

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:

1 Section 1. The public health law is amended by adding a new section
2 4138-e to read as follows:

3 § 4138-e. Adoptee's right to a certified copy of his or her birth
4 certificate. 1. The legislature hereby states its intention to acknowl-
5 edge, support and encourage the life-long health and well-being needs of
6 persons who have been and will be adopted in this state. The legislature
7 further recognizes that the denial of access to accurate and complete
8 medical and self-identifying data of any adopted person, known and
9 wilfully withheld by others, may result in such person succumbing to
10 preventable disease, premature death or otherwise unhealthy life, is a
11 violation of that person's human rights and is contrary to the tenets of
12 government. As such, the provisions of this section seek to establish
13 considerations under the law for adopted persons equal to such consider-
14 ations permitted by law to all non-adopted persons; this section does so
15 while providing for the privacy of an adopted person and his or her
16 birth.

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, including any change attached to
22 that certificate by a birth parent or parents, and any information
23 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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1 sion one of section one hundred fourteen of the domestic relations law,
2 to (i) an adopted person, if eighteen years of age or more, or (ii) if
3 the adopted person is deceased, the adopted person's direct line
4 descendants, or (iii) the lawful representatives of such adopted person,
5 or lawful representatives of such deceased adopted person's direct line
6 descendants, as the case may be.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

37 § 4104. Vital statistics; application of article. The provisions of
38 this article except for the provisions contained in paragraph (i) of
39 subdivision two and subdivision four of section four thousand one
40 hundred, section four thousand one hundred three, subdivision two of
41 section four thousand one hundred thirty-five, section four thousand one
42 hundred thirty-five-b, subdivision eight of section four thousand one
43 hundred seventy-four, paragraphs (b) and (e) of subdivision one, para-
44 graph (a) and (b) of subdivision three, and subdivisions five and eight
45 of section four thousand one hundred thirty-eight, subdivision eleven of
46 section four thousand one hundred thirty-eight-c, paragraph (b) of
47 subdivision three of section four thousand one hundred thirty-eight-d,
48 section four thousand one hundred thirty-eight-e and section four thou-
49 sand one hundred seventy-nine of this article, shall not apply to the
50 city of New York.

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

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

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

1 hereinafter provided for disclosure or access and inspection of records.
2 The clerk upon request of a person or agency entitled thereto shall
3 issue certificates of adoption which shall contain only the new name of
4 the child and the date and place of birth of the child, the name of the
5 adoptive parents and the date when and court where the adoption was
6 granted, which certificate as to the facts recited therein shall have
7 the same force and effect as a certified copy of an order of adoption.

8 For the purposes of this subdivision, the term "commissioner" shall mean
9 the state commissioner of health and, with respect to an adoptive child
10 born in the city of New York, the commissioner of health and mental
11 hygiene of the city of New York.

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