

# STATE OF NEW YORK

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7419--A  
Cal. No. 1267

## IN SENATE

April 24, 2006

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Introduced by Sen. SALAND -- read twice and ordered printed, and when printed to be committed to the Committee on Social Services, Children and Families -- reported favorably from said committee, ordered to first report, amended on first report, ordered to a second report, and to be reprinted as amended, retaining its place in the order of second report

AN ACT to amend the social services law, in relation to legal representation of natural and adoptive parents and authorized agencies in the placement of children

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

1 Section 1. Subdivision 6 of section 374 of the social services law, as  
2 amended by chapter 446 of the laws of 2000, is amended to read as  
3 follows:  
4 6. An authorized agency, as defined in paragraphs (a) and (c) of  
5 subdivision ten of section three hundred seventy-one of this [~~chapter~~  
6 **title**], may charge or accept a fee or other compensation to or from a  
7 person or persons with whom it has placed out a child, for the reason-  
8 able and necessary expenses of such placement; and no agency, associ-  
9 ation, corporation, institution, society or organization, except such an  
10 authorized agency, and no person may or shall request, accept or receive  
11 any compensation or thing of value, directly or indirectly, in  
12 connection with the placing out or adoption of a child or for assisting  
13 a parent, relative or guardian of a child in arranging for the placement  
14 of the child for the purpose of adoption; and no person may or shall pay  
15 or give to any person or to any agency, association, corporation, insti-  
16 tution, society or organization, except such an authorized agency, any  
17 compensation or thing of value in connection with the placing out or  
18 adoption of a child or for assisting a parent, relative or guardian of a  
19 child in arranging for the placement of the child for the purpose of  
20 adoption. The prohibition set forth in this section applies to any adop-  
21 tive placement activity involving a child born in New York state or  
22 brought into this state or involving a New York resident seeking to  
23 bring a child into New York state for the purpose of adoption.

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

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1 This subdivision shall not be construed to prevent the payment of  
2 salaries or other compensation by an authorized agency to the officers  
3 or employees thereof; nor shall it be construed to prevent the payment  
4 by a person with whom a child has been placed out of reasonable and  
5 actual medical fees or hospital charges for services rendered in  
6 connection with the birth of such child or of other necessary expenses  
7 incurred by the mother in connection with or as a result of her pregnan-  
8 cy or the birth of the child, or of reasonable and actual nursing,  
9 medical or hospital fees for the care of such child, if such payment is  
10 made to the physician, nurse or hospital who or which rendered the  
11 services or to the natural mother of the child, or to prevent the  
12 receipt of such payment by such physician, nurse, hospital or mother.  
13 This subdivision shall not be construed to prevent the payment by an  
14 adoptive parent, as defined in section one hundred nine of the domestic  
15 relations law, of the mother's reasonable and actual expenses for hous-  
16 ing, maternity clothing, clothing for the child and transportation for a  
17 reasonable period not to exceed sixty days prior to the birth and the  
18 later of thirty days after the birth or thirty days after the parental  
19 consent to the adoption, unless a court determines, in writing, that  
20 exceptional circumstances exist which require the payment of the moth-  
21 er's expenses beyond the time periods stated in this sentence. This  
22 subdivision shall not be construed to prevent the payment by an adoptive  
23 parent, as defined in section one hundred nine of the domestic relations  
24 law, of reasonable and actual legal fees charged for consultation and  
25 legal advice, preparation of papers and representation and other legal  
26 services rendered in connection with an adoption proceeding or of neces-  
27 sary disbursements incurred for or in an adoption proceeding. No attor-  
28 ney or law firm shall serve as the attorney for, or provide any legal  
29 services to both the ~~[natural parents]~~ birth parent and adoptive  
30 ~~[parents]~~ parent in regard to the placing out of a child for adoption or  
31 in an adoption proceeding. No attorney or law firm shall serve as the  
32 attorney for, or provide any legal services to, both an authorized agen-  
33 cy and adoptive parent or both an authorized agency and birth parent  
34 where the authorized agency provides adoption services to such birth  
35 parent or adoptive parent, where the authorized agency provides foster  
36 care for the child, or where the authorized agency is directly or indi-  
37 rectly involved in the placing out of such child for adoption.  
38 § 2. This act shall take effect on the first of June next succeeding  
39 the date on which it shall have become a law.

**NEW YORK STATE SENATE**  
**INTRODUCER'S MEMORANDUM IN SUPPORT**  
**submitted in accordance with Senate Rule VI. Sec 1**

**BILL NUMBER:** S7419A

**SPONSOR:** SALAND

**TITLE OF BILL:**

An act to amend the social services law, in relation to legal represen-  
tation of natural and adoptive parents and authorized agencies in the  
placement of children

**PURPOSE:**

To establish a clear line of impartiality for legal representation in adoption proceedings.

**SUMMARY OF PROVISIONS:**

Section 1 prohibits an attorney or law firm from serving as the attorney or providing legal services to: an authorized agency and adoptive parent; an authorized agency and birth parent where that authorized agency provided adoption services to the birth parent or adoptive parent or provided foster care services for the child or where such authorized agency is directly or indirectly involved in the placing out of such child for adoption.

Section 2 provides an effective date of June 1st next succeeding the date on which the bill shall have become a law.

**EXISTING LAW:**

Currently, no attorney or law firm can serve as a legal representative for both natural parents and adoptive parents in an adoption proceeding. The statute, however, is silent on whether an attorney or law firm may serve both an authorized agency which was directly or indirectly providing services to a birth parent, child or adoptive parent and such person in the same adoption.

**JUSTIFICATION:**

Every party in an adoption proceeding has the right to an attorney whose undivided loyalty is clear. In the event of a potential or actual conflict between a birth parent, adoptive parent, or foster care agency, it is imperative that each has an independent advocate. Even in cases where no actual conflict arises, any semblance of dual representation raises the perception of bias or partiality.

**LEGISLATIVE HISTORY:**

2005: S2890/A8690 veto number 98. The veto message directed the Office of Children and Families Services to work with the sponsors of the bill and other interested parties to evaluate the practice of dual representation in adoption cases, and develop family-friendly legislation in response to any concerns they identified. This bill is the product of such consultation.

**FISCAL IMPLICATIONS:**

None.

**EFFECTIVE DATE:**

June 1st next succeeding the date on which the bill shall have become a law.

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