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4962

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IN SENATE

April 24, 2007

Introduced by Sens. KRUGER, HANNON -- (at request of the Office of Children and Family Services) -- read twice and ordered printed, and when printed to be committed to the Committee on Social Services, Children and Families

AN ACT to amend the social services law, the family court act and the public health law, in relation to adoption subsidy and the adoption registry

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

1 Section 1. Paragraph (g) of subdivision 3 of section 384-b of the
2 social services law, as amended by chapter 123 of the laws of 1982, is
3 amended to read as follows:

4 (g) (i) An order committing the guardianship and custody of a child
5 pursuant to this section shall be granted only upon a finding that one
6 or more of the grounds specified in subdivision four of this section are
7 based upon clear and convincing proof.

8 (ii) Where a proceeding has been properly commenced under this section
9 by the filing of a petition before the eighteenth birthday of a child,
10 an order committing the guardianship and custody of a child pursuant to
11 this section upon a finding under subdivision four of this section shall
12 be granted after the eighteenth birthday of a child where the child
13 consents to such disposition.

14 § 2. Subdivision 1 of section 451 of the social services law, as
15 amended by chapter 601 of the laws of 1994, is amended to read as
16 follows:

17 1. "Child" shall mean a person under the age of twenty-one years whose
18 guardianship and custody have been committed to a social services offi-
19 cial or a voluntary authorized agency, or whose guardianship and custody
20 have been committed to a certified or approved foster parent pursuant to
21 a court order prior to such person's eighteenth birthday, except as
22 provided in paragraph (g) of subdivision three of section three hundred

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

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1 eighty-four-b of this article and section six hundred thirty-one of the
2 family court act. A "child" shall also mean a person under the age of
3 twenty-one years whose care and custody have been transferred prior to
4 such person's eighteenth birthday to a social services official or a
5 voluntary authorized agency pursuant to section one thousand fifty-five
6 of the family court act or section three hundred eighty-four-a of this
7 [~~chapter~~] article, whose parents are deceased or where one parent is
8 deceased and the other parent is not a person entitled to notice pursu-
9 ant to section one hundred eleven-a of the domestic relations law, and
10 where such official or agency consents to the adoption of such person in
11 accordance with section one hundred thirteen of the domestic relations
12 law.

13 § 3. Paragraph (a) of subdivision 1 of section 453 of the social
14 services law, as amended by chapter 559 of the laws of 1992, is amended
15 to read as follows:

16 (a) A social services official shall make monthly payments for the
17 care and maintenance of a handicapped or hard to place child whom a
18 social services official [~~or voluntary authorized agency~~] has placed
19 [~~out~~] for adoption or who has been adopted[~~r~~] and for the care and main-
20 tenance of a handicapped or hard to place child placed for adoption by a
21 voluntary authorized agency who is residing in such social services
22 district. Where a handicapped or hard to place child is placed in an
23 adoptive placement outside the state, monthly payments for the care and
24 maintenance of the child shall be made by the social services official
25 placing the child or in whose district the voluntary authorized agency
26 maintains its principal office. Such payments shall be made until the
27 child's twenty-first birthday to persons with whom the child has been
28 placed, or to persons who have adopted the child and who applied for
29 such payments prior to the adoption, pursuant to a written agreement
30 therefor between such official or agency and such persons; provided,
31 however, that an application may be made subsequent to the adoption if
32 the adoptive parents first become aware of the child's physical or
33 emotional condition or disability subsequent to the adoption and a
34 physician certifies that the condition or disability existed prior to
35 the child's adoption. The social services official shall consider the
36 financial status of such persons only for the purpose of determining the
37 amount of the payments to be made, pursuant to subdivision three of this
38 section. Upon the death of persons who have adopted the child prior to
39 the twenty-first birthday of the child, such payments shall continue to
40 the legal guardian or custodian of the child under the age of eighteen
41 upon issuance of letters of guardianship or order of custody and shall
42 continue until the child shall attain the age of twenty-one. If the
43 guardian or custodian was the caretaker of the child under the age of
44 eighteen prior to the issuance of letters of guardianship or order of
45 custody, such payments shall be made retroactively from the death of the
46 adoptive parent or parents.

47 § 4. Section 631 of the family court act, as amended by chapter 666 of
48 the laws of 1976, is amended to read as follows:

49 § 631. Disposition on adjudication of permanent neglect. At the
50 conclusion of a dispositional hearing on a petition for the commitment
51 of the guardianship and custody of a child, the court shall enter an
52 order of disposition:

53 (a) dismissing the petition in accord with section six hundred thir-
54 ty-two; or

55 (b) suspending judgment in accord with section six hundred thirty-
56 three; or

1 (c) committing the guardianship and custody of the child in accord
2 with section six hundred thirty-four; provided, however, that an order
3 of disposition committing the guardianship and custody of the child may
4 not be entered after the child's eighteenth birthday, unless the child
5 consents.

6 An order of disposition shall be made, pursuant to this section, sole-
7 ly on the basis of the best interests of the child, and there shall be
8 no presumption that such interests will be promoted by any particular
9 disposition.

10 § 5. Subdivision 2, paragraph (a) of subdivision 4 and subdivisions 5,
11 6 and 9 of section 4138-c of the public health law, subdivision 2 as
12 separately amended by chapters 504 and 588 of the laws of 1999, para-
13 graph (a) of subdivision 4 and subdivisions 5 and 6 as amended by chap-
14 ter 588 of the laws of 1999 and subdivision 9 as added by chapter 521 of
15 the laws of 2000, are amended to read as follows:

16 2. The registry shall accept and maintain the verified registration
17 transmitted by an agency pursuant to section forty-one hundred thirty-
18 eight-d of this article, or of an adoptee, or of a biological sibling of
19 an adoptee, or of the birth parents of an adoptee [~~whose consent to the~~
20 ~~adoption was required at the time of the adoption, or whose signature~~
21 ~~was required on an instrument of surrender to an authorized agency]~~ if
22 such adoptee was born in this state but no sooner than eighteen years
23 after the adoptee's birth, or in the case of registration by a biolog-
24 ical sibling of an adoptee, no sooner than the longer of eighteen years
25 after the biological sibling's birth or eighteen years after the
26 adoptee's birth; provided, however, that any person whose registration
27 was accepted may withdraw such registration prior to the release of any
28 identifying information. The adoptee registrant, and the biological
29 sibling registrant, shall include as part of the registration the iden-
30 tification, including the name and address, of known biological siblings
31 of the adoptee. The adoptee may upon registration or any time thereafter
32 elect not to have release of information by the authorized agency
33 involved in such adoption. The department shall establish an authorized
34 agency fee schedule for search costs and registry costs and services
35 provided by such agency in gathering and forwarding information pursuant
36 to this section. The fee schedule may also include costs for disseminat-
37 ing information about the registry and the adoption medical information
38 sub-registry to the public. Such publications or brochures may include
39 information as to identifying and non-identifying information, how to
40 register and fees charged to the registrants, and any other information
41 deemed appropriate.

42 (a) If the department determines that the adoption occurred within the
43 state, it shall notify the court wherein the adoption occurred to submit
44 to the department non-identifying information as may be contained in the
45 records of the court and the names of the birth parents of the adoptee
46 [~~whose consent to the adoption was required at the time of the adoption~~
47 ~~or whose signature was required on an instrument of surrender to an~~
48 ~~authorized agency]. Notwithstanding any other provision of law to the~~
49 contrary, the court shall thereupon transmit to the department non-iden-
50 tifying information as may be contained in the records of the court, and
51 the names of the birth parents of the adoptee [~~whose consent to the~~
52 ~~adoption was required at the time of the adoption or whose signature was~~
53 ~~required on an instrument of surrender to an authorized agency],
54 provided that, if the court determines from its records that the
55 adoption was from an authorized agency, the court shall submit to the
56 department only the name and address of such authorized agency and the~~

1 names of the birth parents of the adoptee [~~whose consent to the adoption~~
2 ~~was required at the time of the adoption or whose signature was required~~
3 ~~on an instrument of surrender to an authorized agency~~]. In such cases,
4 unless the adoptee registrant or the biological sibling registrant shall
5 have elected otherwise, the department shall notify the authorized agen-
6 cy whose name was provided by the court to release promptly to the adop-
7 tee or biological sibling registrant all non-identifying information as
8 may be contained in the agency records. Such agency shall thereafter
9 promptly release the non-identifying information to the adoptee regis-
10 trant. If the adoptee registrant shall have elected not to have the
11 information released to him or her by the authorized agency, the agency
12 shall submit promptly to the department all non-identifying information
13 as may be contained in the agency records. In any case where the agency
14 records are incomplete, no longer exist or are otherwise unavailable,
15 the department shall so notify the court. The court shall thereupon
16 promptly submit such non-identifying information as may be contained in
17 their records. If no authorized agency was involved or if the adoptee
18 registrant shall have elected not to have release of information by the
19 authorized agency involved in such adoption, the department shall
20 release the non-identifying information to the adoptee registrant. The
21 department and/or an authorized agency may restrict the nature of the
22 non-identifying information released pursuant to this section upon a
23 reasonable determination that disclosure of such non-identifying infor-
24 mation would not be in the adoptee's, biological sibling's, or parent's
25 best interest.

26 5. Upon acceptance of a registration pursuant to this section, the
27 department shall search the registry to determine whether the adoptee,
28 any biological sibling of the adoptee, or birth parents [~~whose consent~~
29 ~~to the adoption was required~~] of the adoptee is also registered.

30 (a) If the department determines the adoptee is not in contact with a
31 biological sibling under the age of eighteen and that there is a corre-
32 sponding registration for the adoptee, for each of the birth parents
33 [~~whose consent to the adoption was required or whose signature was~~
34 ~~required on an instrument of surrender to an authorized agency~~], and/or
35 for the biological sibling registrant, it shall notify the court wherein
36 the adoption occurred and the department shall notify all such persons
37 that a corresponding match has been made and request such persons' final
38 consent to the release of identifying information.

39 (b) If the department determines that there is no corresponding regis-
40 tration for the adoptee, for each of the birth parents [~~whose consent to~~
41 ~~the adoption was required or whose signature was required on an instru-~~
42 ~~ment of surrender to an authorized agency~~], and/or for a biological
43 sibling of the adoptee, it shall notify the registering person that no
44 corresponding match has been made. The department shall not solicit or
45 request the consent of the non-registered person or persons.

46 6. Upon receipt of a final consent by the adoptee, by each of the
47 birth parents [~~whose consent to the adoption was required or whose~~
48 ~~signature was required on an instrument of surrender to an authorized~~
49 ~~agency~~], and/or by a biological sibling of the adoptee, the department
50 shall, unless the adoptee or biological sibling registrant shall elect
51 otherwise, if an authorized agency was involved in such adoption,
52 release identifying information to such agency; such agency shall there-
53 after promptly release identifying information to all the registrants.
54 If no authorized agency was involved, or if any registrant shall have
55 elected not to have release of the information by the authorized agency
56 involved in such adoption the department shall release identifying

1 information to all the registrants. Such identifying information shall
2 be limited to the names and addresses of the registrants and shall not
3 include any other information contained in the adoption or birth
4 records. However, nothing in this section shall be construed to prevent
5 the release of adoption records as otherwise permitted by law.

6 9. For the purposes of this section, the term "birth parents [~~whose
7 consent to the adoption was required or whose signature was required on
8 an instrument of surrender to an authorized agency~~]" shall mean a
9 surviving birth parent when the other birth parent who would otherwise
10 be required to register is deceased. The registry shall consider the
11 registration of such a surviving birth parent who can demonstrate that
12 the other birth parent is deceased to fulfill all requirements for the
13 registration of the birth parents of an adoptee. Upon the request of a
14 birth parent at or following registration the department shall conduct a
15 search of its records to determine whether the other birth parent [~~whose
16 signature or consent to the adoption was required~~] is deceased.

17 § 6. Subdivision 2, paragraphs (a) and (b) of subdivision 4 and subdivi-
18 sions 5 and 9 of section 4138-d of the public health law, subdivision
19 2, paragraphs (a) and (b) of subdivision 4 and subdivision 5 as amended
20 by chapter 588 of the laws of 1999 and subdivision 9 as added by chapter
21 521 of the laws of 2000, are amended to read as follows:

22 2. The agency shall accept and maintain the verified registration of
23 an adoptee, or of the birth parents of an adoptee [~~whose consent to the
24 adoption was required at the time of the adoption, or whose signature
25 was required on an instrument of surrender to an authorized agency~~] or
26 of the biological sibling of an adoptee if such adoptee was born in this
27 state but no sooner than eighteen years after the adoptee's birth or in
28 the case of a biological sibling registrant, no sooner than the longer
29 of eighteen years after the birth of the adoptee or eighteen years after
30 the birth of the biological sibling; provided however, that any person
31 whose registration was accepted may withdraw such registration prior to
32 the release of any identifying information.

33 (a) If the department determines that there is a corresponding regis-
34 tration for the adoptee, for each of the birth parents [~~whose consent to
35 the adoption was required or whose signature was required on an instru-
36 ment of surrender to an authorized agency~~] and/or for a biological
37 sibling of the adoptee, it shall notify the court wherein the adoption
38 occurred and the department shall notify the agency that a corresponding
39 match has been made. The agency shall notify all such persons that a
40 corresponding match has been made and request such persons' final
41 consent to the release of identifying information.

42 (b) If the department determines that there is no corresponding regis-
43 tration for the adoptee, for the birth parents [~~whose consent to the
44 adoption was required or whose signature was required on an instrument
45 of surrender to an authorized agency~~] and/or for a biological sibling of
46 the adoptee, it shall notify the agency which shall notify the register-
47 ing person that no corresponding match has been made. The agency shall
48 not solicit or request the consent of the non-registered person or
49 persons.

50 5. Upon receipt of a final consent by the adoptee, by each of the
51 birth parents [~~whose consent to the adoption was required or whose
52 signature was required on an instrument of surrender to an authorized
53 agency~~] and/or by a biological sibling of the adoptee, the agency shall
54 release identifying information to all the registrants. Such identifying
55 information shall be limited to the names and addresses of the regis-
56 trants and shall not include any other information contained in the

1 adoption or birth records. However, nothing in this section shall be
 2 construed to prevent the release of adoption records as otherwise
 3 permitted by law.

4 9. For the purposes of this section, the term "birth parents [~~whose
 5 consent to the adoption was required or whose signature was required on
 6 an instrument of surrender to an authorized agency~~]" shall mean a
 7 surviving birth parent when the other birth parent who would otherwise
 8 be required to register is deceased. The registry shall consider the
 9 registration of such a surviving birth parent who can demonstrate that
 10 the other birth parent is deceased to fulfill all requirements for the
 11 registration of the birth parents of an adoptee. Upon the request of a
 12 birth parent at or following registration the department shall conduct a
 13 search of its records to determine whether the other birth parent whose
 14 signature or consent to the adoption was required is deceased.
 15 § 7. This act shall take effect on the one hundred twentieth day after
 16 it shall have become a law.

MEMORANDUM

AN ACT to amend the social services law, the family court act
 and the public health law, in relation to adoption subsidy and
 the adoption registry

Purpose:

This proposal will provide for the availability of an adoption subsidy under certain circumstances upon the death of an adoptive parent and permit an adult adopted child to contact a birth parent whose parental rights were terminated by permitting the birth parent to register with the New York State Department of Health (DOH) Adoption Registry.

Summary of Provisions:

Section one of the proposal amends Social Services Law (SSL) §384-b (3)(g) to permit an order of disposition committing the guardianship and custody of a child to be entered after the child's eighteenth birthday where the termination of parental rights proceeding was properly commenced prior to, but not concluded, until after the child's 18th birthday, if the child consents to such an order.

Section two of the proposal amends SSL §451(1) defining "child" for the purposes of eligibility for an adoption subsidy to cross-reference new provisions in SSL §384-b (3)(g) and Family Court Act (FCA) §631 to permit payment of an adoption subsidy where an order committing the guardianship and custody of a child is entered after a child's 18th birthday.

Section three of the proposal amends SSL §453(1)(a) to clarify language regarding responsibility for the payment of adoption subsidy and to permit payment of an adoption subsidy to a legal guardian or custodian appointed after the death of the adoptive child's parent who was receiving an adoption subsidy on behalf of an eligible child.

Section four of the proposal amends FCA §631 to clarify that an order of disposition committing the guardianship and custody of a child may not be entered after the child's 18th birthday without the consent of the child.

Section five of the proposal amends Public Health Law (PHL) §4138-c, pertaining to the Adoption Information Registry maintained by DOH, to permit birth parents whose parental rights were terminated to provide information to the Adoption Information Registry and consent to the release of identifying information for possible match with an adult adopted child who is voluntarily registered.

Section six of the proposal amends PHL §4138-d, pertaining to the Mutual Consent Voluntary Adoption Registry maintained by individual adoption agencies, to permit birth parents whose parental rights were terminated to register with an individual adoption agency, provide information for release, and consent to the release of identifying information with an individual adoption agency for possible match with an adult adopted child who is voluntarily registered.

Section seven provides for an effective date of 120 days after enactment.

Existing Law:

SSL §384-b sets forth the grounds and procedure for commitment of the guardianship and custody of a child to an authorized agency or foster parent based on the death of the child's parents or termination of parental rights.

SSL §451 defines terms used in Title 9 of Article 6 pertaining to subsidies for the adoption of children.

SSL §453 provides for monthly payments or subsidies for the care and maintenance of a handicapped or hard to place child who is placed for adoption or is adopted.

FCA §631 sets forth the possible dispositions after fact-finding and dispositional hearings regarding adjudication of permanent neglect of a child.

PHL §4138-c governs the Adoption Information Registry maintained by DOH, which enables an adopted adult to receive non-identifying information only, and permits an adopted adult, biological sibling of an adopted adult and a parent whose consent to the adoption was required at the time of the adoption or who surrendered a child, to register and share identifying information including names and current addresses, where all the parties consent.

PHL §4138-d governs the Mutual Consent Voluntary Adoption Registry maintained by individual adoption agencies, which enables an adopted adult to receive non-identifying information only, and permits an adopted adult, biological sibling of an adopted adult and a parent whose consent to the adoption was required at the time of the adoption or who surrendered a child, to register and share identifying information including names and current addresses, where all the parties consent.

Legislative History:

A proposal that included the provision permitting payment of an adoption subsidy to a legal guardian or custodian appointed after the death of the adoptive child's parent who was receiving an adoption subsidy on behalf of an eligible child was introduced as S.5195 of 2005 and passed in the Senate. The other provisions of this proposal are new.

Statement in Support:

This proposal would correct two inequities which exist in current law regarding adoption subsidy that adversely affect children. Monthly adoption subsidy payments may be made to the parent(s) for the care of a child who is deemed hard to place or handicapped, until the child is 21 years of age. A handicapped child means a child who possesses a specific physical, mental, or emotional condition or disability of such severity or kind that it would constitute a significant obstacle to the child's adoption. A hard-to-place child is a child who has been in a placement for an extended period of time prior to signing of the adoptive placement agreement or who meets certain age, sibling group, or other requirements as stated in 18 NYCRR § 421.24(a)(3). Adoption subsidy payments are intended "to promote permanency of family status through adoption for children who might not otherwise derive the benefits of that status ... who have not been placed for adoption because of emotional or physical handicaps, age or other factors". SSL §450.

The proposal would allow an adoption subsidy to be provided for a child who, through no fault of his or her own, is freed for adoption subsequent to his or her 18th birthday. Under current law, the child must be freed before age 18 to permit subsidy maintenance payments to be made to the adoptive parent. The proposal would permit subsidy agreement to be approved for a child freed for adoption after turning 18 only where the termination of parental rights proceeding was properly commenced before the child's 18th birthday, but due to delay caused by circumstances such as, for example, court congestion, inability to effect service on the birth parent, cause the order to be issued after the child's 18th birthday. The proposal would amend FCA Article 6 pertaining to permanent neglect termination of parental rights proceedings and SSL 384-b pertaining to termination of parental rights proceedings to allow the order committing the guardianship and custody of a child to an authorized agency or a foster parent after the child's 18th birthday, conditioned on the consent of the child, in keeping with the requirements that a child must consent to remaining in foster care after his or her 18th birthday and must consent to his or her adoption.

Under current law, if an adoptive parent dies and a guardian has been appointed prior to the parent's death, subsidy payments for an adopted child continue to be provided to the guardian for the care of the child. However, if the adoptive parent dies before a new guardian is appointed, the guardian appointed after the adoptive parent's death is not eligible to receive the adoption subsidy payments until after formal appointment by a court. If a person providing care for the adopted child after the death of the adoptive parent had court-ordered custody of the child rather than court-ordered guardianship, the custodian would not be permitted to receive adoption subsidy payments on behalf of the child at all. This proposal would permit adoption subsidy payments to be made to a caretaker of a child regardless of whether that person has a court order granting custody or letters of guardianship. In addition, the proposal would permit retroactive payments where the custodian or guardian appointed after the death of the adoptive parent has been providing care for the child for the interim period until appointment. Since the subsidy payments are intended to provide for the care of a handicapped or hard-to-place child, and in these instances the child has already been deemed eligible, fairness dictates that the subsidy payments continue in these cases.

The proposal would also rectify another inequity that exists regarding an adopted child's access to information about his or her birth family. The Adoption Registry provides three kinds of information: non-identifying, identifying and medical. With the exception of medical information, the provision of identifying or non-identifying information is limited to parents who surrendered a child or who had the statutory right to consent to the adoption of the child. Children whose birth parents have had their parental rights terminated cannot receive either non-identifying or identifying information about their parents. That purpose should not be limited by artificial constraints, such as whether the parent was a consent parent or whether they surrendered the child. Circumstances change as time passes. A birth father that made no effort to be a part of his child's life before the child was surrendered for adoption may regret that decision and wish to meet his now-adult child. A mother who had substance abuse issue that led to the termination of her parental rights may have resolved those issues by the time her child is an adult and able to make the decision to attempt to find her. Even if the issues that led to the parental rights termination have not resolved, there may be other relatives to whom the adult adopted child can gain access through the birth parents. What is important to the adult adopted child is to find his birth parents. The Registry is structured to protect any parent, child or sibling who does not want to be found. The proposal would eliminate the statutory preclusion of the registration of a birth parent who was only entitled to notice of his or her child's adoption or whose parental rights had been terminated.

Budget Implications:

The provision to permit payment of an adoption subsidy for a child who is freed for adoption after his or her 18th birthday would have a slight fiscal impact. In December of 2005 there were approximately ten children over the age of 18 with a goal of adoption awaiting finalization of a termination of parental rights. Given the small number of children affected, it is estimated that the total cost of these subsidies would be \$100,000 a year. Due to Federal restrictions, children over the age of 18 are not eligible to draw down Title IV-E reimbursement. Therefore, the cost of these subsidies would be divided between the State (75%) and the local social services district (25%).

OCFS defers to DOH with respect to any additional costs that it may incur if additional persons were permitted to register with the Adoption Information Registry.

Effective Date:

This act shall take effect on the one hundred twentieth day after it shall have become a law.