

IN ASSEMBLY

Introduced by _____

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:

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

17 2. (a) Notwithstanding any other provision of law, the
18 commissioner or a local registrar or any person authorized
19 by the commissioner or a local registrar, upon application,
20 proof of identity and payment of a nominal fee, shall issue
21 certified copies of original long form line by line, vault
22 copy birth certificates and any change attached to that
23 certificate by a birth parent or parents, and, if
24 available, medical history forms upon specific request
25 therefor (i) to an adopted person, if eighteen years of age
26 or more, or (ii) if the adopted person is deceased, the
27 adopted person's direct line descendants, or (iii) the
28 lawful representatives of such adopted person, or lawful
29 representatives of such deceased adopted person's direct
30 line descendants, as the case may be.

1 (b) when it shall be impossible through good-faith efforts
2 to provide a copy of an adult adopted person's original
3 birth certificate (as in the case of an adopted person born
4 outside of, but adopted within, the state), the true and
5 correct identifying information that would have appeared on
6 such original birth certificate shall be provided by a
7 court of competent jurisdiction or the adoption agency,
8 upon specific request therefor, to: (i) the adopted person,
9 if eighteen years of age or more, or (ii) if the adopted
10 person is deceased, the adopted person's direct line
11 descendants, or (iii) lawful representatives of such
12 adopted person, or lawful representatives of such deceased
13 adopted person's direct line descendants, as the case may
14 be. In such case the agency shall be held harmless from any
15 liability arising out of the disclosure.

16 (c) for purposes of this subdivision:

17 (i) the term "commissioner" shall include the
18 commissioner of health and mental hygiene of the city of
19 New York and for records of birth prior to January first,
20 nineteen hundred fourteen, the local registrars of the
21 cities of Albany, Buffalo and Yonkers; and

22 (ii) the term "department" shall include the
23 department of health and mental hygiene of the city of New
24 York and, for records of birth prior to January first,
25 nineteen hundred fourteen, the office of vital statistics
26 of the city of Albany, the office of vital records of the
27 city of Buffalo and the office of clerk of the city of
28 Yonkers.

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

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

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

46 5. Thereafter, when a certified copy or certified
47 transcript of the certificate of birth of such a person, or

1 a certification of birth for such person is issued, it
2 shall be based upon the new certificate of birth, except
3 when an order of a court of competent jurisdiction shall
4 require the issuance of a copy of the original certificate
5 of birth or upon application by (i) an adopted person, if
6 eighteen years of age or more, or (ii) if the adoptee is
7 deceased, the adoptee's direct line descendants, or (iii)
8 lawful representatives of such adoptee, or lawful
9 representatives of such deceased adoptee's direct line
10 descendants, as the case may be.

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

14 (b) Thereafter, when a verified transcript or
15 certification of birth of such person is issued by the
16 registrar, it shall be based upon the new certificate,
17 except when an order of a court of competent jurisdiction
18 shall require the issuance of a verified transcript or
19 certification based upon the original local record of birth
20 or upon application by (i) an adopted person, if eighteen
21 years of age or more, or (ii) if the adoptee is deceased,
22 the adoptee's direct line descendants, or (iii) lawful
23 representatives of such adoptee, or lawful representatives
24 of such deceased adoptee's direct line descendants, as the
25 case may be.

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

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

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

44 § 4104. Vital statistics; application of article. The
45 provisions of this article except for the provisions
46 contained in paragraph (i) of subdivision two and
47 subdivision four of section four thousand one hundred,

1 section four thousand one hundred three, subdivision two of
2 section four thousand one hundred thirty-five, section four
3 thousand one hundred thirty-five-b, subdivision eight of
4 section four thousand one hundred seventy-four, paragraphs
5 (b) and (e) of subdivision one, paragraph (b) of
6 subdivision three, and subdivisions five, seven and eight
7 of section four thousand one hundred thirty-eight,
8 subdivision eleven of section four thousand one hundred
9 thirty-eight-c, paragraph (b) of subdivision three of
10 section four thousand one hundred thirty-eight-d, section
11 four thousand one hundred thirty-eight-e and section four
12 thousand one hundred seventy-nine of this article, shall
13 not apply to the city of New York.

14 § 7. Subdivision 1 of section 114 of the domestic
15 relations law, as amended by chapter 751 of the laws of
16 1989 and designated by chapter 601 of the laws of 1994, is
17 amended to read as follows:

18 1. If satisfied that the best interests of the
19 adoptive child will be promoted thereby, the judge or
20 surrogate shall make an order approving the adoption and
21 directing that the adoptive child shall thenceforth be
22 regarded and treated in all respects as the child of the
23 adoptive parents or parent. In determining whether the best
24 interests of the adoptive child will be promoted by the
25 adoption, the judge or surrogate shall give due
26 consideration to any assurance by a local commissioner of
27 social services that he or she will provide necessary
28 support and maintenance for the adoptive child pursuant to
29 the social services law. Such order shall contain the full
30 name, date and place of birth and reference to the schedule
31 annexed to the petition containing the medical history of
32 the child in the body thereof and shall direct that the
33 child's medical history, heritage of the birth parents,
34 which shall include nationality, ethnic background and
35 race; education, which shall be the number of years of
36 school completed by the birth parents at the time of the
37 birth and also at the time of surrender of the adoptive
38 child; general physical appearance of the birth parents at
39 the time of the birth and also at the time of surrender of
40 the adoptive child, which shall include height, weight,
41 color of hair, eyes, skin; occupation of the birth parents
42 at the time of the birth and also at the time of surrender
43 of the adoptive child; health and medical history of the
44 birth parents at the time of the birth and also at the time
45 of surrender of the adoptive child, including all available
46 information setting forth conditions or diseases believed
47 to be hereditary, any drugs or medication taken during the

1 pregnancy by the child's mother; and any other information
2 which may be a factor influencing the child's present or
3 future health, including the talents, hobbies and special
4 interests of the birth parents as contained in the
5 petition, be furnished to the adoptive parents. If the
6 judge or surrogate is also satisfied that there is no
7 reasonable objection to the change of name proposed, the
8 order shall direct that the name of the adoptive child be
9 changed to the name stated in the agreement of adoption and
10 that henceforth he or she shall be known by that name. All
11 such orders made by a family court judge of Westchester
12 county since September first, nineteen hundred sixty-two,
13 and on file in the office of the county clerk of such
14 county shall be transferred to the clerk of the family
15 court of such county. Such order and all the papers in the
16 proceeding shall be filed in the office of the court
17 granting the adoption and the order shall be entered in
18 books which shall be kept under seal and which shall be
19 indexed by the name of the adoptive parents and by the full
20 original name of the child. Such order, including orders
21 heretofore entered, shall be subject to inspection and
22 examination only as hereinafter provided. Notwithstanding
23 the fact that adoption records shall be sealed and secret,
24 they may be microfilmed and processed pursuant to an order
25 of the court, provided that such order provides that the
26 confidentiality of such records be maintained. If the
27 confidentiality is violated, the person or company
28 violating it can be found guilty of contempt of court. The
29 fact that the adoptive child was born out of wedlock shall
30 in no case appear in such order. The written report of the
31 investigation together with all other papers pertaining to
32 the adoption shall be kept by the judge or surrogate as a
33 permanent record of his or her court and such papers must
34 be sealed by him or her and withheld from inspection. No
35 certified copy of the order of adoption shall issue unless
36 authorized by court order, except that certified copies may
37 issue to the agency or agencies in the proceeding prior to
38 the sealing of the papers. Before the record is sealed,
39 such order may be granted upon written ex parte application
40 on good cause shown and upon such conditions as the court
41 may impose. After the record is sealed, such order may be
42 granted only upon notice as hereinafter provided for
43 disclosure or access and inspection of records. The clerk
44 upon request of a person or agency entitled thereto shall
45 issue certificates of adoption which shall contain only the
46 new name of the child and the date and place of birth of
47 the child, the name of the adoptive parents and the date

1 when and court where the adoption was granted, which
2 certificate as to the facts recited therein shall have the
3 same force and effect as a certified copy of an order of
4 adoption.

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

DRAFT LEGISLATION