all available information setting forth conditions or diseases believed to be hereditary, any drugs or medication taken during the pregnancy by the child's mother; and any other information which may be a factor influencing the child's present or future health, **including the** talents, hobbies and special interests of **the birth** parents as contained in the petition**,** be furnished to the adoptive parents**, the commissioner and the appropriate local registrar of vital statistics**. If the judge or surrogate is also satisfied that there is no reasonable objection to the change of name proposed, the order shall direct that the name of the adoptive child be changed to the name stated in the agreement of adoption and that henceforth he **or she** shall be known by that name. All such orders made by a family court judge of Westchester county since September first**,** nineteen hundred sixty-two, and on file in the office of the county clerk of such county shall be transferred to the clerk of the family court of such county. Such order and all the papers in the proceeding shall be filed in the office of the court granting the adoption and the order shall be entered in books which shall be kept under seal and which shall be indexed by the name of the adoptive parents and by the full original name of the child. Such order, including orders heretofore entered, shall be subject to inspection and examination only as hereinafter provided. Notwithstanding the fact that adoption records shall be sealed and secret, they may be microfilmed and processed pursuant to an order of the court, provided that such order provides that the confidentiality of such records be maintained. If the confidentiality is violated, the person or company violating it can be found guilty of contempt of court. The fact that the adoptive child was born out of wedlock shall in no case appear in such order. The written report of the investigation together with all other papers pertaining to the adoption shall be kept by the judge or surrogate as a permanent record of his **or her** court and such papers must be sealed by him **or her** and withheld from inspection. No certified copy of the order of adoption shall issue unless authorized by court order, except that certified copies may issue to the agency or agencies in the proceeding prior to the sealing of the papers. Before the record is sealed, such order may be granted upon written ex parte application on good cause shown and upon such conditions as the court may impose. After the record is sealed, such order may be granted only upon notice as

hereinafter provided for disclosure or access and inspection of records. The clerk upon request of a person or agency entitled thereto shall issue certificates of adoption which shall contain only the new name of the child and the date and place of birth of the child, the name of the adoptive parents and the date when and court where the adoption was granted, which certificate as to the facts recited therein shall have the same force and effect as a certified copy of an order of adoption. **For the purposes of this subdivision, the term "commissioner" shall mean the state commissioner of health and, with respect to an adoptive child born in the city of New York, the commissioner of health and mental hygiene of the city of New York.**

§ 10. This act shall take effect January 15, 2020, provided, however, that effective immediately, the commissioner of health is directed to promulgate such rules and regulations as may be necessary to carry out the provisions of this act.