STATE OF NEW YORK

7433

2021-2022 Regular Sessions

IN ASSEMBLY

May 7, 2021

Introduced by M. of A. HEVESI -- read once and referred to the Committee on Judiciary

AN ACT to amend the domestic relations law and the social services law, in relation to certain time periods and prospective applicants in adoption proceedings; and to repeal subdivision 3 of section 373 of the social services law relating to adoption proceedings and an individual's religious faith

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The opening paragraph and the seventh undesignated paragraph of section 110 of the domestic relations law, the opening paragraph as amended by chapter 509 of the laws of 2010 and the seventh undesignated paragraph as added by chapter 522 of the laws of 1999, are amended to read as follows:

An adult unmarried person, an adult married couple together, or any two unmarried adult intimate partners together may adopt another person. An adult married person who is living separate and apart from his or her spouse pursuant to a decree or judgment of separation or pursuant to a written agreement of separation subscribed by the parties thereto and acknowledged or proved in the form required to entitle a deed to be recorded or an adult married person who has been living separate and apart from his or her spouse for at least three years prior to commencing an adoption proceeding may adopt another person; provided, however, that the person so adopted shall not be deemed the child or step-child of the non-adopting spouse for the purposes of inheritance or support rights or obligations or for any other purposes. An adult or minor married couple together may adopt a child of either of them born in or out of wedlock and an adult or minor spouse may adopt such a child of the other spouse. No person shall hereafter be adopted except in pursuance of this article[~~, and in conformity with section three hundred seventy-three of the social services law~~].

It shall be unlawful to preclude a prospective adoptive parent or parents [~~solely~~] on the basis **of age, race, creed, color, national origin, sexual orientation, gender identity or expression, military**

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

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status, sex, disability, predisposing genetic characteristics, familial status, marital status, or domestic violence victim status, or that the adoptor or adopters has had, or has cancer, or any other disease. Nothing herein shall prevent the rejection of a prospective applicant based upon his or her poor health or limited life expectancy.

§ 2. Subdivisions 3 and 4 and paragraph (a) and the opening paragraph of paragraph (b) of subdivision 6 of section 115-b of the domestic relations law, subdivision 3 and the opening paragraph of paragraph (b) of subdivision 6 as amended and subdivision 4 as added by chapter 817 of the laws of 1986, paragraph (c) of subdivision 4 as amended by chapter 680 of the laws of 2007, paragraph (d) of subdivision 4 as relettered by chapter 371 of the laws of 1994, and paragraph (a) of subdivision 6 as amended by chapter 557 of the laws of 1988, are amended to read as follows:

3. Extrajudicial consents. (a) Whenever a consent is not executed or acknowledged before a judge or surrogate pursuant to subdivision two of this section such consent shall become irrevocable [~~forty-five~~] ten days after the execution of the consent unless written notice of revocation thereof is received by the court in which the adoption proceeding is to be commenced within said [~~forty-five~~] ten days.

(b) Notwithstanding that such written notice is received within said [~~forty-five~~] ten days, the notice of revocation shall be given effect only if the adoptive parents fail to oppose such revocation, as provided in subdivision six of this section, or, if they oppose such revocation and the court as provided in subdivision six of this section has determined that the best interests of the child will be served by giving force and effect to such revocation.

4. (a) In any case where a consent is not executed or acknowledged before a judge or surrogate pursuant to subdivision two of this section, the consent shall state, in conspicuous print of at least eighteen point type:

(i) the name and address of the court in which the adoption proceeding has been or is to be commenced; and

(ii) that the consent may be revoked within [~~forty-five~~] ten days of the execution of the document and where the consent is not revoked within said [~~forty-five~~] ten days no proceeding may be maintained by the parent for the return of the custody of the child; and

(iii) that such revocation must be in writing and received by the court where the adoption proceeding is to be commenced within [~~forty-five~~] ten days of the execution of said consent; and

(iv) that, if the adoptive parents contest the revocation, timely notice of the revocation will not necessarily result in the return of the child to the parent's custody, and that the rights of the parent to custody of the child shall not be superior to those of the adoptive parents but that a hearing will be required before a judge pursuant to the provisions of this section to determine: (1) whether the notice of revocation was timely and properly given; and if necessary, (2) whether the best interests of the child will be served by: (A) returning custody of the child to the parent; or (B) by continuing the adoption proceeding commenced by the adoptive parents; or (C) by disposition other than adoption by the adoptive parents; or (D) by placement of the child with an authorized agency, and if any such determination is made, the court shall make such disposition of the custody of the child as will best serve the interests of the child; and

(v) that the parent has the right to legal representation of the parent's own choosing; the right to obtain supportive counseling and may

have the right to have the court appoint an attorney pursuant to section two hundred sixty-two of the family court act, section four hundred seven of the surrogate's court procedure act, or section thirty-five of the judiciary law.

(b) Such consent shall be executed or acknowledged before a notary public or other officer authorized to take proof of deeds.

(c) A copy of such consent shall be given to such parent upon the execution thereof. The consent shall include the following statement: "I, (name of consenting parent), this ____ day of _____, _____, have received a copy of this consent. (Signature of consenting parent)". Such consenting parent shall so acknowledge the delivery and the date of the delivery in writing on the consent.

(d) The adoptive parent may commence the adoption proceeding in a court of competent jurisdiction other than the court named in the consent provided that such commencement is initiated more than [~~forty-five~~] ten days after the consent is executed. Such commencement shall not revive, extend or toll the period for revocation of a consent pursuant to this section.

(a) A parent may revoke his consent to adoption only by giving notice, in writing, of such revocation, no later than [~~forty-five~~] ten days after the execution of the consent, or twenty days after the receipt of a notice of denial, withdrawal or removal pursuant to paragraph (a) of subdivision four of section seventeen hundred twenty-five of the surrogate's court procedure act, whichever is later, to the court in which the adoption proceeding has been or is to be commenced. Such notice shall set forth the name and address of the court in which the adoption proceeding is to be commenced, the address of the parent and may, in addition, set forth the name and address of the attorney for the parent.

If, within [~~forty-five~~] ten days of the execution of the consent, the court has received such notice of revocation, the court shall promptly notify the adoptive parents and their attorney, by certified mail, of the receipt by the court of such notice of revocation.

§ 3. Subdivision 3 of section 373 of the social services law is REPEALED and subdivisions 4, 5, 6 and 7 are renumbered subdivisions 3, 4, 5 and 6.

§ 4. Subdivision 6 of section 374 of the social services law, as amended by chapter 305 of the laws of 2008, is amended to read as follows:

6. An authorized agency, as defined in paragraphs (a) and (c) of subdivision ten of section three hundred seventy-one of this title, may charge or accept a fee or other compensation to or from a person or persons with whom it has placed out a child, for the reasonable and necessary expenses of such placement; and no agency, association, corporation, institution, society or organization, except such an authorized agency, and no person may or shall request, accept or receive any compensation or thing of value, directly or indirectly, in connection with the placing out or adoption of a child or for assisting a birth parent, relative or guardian of a child in arranging for the placement of the child for the purpose of adoption; and no person may or shall pay or give to any person or to any agency, association, corporation, institution, society or organization, except such an authorized agency, any compensation or thing of value in connection with the placing out or adoption of a child or for assisting a birth parent, relative or guardian of a child in arranging for the placement of the child for the purpose of adoption. The prohibition set forth in this section applies to any adoptive placement activity involving a child born in New York

state or brought into this state or involving a New York resident seeking to bring a child into New York state for the purpose of adoption.

This subdivision shall not be construed to prevent the payment of salaries or other compensation by an authorized agency to the officers or employees thereof; nor shall it be construed to prevent the payment by a person with whom a child has been placed out of reasonable and actual medical fees or hospital charges for services rendered in connection with the birth of such child or of other necessary expenses incurred by the birth mother in connection with or as a result of her pregnancy or the birth of the child, or of reasonable and actual nursing, medical or hospital fees for the care of such child, if such payment is made to the physician, nurse or hospital who or which rendered the services or to the birth mother of the child, or to prevent the receipt of such payment by such physician, nurse, hospital or birth mother. This subdivision shall not be construed to prevent the payment by an adoptive parent, as defined in section one hundred nine of the domestic relations law, of the birth mother's reasonable and actual expenses for housing, maternity clothing, clothing for the child and transportation for a reasonable period not to exceed [~~sixty~~] **one hundred eighty** days prior to the birth and the later of thirty days after the birth or thirty days after the parental consent to the adoption, unless a court determines, in writing, that exceptional circumstances exist which require the payment of the birth mother's expenses beyond the time periods stated in this sentence**; provided, however, that any such payments made to the birth mother shall not exceed ten thousand dollars**. This subdivision shall not be construed to prevent the payment by an adoptive parent, as defined in section one hundred nine of the domestic relations law, of reasonable and actual legal fees charged for consultation and legal advice, preparation of papers and representation and other legal services rendered in connection with an adoption proceeding or of necessary disbursements incurred for or in an adoption proceeding. No attorney or law firm shall serve as the attorney for, or provide any legal services to both the birth parent and adoptive parent in regard to the placing out of a child for adoption or in an adoption proceeding. No attorney or law firm shall serve as the attorney for, or provide any legal services to, both an authorized agency and adoptive parent or both an authorized agency and birth parent where the authorized agency provides adoption services to such birth parent or adoptive parent, where the authorized agency provides foster care for the child, or where the authorized agency is directly or indirectly involved in the placing out of such child for adoption.

§ 5. Paragraphs (e), (f) and (g) of subdivision 4 of section 382 of the social services law, paragraphs (e) and (f) as amended by chapter 945 of the laws of 1971 and paragraph (g) as amended by chapter 555 of the laws of 1978, are amended to read as follows:

(e) [~~will comply with section three hundred seventy-three;~~

~~(f)~~] will supervise the care and training of such child and cause it to be visited at least annually by a responsible agent of the licensee; and

[~~(g)~~] **(f)** will make to the department such reports as it from time to time may require.

§ 6. This act shall take effect on the thirtieth day after it shall have become a law.