

ARTICLE VII

ADOPTION

- Title 1. Adoptions generally.
2. Adoption from an authorized agency.
3. Private-placement adoption.
4. Effect of adoption from an authorized agency, of private-placement adoption, and abrogation's thereof.

§ 109. Definitions. When used in this article, unless the context or subject matter manifestly requires a different interpretation:

1. "Adoptive parent" or "adopter" shall mean a person adopting and "adoptive child" or "adoptee" shall mean a person adopted.
2. "Judge" shall mean a judge of the family court of any county in the state.
3. "Surrogate" shall mean the surrogate of any county in the state and any other judicial officer while acting in the capacity of surrogate.
4. "Authorized agency" shall mean an authorized agency as defined in the social services law and, for the purpose of this article, shall include such corporations incorporated or organized under the laws of this state as may be specifically authorized by their certificates of incorporation to receive children for purposes of adoption.
5. "Private-placement adoption" shall mean any adoption other than that of a minor who has been placed for adoption by an authorized agency.
6. "Lawful custody" shall mean a custody (a) specifically authorized by statute or (b) pursuant to judgment, decree or order of a court or (c) otherwise authorized by law.
7. "A child who has been surrendered to an authorized agency for the purpose of adoption" shall mean a child who has been surrendered to such an agency pursuant to the provisions of section three hundred eighty-three-c or three hundred eighty-four of the social services law.

§ 110. Who may adopt; effect of article. 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.

An adult married person who has executed a legally enforceable separation agreement or is a party to a marriage in which a valid decree of separation has been entered or has been living separate and apart from his or her spouse for at least three years prior to commencing an adoption proceeding and who becomes or has been the custodian of a child placed in their care as a result of court ordered foster care may apply

to such authorized agency for placement of said child with them for the purpose of adoption. Final determination of the propriety of said adoption of such foster child, however, shall be within the sole discretion of the court, as otherwise provided herein.

Adoption is the legal proceeding whereby a person takes another person into the relation of child and thereby acquires the rights and incurs the responsibilities of parent in respect of such other person.

A proceeding conducted in pursuance of this article shall constitute a judicial proceeding. An order of adoption or abrogation made therein by a surrogate or by a judge shall have the force and effect of and shall be entitled to all the presumptions attaching to a judgment rendered by a court of general jurisdiction in a common law action.

No adoption heretofore lawfully made shall be abrogated by the enactment of this article. All such adoptions shall have the effect of lawful adoptions hereunder.

Nothing in this article in regard to a minor adopted pursuant hereto inheriting from the adoptive parent applies to any will, devise or trust made or created before June twenty-fifth, eighteen hundred seventy-three, nor alters, changes or interferes with such will, devise or trust. As to any such will, devise or trust a minor adopted before that date is not an heir so as to alter estates or trusts or devises in wills so made or created. Nothing in this article in regard to an adult adopted pursuant hereto inheriting from the adoptive parent applies to any will, devise or trust made or created before April twenty-second, nineteen hundred fifteen, nor alters, changes or interferes with such will, devise or trust. As to any such will, devise or trust an adult so adopted is not an heir so as to alter estates or trusts or devises in wills so made or created.

It shall be unlawful to preclude a prospective adoptive parent or parents solely on the basis that the adopter 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.

§ 111. Whose consent required. 1. Subject to the limitations hereinafter set forth consent to adoption shall be required as follows:

(a) Of the adoptive child, if over fourteen years of age, unless the judge or surrogate in his discretion dispenses with such consent;

(b) Of the parents or surviving parent, whether adult or infant, of a child conceived or born in wedlock;

(c) Of the mother, whether adult or infant, of a child born out of wedlock;

(d) Of the father, whether adult or infant, of a child born out-of-wedlock and placed with the adoptive parents more than six months after birth, but only if such father shall have maintained substantial and continuous or repeated contact with the child as manifested by: (i) the payment by the father toward the support of the child of a fair and reasonable sum, according to the father's means, and either (ii) the father's visiting the child at least monthly when physically and financially able to do so and not prevented from doing so by the person or authorized agency having lawful custody of the child, or (iii) the father's regular communication with the child or with the person or agency having the care or custody of the child, when physically and financially unable to visit the child or prevented from doing so by the person or authorized agency having lawful custody of the child. The subjective intent of the father, whether expressed or otherwise, unsupported by evidence of acts specified in this paragraph manifesting such intent, shall not preclude a determination that the father failed

to maintain substantial and continuous or repeated contact with the child. In making such a determination, the court shall not require a showing of diligent efforts by any person or agency to encourage the father to perform the acts specified in this paragraph. A father, whether adult or infant, of a child born out-of-wedlock, who openly lived with the child for a period of six months within the one year period immediately preceding the placement of the child for adoption and who during such period openly held himself out to be the father of such child shall be deemed to have maintained substantial and continuous contact with the child for the purpose of this subdivision.

(e) Of the father, whether adult or infant, of a child born out-of-wedlock who is under the age of six months at the time he is placed for adoption, but only if: (i) such father openly lived with the child or the child's mother for a continuous period of six months immediately preceding the placement of the child for adoption; and (ii) such father openly held himself out to be the father of such child during such period; and (iii) such father paid a fair and reasonable sum, in accordance with his means, for the medical, hospital and nursing expenses incurred in connection with the mother's pregnancy or with the birth of the child.

(f) Of any person or authorized agency having lawful custody of the adoptive child.

2. The consent shall not be required of a parent or of any other person having custody of the child:

(a) who evinces an intent to forego his or her parental or custodial rights and obligations as manifested by his or her failure for a period of six months to visit the child and communicate with the child or person having legal custody of the child, although able to do so; or

(b) who has surrendered the child to an authorized agency under the provisions of section three hundred eighty-three-c or three hundred eighty-four of the social services law; or

(c) for whose child a guardian has been appointed under the provisions of section three hundred eighty-four-b of the social services law; or

(d) who, by reason of mental illness or mental retardation, as defined in subdivision six of section three hundred eighty-four-b of the social services law, is presently and for the foreseeable future unable to provide proper care for the child. The determination as to whether a parent is mentally ill or mentally retarded shall be made in accordance with the criteria and procedures set forth in subdivision six of section three hundred eighty-four-b of the social services law; or

(e) who has executed an instrument, which shall be irrevocable, denying the paternity of the child, such instrument having been executed after conception and acknowledged or proved in the manner required to permit the recording of a deed.

3. (a) Notice of the proposed adoption shall be given to a person whose consent to adoption is required pursuant to subdivision one and who has not already provided such consent.

(b) Notice and an opportunity to be heard upon the proposed adoption may be afforded to a parent whose consent to adoption may not be required pursuant to subdivision two, if the judge or surrogate so orders.

(c) Notice under this subdivision shall be given in such manner as the judge or surrogate may direct.

(d) Notwithstanding any other provision of law, neither the notice of a proposed adoption nor any process in such proceeding shall be required to contain the name of the person or persons seeking to adopt the child.

4. Where the adoptive child is over the age of eighteen years the

Consents specified in paragraphs (b), (c) and (d) of subdivision one of this section shall not be required, and the judge or surrogate in his discretion may direct that the consent specified in paragraph (f) of subdivision one of this section shall not be required if in his opinion the best interests of the adoptive child will be promoted by the adoption and such consent cannot for any reason be obtained.

5. An adoptive child who has once been lawfully adopted may be readopted directly from such child's adoptive parents in the same manner as from its birth parents. In such case the consent of such birth parents shall not be required but the judge or surrogate in his discretion may require that notice be given to the birth parents in such manner as he may prescribe.

6. For the purposes of paragraph (a) of subdivision two:

(a) In the absence of evidence to the contrary, the ability to visit and communicate with a child or person having custody of the child shall be presumed.

(b) Evidence of insubstantial or infrequent visits or communication by the parent or other person having custody of the child shall not, of itself, be sufficient as a matter of law to preclude a finding that the consent of such parent or person to the child's adoption shall not be required.

(c) The subjective intent of the parent or other person having custody of the child, whether expressed or otherwise, unsupported by evidence of acts specified in paragraph (a) of subdivision two manifesting such intent, shall not preclude a determination that the consent of such parent or other person to the child's adoption shall not be required.

(d) Payment by a parent toward the support of the child of a fair and reasonable sum, according to the parent's means, shall be deemed a substantial communication by such parent with the child or person having legal custody of the child.

§ 111-a. Notice in certain proceedings to fathers of children born out-of-wedlock. 1. Notwithstanding any inconsistent provisions of this or any other law, and in addition to the notice requirements of any law pertaining to persons other than those specified in subdivision two of this section, notice as provided herein shall be given to the persons specified in subdivision two of this section of any adoption proceeding initiated pursuant to this article or of any proceeding initiated pursuant to section one hundred fifteen-b of this article relating to the revocation of an adoption consent, when such proceeding involves a child born out-of-wedlock provided, however, that such notice shall not be required to be given to any person who previously has been given notice of any proceeding involving the child, pursuant to section three hundred eighty-four-c of the social services law, and provided further that notice in an adoption proceeding, pursuant to this section shall not be required to be given to any person who has previously received notice of any proceeding pursuant to section one hundred fifteen-b of this article. In addition to such other requirements as may be applicable to the petition in any proceeding in which notice must be given pursuant to this section, the petition shall set forth the names and last known addresses of all persons required to be given notice of the proceeding, pursuant to this section, and there shall be shown by the petition or by affidavit or other proof satisfactory to the court that there are no persons other than those set forth in the petition who are entitled to notice. For the purpose of determining persons entitled to notice of adoption proceedings initiated pursuant to this article, persons specified in subdivision two of this section shall not include any person who has been convicted of one or more of the following sexual

offenses in this state or convicted of one or more offenses in another jurisdiction which, if committed in this state, would constitute one or more of the following offenses, when the child who is the subject of the proceeding was conceived as a result: (A) rape in first or second degree; (B) course of sexual conduct against a child in the first degree; (C) predatory sexual assault; or (D) predatory sexual assault against a child.

2. Persons entitled to notice, pursuant to subdivision one of this section, shall include:

(a) any person adjudicated by a court in this state to be the father of the child;

(b) any person adjudicated by a court of another state or territory of the United States to be the father of the child, when a certified copy of the court order has been filed with the putative father registry, pursuant to section three hundred seventy-two-c of the social services law;

(c) any person who has timely filed an unrevoked notice of intent to claim paternity of the child, pursuant to section three hundred seventy-two-c of the social services law;

(d) any person who is recorded on the child's birth certificate as the child's father;

(e) any person who is openly living with the child and the child's mother at the time the proceeding is initiated and who is holding himself out to be the child's father;

(f) any person who has been identified as the child's father by the mother in written, sworn statement;

(g) any person who was married to the child's mother within six months subsequent to the birth of the child and prior to the execution of a surrender instrument or the initiation of a proceeding pursuant to section three hundred eighty-four-b of the social services law; and

(h) any person who has filed with the putative father registry an instrument acknowledging paternity of the child, pursuant to section 4-1.2 of the estates, powers and trusts law.

3. The provisions of this section shall not apply to persons entitled to notice pursuant to section one hundred eleven.

The sole purpose of notice under this section shall be to enable the person served pursuant to subdivision two to present evidence to the court relevant to the best interests of the child.

4. Notice under this section shall be given at least twenty days prior to the proceeding by delivery of a copy of the petition and notice to the person. Upon a showing to the court, by affidavit or otherwise, on or before the date of the proceeding or within such further time as the court may allow, that personal service cannot be effected at the person's last known address with reasonable effort, notice may be given, without prior court order therefor, at least twenty days prior to the proceeding by registered or certified mail directed to the person's last known address or, where the person has filed a notice of intent to claim paternity pursuant to section three hundred seventy-two-c of the social services law, to the address last entered therein. Notice by publication shall not be required to be given to a person entitled to notice pursuant to the provisions of this section.

5. A person may waive his right to notice under this section by written instrument subscribed by him and acknowledged or proved in the manner required for the execution of a surrender instrument pursuant to section three hundred eighty-four of the social services law.

6. The notice given to persons pursuant to this section shall inform them of the time, date, place and purpose of the proceeding and shall

also apprise such persons that their failure to appear shall constitute a denial of their interest in the child which denial may result, without further notice, in the adoption or other disposition of the custody of the child.

7. No order of adoption and no order of the court pursuant to section one hundred fifteen-b shall be vacated, annulled or reversed upon the application of any person who was properly served with notice in accordance with this section but failed to appear, or who waived notice pursuant to subdivision five. Nor shall any order of adoption be vacated, annulled or reversed upon the application of any person who was properly served with notice in accordance with this section in any previous proceeding pursuant to section one hundred fifteen-b in which the court determined that the best interests of the child would be served by adoption of the child by the adoptive parents.

§ 111-b. Determination of issue of paternity by surrogate; limitations. 1. In the course of an adoption proceeding conducted pursuant to this article the surrogate shall have jurisdiction to determine any issue of paternity arising in the course of the same proceeding and to make findings and issue an order thereon.

2. Such determination shall be made substantially in accordance with the relevant and otherwise consistent provisions of the family court act except that the surrogate shall have no power to grant any relief relating to support of the child as an incident thereto.

3. A judge of the family court shall continue to exercise all of the powers relating to adoption and declaration of paternity conferred upon the family court by law.

§ 111-c. Adoption order from foreign country or foreign jurisdiction.

1. A final judgment of adoption granted by a judicial, administrative or executive body of a jurisdiction or country other than the United States shall have the same force and effect in this state as that given to a judgment of adoption entered by a court of competent jurisdiction of New York state, without additional proceedings or documentation provided:

(a) either adopting parent is a resident of this state; and

(b) the validity of the foreign adoption has been verified by the granting of an IR-3, IH-3, or a successor immigrant visa, for the child by the United States Citizenship and Immigration Services.

2. Notwithstanding any other provision of law or rule or regulation to the contrary, an adoptive parent referred to in subdivision one of this section shall not be required to petition a court in this state for adoption of the child provided the conditions of paragraphs (a) and (b) of subdivision one of this section are met. The foreign adoption shall be considered "final" under the laws of New York state upon the satisfaction of paragraphs (a) and (b) of subdivision one of this section.

3. Either adoptive parent or a guardian or a guardian ad litem may register the order in this state with the judge or surrogate of the county in which the adoptive parent or parents reside. A petition for registration of a foreign adoption order may be combined with a petition for a name change. If the court finds that the foreign adoption order meets the requirements of subdivision one of this section, the court shall issue a finding as to aspects of the foreign adoption, to wit, the names of the adoptive parents, the name or names and reported birth date of the adoptive child, the country of the adoptive child's birth, the country and the date of the foreign adoption, the state residency of the adoptive parent or parents and adoptive child, and a finding as to the date and issuance of an IR-3, IH-3, or a successor immigrant visa; and, the court shall issue an order of adoption to the party who has

petitioned for such an order.

4. The judge or surrogate is hereby directed to expedite the issuance of an order of adoption pursuant to the provisions of subdivision three of this section in order to ensure minimal expense of time and money to the petitioning parties in attaining such order of adoption.

TITLE II

ADOPTION FROM AN AUTHORIZED AGENCY

Section 112. General provisions relating to adoption from authorized agencies.

112-a. Expedited calendaring of adoption proceedings.

112-b. Post-adoption contact agreements; judicial approval; enforcement.

113. Special provisions relating to adoption from authorized agencies.

113-a. Effect of death of potential adoptive parent.

114. Order of adoption.

§ 112. General provisions relating to adoption from authorized agencies. In an adoption from an authorized agency the following requirements shall be observed:

1. The adoptive parents or parent and the adoptive child must appear for examination before a judge or surrogate of the county specified in section one hundred thirteen of this title. The judge or surrogate, however, may in his discretion dispense with the personal appearance of the adoptive child or of an adoptive parent who is on active duty in the armed forces of the United States.

2. The adoptive parents or parent and the adoptive child if over eighteen years of age must present to such judge or surrogate (a) a petition stating the names and place of residence of the petitioners; whether they are of full age; whether they are married or unmarried and, if married, whether they are living together as husband and wife; the first name, date and place of birth of the adoptive child as nearly as the same can be ascertained; a statement on information and belief that there will be annexed to the petition a schedule verified by a duly constituted official of the authorized agency as required by this section; the religious faith of the petitioners; the religious faith of the adoptive child and his or her parents as nearly as the same can be ascertained; the manner in which the adoptive parents obtained the adoptive child; whether the child was placed or brought into the state of New York from out of state for the purpose of adoption, whether the placement was subject to the provisions of section three hundred seventy-four-a of the social services law and if the placement was subject to the provisions of such section, whether the provisions of such section were complied with; the period of time during which the adoptive child has resided with the adoptive parents; the occupation and approximate income of the petitioners, including support and maintenance, if any, to be received on behalf of the adoptive child from a commissioner of social services, pursuant to the social services law, and the new name, if any, by which the adoptive child is to be known; whether the adoptive parent or parents has or have knowledge that an adoptive parent is the subject of an indicated report, as such terms are defined in section four hundred twelve of the social services law, filed with the statewide central register of child abuse and maltreatment pursuant to title six of article six of the social services law, or has been the subject of or the respondent in a child protective proceeding

commenced under article ten of the family court act, which proceeding resulted in an order finding that the child is an abused or neglected child; that no previous application has been made to any court or judge for the relief sought or if so made, the disposition of it and a statement as to whether the adoptive child had been previously adopted, all of which statements shall be taken prima facie as true; (b) an agreement on the part of the adoptive parents or parent to adopt and treat the adoptive child as their or his or her own lawful child; (c) the consents required by section one hundred eleven of this article.

2-a. In the petition provided for in subdivision two of this section, the adoptive parents or parent and the adoptive child if over eighteen years of age shall present to the judge or surrogate as nearly as can be ascertained the heritage of the parents, which shall include nationality, ethnic background and race; education, which shall be the number of years of school completed by the parents at the time of the birth of the adoptive child; general physical appearance of the parents at the time of the birth of the adoptive child, which shall include height, weight, color of hair, eyes, skin; occupation of the parents at the time of the birth of the adoptive child; health and medical history of the parents at the time of the birth of the adoptive child, including all available information setting forth conditions or diseases believed to be hereditary, any drugs or medication taken during the pregnancy by the child's mother; and any other information which may be a factor influencing the child's present or future health, talents, hobbies and special interests of parents. The petition shall also include the names and current addresses of the biological parents, if known.

3. The authorized agency must present to such judge or surrogate a schedule to be annexed to the petition which shall be verified by a duly constituted official of the authorized agency having custody of the adoptive child or actually placing the child for adoption and shall contain (1) the full name of the child, (2) the manner in which the authorized agency obtained custody of the adoptive child, (3) the facts, if any, which render unnecessary the consent of either or both of the parents of the adoptive child, (4) a statement whether either parent had ever requested the agency to return the child to the parent, within thirty days of the execution and delivery of an instrument of surrender to an authorized agency and, if so, all facts relating thereto. If a request for return of the child to a parent be made after the presentation to the court of the petition and schedule, the authorized agency shall promptly report to the court in writing the facts relating thereto and (5) all available information comprising the child's medical history. If the child was placed into the state of New York for the purpose of adoption and such placement was subject to the provisions of section three hundred seventy-four-a of the social services law, the authorized agency shall attach to the petition a copy of the document, signed by New York's administrator of the interstate compact for the placement of children or his designee, which informs the agency or person who placed the child into the state that such placement complied with the provisions of the compact.

4. None of the papers in the proceeding shall state the surname of the child in the title and no petition, agreement, consent, affidavit, nor any other document which is required to be signed by the adoptive parents shall contain the surname of the adoptive child.

5. The petition must be verified, the agreement and consents executed and acknowledged and the proof given by the respective persons before such judge or surrogate; but where the verification, agreement or necessary consent is duly acknowledged or proved and certified in form

sufficient to entitle a conveyance to be recorded in this state, (except that when executed and acknowledged within the state of New York, no certificate of the county clerk shall be required), such judge or surrogate may grant the order of adoption without the personal appearance of such persons or parties or any of them for good cause shown, which reason shall be recited in the order of adoption.

6. Where the adoptive child is less than eighteen years of age, no order of adoption shall be made until such child has resided with the adoptive parents for at least three months unless the judge or surrogate in his discretion shall dispense with such period of residence and shall recite in the order the reason for such action. When the adoptive parents are the foster parents in whose home the adoptive child has been placed out or boarded out for a period in excess of three months, such period shall be deemed to constitute the required period of residence.

7. Before making an order of adoption the judge or surrogate shall inquire of the department of social services and the department shall inform the court whether an adoptive parent is the subject of an indicated report, as such terms are defined in section four hundred twelve of the social services law, filed with the statewide central register of child abuse and maltreatment pursuant to title six of article six of the social services law and shall cause to be made an investigation by a disinterested person or by an authorized agency specifically designated by the judge or surrogate to examine into the allegations set forth in the petition and to ascertain such other facts relating to the adoptive child and adoptive parents as will give such judge or surrogate adequate basis for determining the propriety of approving the adoption. A written report of such investigation shall be submitted before the order of adoption is made. As used in this subdivision, "disinterested person" includes the probation service of the family court. Such an inquiry shall not be required if the findings of such an inquiry made within the past twelve months is available to the judge or surrogate.

7-a. Any order subject to the provisions of this section shall include an adoption information registry birth parent registration consent form, stating whether or not such biological parent or parents whose consent is subject to the provisions of this section, consents to the receipt of identifying information by the child to be adopted upon registration with the adoption information registry established by section forty-one hundred thirty-eight-c of the public health law and upon the adoptee reaching the age of eighteen. If such consent is made, it shall be revocable by either of the biological parents at any time. The revocation of the consent by one of the parents shall revoke the consent of both parents. The failure of a biological parent to complete the consent form shall have no effect on the finality of the consent to adoption. A copy of the form required by this subdivision, shall be forwarded to the state adoption information registry for inclusion in the records maintained by such registry. Any fees authorized to be charged by the state adoption registry for filing documentation with such registry shall be waived for the form required by this subdivision.

8. Rules of court shall permit the filing of a petition for adoption of a child whose custody and guardianship has not yet been committed to an authorized agency where a proceeding to terminate parental rights is pending. Such adoption petition shall be filed in the court where the termination of parental rights proceeding is pending. The clerk of such court shall accept the adoption petition for filing and processing and shall request such inquiries of the department of social services as are required by subdivision seven of this section, provided, however, that

the petition, supporting documents and the fact of their filing shall not be provided to the judge before whom the petition for termination of parental rights is pending until such time as fact-finding is concluded under such petition.

§ 112-a. Expedited calendaring of adoption proceedings. 1. The adoption proceeding shall be deemed filed upon receipt by the clerk of the court of all the documents required in subdivisions two, two-a, three, five and seven of section one hundred twelve of this title, and by rules of the court, together with an affidavit of readiness from the petitioner's attorney. The affidavit of readiness shall attest that the petitioner has prepared a petition for the adoption of the child and has collected documentation as required by such rules and subdivisions two, two-a, three and five of section one hundred twelve of this title.

2. Upon the filing of the documents required by subdivision one of this section, the court, pursuant to rules promulgated by the chief administrator of the court, shall schedule the proceeding for a review, to take place within time frames established by such rules, to determine if there is adequate basis for approving the adoption.

(a) If such basis is found, the appearance of the adoptive parents and child before the court for approval of the adoption shall be calendared pursuant to such rules.

(b) If, upon the court's review, the court finds that there is not an adequate basis for approval of the adoption, the court shall direct such further hearings, submissions or appearances as may be required, and the proceedings shall be adjourned as required for such purposes.

3. The chief administrator of the court shall establish by rule time frames for the calendaring and disposition of adoption proceedings and shall report by the thirty-first day of December of each year to the governor and the temporary president of the senate, speaker of the assembly, and chairpersons of the judiciary and children and families committees on the implementation of such rules and their impact upon adoptions from authorized agencies.

§ 112-b. Post-adoption contact agreements; judicial approval; enforcement. 1. Nothing in this section shall be construed to prohibit the parties to a proceeding under this chapter from entering into an agreement regarding communication with or contact between an adoptive child, adoptive parent or parents and a birth parent or parents and/or the adoptive child's biological siblings or half-siblings.

2. Agreements regarding communication or contact between an adoptive child, adoptive parent or parents, and a birth parent or parents and/or biological siblings or half-siblings of an adoptive child shall not be legally enforceable unless the terms of the agreement are incorporated into a written court order entered in accordance with the provisions of this section. The court shall not incorporate an agreement regarding communication or contact into an order unless the terms and conditions of the agreement have been set forth in writing and consented to in writing by the parties to the agreement, including the attorney representing the adoptive child. The court shall not enter a proposed order unless the court that approved the surrender of the child determined and stated in its order that the communication with or contact between the adoptive child, the prospective adoptive parent or parents and a birth parent or parents and/or biological siblings or half-siblings, as agreed upon and as set forth in the agreement, would be in the adoptive child's best interests. Notwithstanding any other provision of law, a copy of the order entered pursuant to this section incorporating the post-adoption contact agreement shall be given to all parties who have agreed to the terms and conditions of such order.

3. Failure to comply with the terms and conditions of an approved order regarding communication or contact that has been entered by the court pursuant to this section shall not be grounds for setting aside an adoption decree or revocation of written consent to an adoption after that consent has been approved by the court as provided in this section.

4. An order incorporating an agreement regarding communication or contact entered under this section may be enforced by any party to the agreement or the attorney for the child by filing a petition in the family court in the county where the adoption was approved. Such petition shall have annexed to it a copy of the order approving the agreement regarding communication or contact. The court shall not enforce an order under this section unless it finds that the enforcement is in the child's best interests.

5. If a birth parent has surrendered a child to an authorized agency pursuant to the provisions of section three hundred eighty-three-c or section three hundred eighty-four of the social services law, and if the court before whom the surrender instrument was presented for approval approved an agreement providing for communication or contact pursuant to paragraph (a) of subdivision two of section three hundred eighty-three-c or paragraph (a) of subdivision two of section three hundred eighty-four of the social services law, a copy of the surrender instrument and of the approved agreement shall be annexed to the petition of adoption. The court shall issue an order incorporating the terms and conditions of the approved agreement into the order of adoption. Notwithstanding any other provision of law, a copy of any order entered pursuant to this subdivision shall be given to the parties who approved such agreement.

6. If a surrender instrument executed by a birth parent pursuant to section three hundred eighty-three-c or three hundred eighty-four of the social services law contains terms and conditions that provide for communication with or contact between a child and a birth parent or parents, such terms and conditions shall not be legally enforceable after any adoption approved by a court pursuant to this article unless the court has entered an order pursuant to this section incorporating those terms and conditions into a court ordered adoption agreement.

§ 113. Special provisions relating to adoption from authorized agencies. 1. An authorized agency may consent to the adoption of a minor whose custody and guardianship has been transferred to such agency. An authorized agency may also consent to the adoption of a minor whose care and custody has been transferred to such agency pursuant to section one thousand fifty-five of the family court act or section three hundred eighty-four-a of the social services law, where such child's parents are both deceased, or where one parent is deceased and the other parent is not a person entitled to notice pursuant to sections one hundred eleven and one hundred eleven-a of this chapter.

2. In accordance with subparagraph three of paragraph (g) of subdivision six of section three hundred ninety-eight of the social services law, an authorized agency may submit a written request to a social services district with a population of more than two million for approval to consent to the adoption of a child whose custody and guardianship, or of a child where such child's parents are both deceased, or where one parent is deceased and the other parent is not entitled to notice pursuant to sections one hundred eleven and one hundred eleven-a of this chapter, and whose care and custody, has been transferred to a social services official and who has been placed by the social services official with the authorized agency. If the request is not disapproved by the social services district within sixty days after

its submission, it shall be deemed approved, and the authorized agency may give all necessary consent to the adoption of the child. Nothing herein shall result in the transfer of care and custody or custody and guardianship of the child from the social services official to the authorized agency.

3. (a) The agreement of adoption shall be executed by such authorized agency.

(b) (i) If the adoption petition is filed pursuant to subdivision eight of section one hundred twelve of this article or subdivision ten of section three hundred eighty-three-c or subdivision eleven of section three hundred eighty-four-b of the social services law, the petition shall be filed in the county where the termination of parental rights proceeding or judicial surrender proceeding, as applicable, is pending and shall be assigned, wherever practicable, to the same judge.

(ii) In any other agency adoption proceeding, the petition shall be filed in the same court and, wherever practicable, shall be assigned to the same judge of the county in which parental rights had been terminated, a judicial surrender had been approved or the most recent proceeding under article ten or ten-A of the family court act or section three hundred fifty-eight-a of the social services law had been heard, whichever occurred last, or in the county where the adoptive parents reside or, if such adoptive parents do not reside in this state, in the county where such authorized agency has its principal office. The following procedures shall be applicable in cases where the child is under the jurisdiction of a family court, but where the adoption petition has been filed in a court other than the court that presided over the termination of parental rights, surrender or most recent proceeding under article ten or ten-A of the family court act or section three hundred fifty-eight-a of the social services law, whichever occurred last:

(A) Before hearing such an adoption proceeding, the court in which the adoption petition was filed shall ascertain whether the child is under the jurisdiction of a family court as a result of a placement under article ten or ten-A of the family court act or section three hundred fifty-eight-a of the social services law, a surrender under section three hundred eighty-three-c or three hundred eighty-four of the social services law or an order committing guardianship and custody under article six of the family court act or section three hundred eighty-four-b of the social services law, and, if so, which court exercised jurisdiction over the most recent permanency or other proceeding involving the child.

(B) If the court determines that the child is under the jurisdiction of a different family court, the court in which the adoption petition was filed shall stay its proceeding for not more than thirty days and shall communicate with the family court judge who exercised jurisdiction over the most recent permanency or other proceeding involving the child. The communication shall be recorded or summarized on the record by the court in which the adoption petition was filed. Both courts shall notify the parties and the attorney for the child, if any, in their respective proceedings and shall give them an opportunity to present facts and legal argument or to participate in the communication prior to the issuance of a decision on jurisdiction.

(C) The family court judge who exercised jurisdiction over the most recent permanency or other proceeding involving the child shall determine whether he or she should assume or decline jurisdiction over the adoption proceeding. In making its determination, the family court judge shall consider, among other factors: the relative familiarity of

each court with the facts and circumstances regarding permanency planning for, and the needs and best interests of, the child; the ability of the attorney for the child to continue such representation in the adoption proceeding, if appropriate; the convenience of each court to the residence of the prospective adoptive parent or parents; and the relative ability of each court to hear and determine the adoption petition expeditiously. The court in which the adoption petition was filed shall issue an order incorporating this determination of jurisdiction within thirty days of the filing of the adoption petition.

(D) If the family court that exercised jurisdiction over the most recent permanency or other proceeding determines that it should exercise jurisdiction over the adoption petition, the order of the court in which the adoption petition was filed shall direct the transfer of the proceeding forthwith but in no event more than thirty-five days after the filing of the petition. The petition shall be assigned, wherever practicable, to the family court judge who heard the most recent permanency or other proceeding involving the child.

(E) If the family court that exercised jurisdiction over the permanency or other proceeding involving the child declines to exercise jurisdiction over the adoption petition, the court in which the adoption petition was filed shall issue an order incorporating that determination and shall proceed forthwith.

(iii) Neither such authorized agency nor any officer or agent thereof need appear before the judge or surrogate. The judge or surrogate in his or her discretion may accept the report of an authorized agency verified by one of its officers or agents as the report of investigation hereinbefore required. In making orders of adoption the judge or surrogate when practicable must give custody only to persons of the same religious faith as that of the adoptive child in accordance with article six of the social services law.

§ 113-a. Effect of death of potential adoptive parent. Notwithstanding any other provision of law to the contrary, when a petition for adoption by two persons has been duly filed, and one of the petitioners dies before the adoption is complete, it shall be treated as a change of circumstance. This change may be reviewed to assure that the adoption is in the best interest of the child. The death of one of the adoptive parents shall not, by itself, invalidate a certification nor shall the death of one of the adoptive parents cause a new petition for adoption to be filed. The deceased adoptive parent shall be considered one of the legal parents, unless the surviving adoptive parent requests otherwise.

§ 114. Order of adoption. 1. If satisfied that the best interests of the adoptive child will be promoted thereby the judge or surrogate shall make an order approving the adoption and directing that the adoptive child shall thenceforth be regarded and treated in all respects as the child of the adoptive parents or parent. In determining whether the best interests of the adoptive child will be promoted by the adoption, the judge or surrogate shall give due consideration to any assurance by a commissioner of social services that he will provide necessary support and maintenance for the adoptive child pursuant to the social services law. Such order shall contain the full name, date and place of birth and reference to the schedule annexed to the petition containing the medical history of the child in the body thereof and shall direct that the child's medical history, heritage of the parents, which shall include nationality, ethnic background and race; education, which shall be the number of years of school completed by the parents at the time of the birth of the adoptive child; general physical appearance of the parents at the time of the birth of the adoptive child, which shall include

height, weight, color of hair, eyes, skin; occupation of the parents at the time of the birth of the adoptive child; health and medical history of the parents at the time of the birth of the adoptive child, including all available information setting forth conditions or diseases believed to be hereditary, any drugs or medication taken during the pregnancy by the child's mother; and any other information which may be a factor influencing the child's present or future health, talents, hobbies and special interests of parents as contained in the petition be furnished to the adoptive parents. If the judge or surrogate is also satisfied that there is no reasonable objection to the change of name proposed, the order shall direct that the name of the adoptive child be changed to the name stated in the agreement of adoption and that henceforth he shall be known by that name. All such orders made by a family court judge of Westchester county since September first nineteen hundred sixty-two, and on file in the office of the county clerk of such county shall be transferred to the clerk of the family court of such county. Such order and all the papers in the proceeding shall be filed in the office of the court granting the adoption and the order shall be entered in books which shall be kept under seal and which shall be indexed by the name of the adoptive parents and by the full original name of the child. Such order, including orders heretofore entered, shall be subject to inspection and examination only as hereinafter provided. Notwithstanding the fact that adoption records shall be sealed and secret, they may be microfilmed and processed pursuant to an order of the court, provided that such order provides that the confidentiality of such records be maintained. If the confidentiality is violated, the person or company violating it can be found guilty of contempt of court. The fact that the adoptive child was born out of wedlock shall in no case appear in such order. The written report of the investigation together with all other papers pertaining to the adoption shall be kept by the judge or surrogate as a permanent record of his court and such papers must be sealed by him and withheld from inspection. No certified copy of the order of adoption shall issue unless authorized by court order, except that certified copies may issue to the agency or agencies in the proceeding prior to the sealing of the papers. Before the record is sealed, such order may be granted upon written ex parte application on good cause shown and upon such conditions as the court may impose. After the record is sealed, such order may be granted only upon notice as hereinafter provided for disclosure or access and inspection of records. The clerk upon request of a person or agency entitled thereto shall issue certificates of adoption which shall contain only the new name of the child and the date and place of birth of the child, the name of the adoptive parents and the date when and court where the adoption was granted, which certificate as to the facts recited therein shall have the same force and effect as a certified copy of an order of adoption.

2. No person, including the attorney for the adoptive parents shall disclose the surname of the child directly or indirectly to the adoptive parents except upon order of the court. No person shall be allowed access to such sealed records and order and any index thereof except upon an order of a judge or surrogate of the court in which the order was made or of a justice of the supreme court. No order for disclosure or access and inspection shall be granted except on good cause shown and on due notice to the adoptive parents and to such additional persons as the court may direct. Nothing contained herein shall be deemed to require the state commissioner of health or his designee to secure a court order authorizing disclosure of information contained in adoption

or birth records requested pursuant to the authority of section forty-one hundred thirty-eight-c or section forty-one hundred thirty-eight-d of the public health law; upon the receipt of such request for information, the court shall transmit the information authorized to be released thereunder to the state commissioner of health or his designee.

3. In like manner as a court of general jurisdiction exercises such powers, a judge or surrogate of a court in which the order of adoption was made may open, vacate or set aside such order of adoption for fraud, newly discovered evidence or other sufficient cause.

4. Good cause for disclosure or access to and inspection of sealed adoption records and orders and any index thereof, hereinafter the "adoption records", under this section may be established on medical grounds as provided herein. Certification from a physician licensed to practice medicine in the state of New York that relief under this subdivision is required to address a serious physical or mental illness shall be prima facie evidence of good cause. Such certification shall identify the information required to address such illness. Except where there is an immediate medical need for the information sought, in which case the court may grant access to the adoption records directly to the petitioner, the court hearing petition under the subdivision shall appoint a guardian ad litem or other disinterested person, who shall have access to the adoption records for the purpose of obtaining the medical information sought from those records or, where the records are insufficient for such purpose, through contacting the biological parents. The guardian or other disinterested person shall offer a biological parent the option of disclosing the medical information sought by the petitioner pursuant to this subdivision, as well as the option of granting consent to examine the parent's medical records. If the guardian or other disinterested person appointed does not obtain the medical information sought by the petitioner, such guardian or disinterested person shall make a report of his or her efforts to obtain such information to the court. Where further efforts to obtain such information are appropriate, the court may in its discretion authorize direct disclosure or access to and inspection of the adoption records by the petitioner.

TITLE III

PRIVATE-PLACEMENT ADOPTION

Section 115. General provisions relating to private-placement adoptions.

115-a. Special provisions relating to children to be brought into the state for private-placement adoption.

115-b. Special provisions relating to consents in private-placement adoptions.

115-c. Temporary guardianship by adoptive parent.

115-d. Petition for certification.

115-e. Effect of death of potential adoptive parent.

116. Orders of investigation and order of adoption.

§ 115. General provisions relating to private-placement adoptions. 1.

(a) Except as otherwise provided in this title, private-placement adoptions shall be effected in the same manner as provided in sections one hundred twelve and one hundred fourteen of title two of this article.

(b) A person or persons seeking to commence a private-placement

adoption shall, prior to the submission of a petition for such adoption and prior to any transfer of physical custody of an adoptive child, be certified as a qualified adoptive parent or parents by a court of competent jurisdiction pursuant to section one hundred fifteen-d of this title. The provisions of such section may be waived upon the court's own motion or upon the application of any party for good cause shown.

(c) A non-resident person or persons seeking to commence a private-placement adoption of a child present within the state at the time of placement shall, prior to any transfer of physical custody of an adoptive child, make application for certification as a qualified adoptive parent or parents by a court of competent jurisdiction pursuant to section one hundred fifteen-d of this title. Upon application of such person or persons, the court of the county to which the certification petition is properly filed may take or retain jurisdiction of the adoption proceeding. The provisions of this paragraph may be waived upon the court's own motion or upon the application of any party for good cause shown.

2. The proceeding shall be instituted in the county where the adoptive parents reside or, if such adoptive parents do not reside in this state, in the county where the adoptive child resides.

3. The adoptive parents or parent, the adoptive child and all persons whose consent is required by section one hundred eleven of this article must appear for examination before the judge or surrogate of the court where the adoption proceedings are instituted. The judge or surrogate may dispense with the personal appearance of the adoptive child or of an adoptive parent who is on active duty in the armed forces of the United States.

4. The agreement of adoption shall be executed by the adoptive parents or parent.

5. Where the petition alleges that either or both of the birth parents of the child have been deprived of civil rights or are mentally ill or mentally retarded, proof shall be submitted that such disability exists at the time of the proposed adoption.

6. The adoptive parent or parents shall also present in an affidavit a description of any change of circumstances since their certification as a qualified adoptive parent or parents, pursuant to section one hundred fifteen-d of this title, which may be relevant and material to such certification.

7. Where the adoptive child is to be adopted upon the consent of some person other than his father or mother, there shall also be presented the affidavit of such person showing how he or she obtained lawful custody of the child.

8. The adoptive parent or parents shall also present an affidavit describing all fees, compensation and other remunerations paid by such parent or parents on account of or incidental to the birth or care of the adoptive child, the pregnancy or care of the adoptive child's mother or the placement or adoption of the child and on account of or incidental to assistance in arrangements for such placement or adoption. The attorney representing the adoptive parents shall also present an affidavit describing all fees, compensation and other remuneration received by him on account of or incidental to the placement or adoption of the child or assistance in arrangements for such placement or adoption.

9. The petition must be verified, the agreement and consents executed and acknowledged, the proof given and the affidavit sworn to by the respective persons before such judge or surrogate; but where the verification, agreement or consent of an adoptive parent, birth parent

or person whose consent is necessary to the adoption is duly acknowledged or proved and certified in form sufficient to entitle a conveyance to be recorded in this state, (except that when executed and acknowledged within the state of New York, no certificate of the county clerk shall be required), such judge or surrogate may grant the order of adoption without the personal appearance of such adoptive parent, birth parent or person. The judge or surrogate may, in his discretion, dispense with the requirement that the adoptive child appear for examination or join in the petition, where otherwise required. In any adoption proceeding where the judge or surrogate shall dispense with the personal appearance of such adoptive parent, birth parent, person whose consent is necessary to the adoption, or adoptive child, the reason therefor must be for good cause shown, and shall be recited in the order of adoption.

10. In all cases where the consents of the persons mentioned in subdivision two, three and four of section one hundred eleven of this article are not required or where the adoptive child is an adult notice of such application shall be served upon such persons as the judge or surrogate may direct.

11. The provisions of title two prohibiting the surname of the child from appearing in the papers, prohibiting disclosure of the surname of the child to the adoptive parents, and requiring a separate application for issuance of a certified copy of an order of adoption prior to the sealing of the papers, requiring the filing of a verified schedule, shall not apply to private-placement adoptions; provided, however, that the facts required to be stated in the verified schedule in an agency adoption shall be set forth in the petition.

12. (a) If the child who is being adopted was placed or brought into New York for the purpose of adoption from a state which is a party to the interstate compact on the placement of children and the provisions of the compact applied to such placements, the petition must contain a statement that the provisions of section three hundred seventy-four-a of the social services law were complied with and where applicable, that the provisions of section three hundred eighty-two of such law were also complied with.

(b) If the child who is being adopted was placed or brought into New York for the purpose of adoption from a state which is not a party to the interstate compact on the placement of children, the petition, where applicable, must contain a statement that the provisions of section three hundred eighty-two of the social services law were complied with.

13. If the placement of a child into the state of New York is subject to the provisions of sections three hundred seventy-four-a and/or three hundred eighty-two of the social services law, there shall be attached to the petition a copy of the document signed by New York's administrator of the interstate compact on the placement of children or his designee which informs the agency or person who placed the child into the state that such placement complied with the provisions of the compact and/or a copy of the license which is issued pursuant to the provisions of section three hundred eighty-two of the social services law to the person, institution, corporation or agency which placed or brought the child into this state.

§ 115-a. Special provisions relating to children to be brought into the state for private-placement adoption. 1. In the case of a child whose admission to the United States as an eligible orphan with non-quota immigrant status pursuant to the federal immigration and nationality act is sought for the purpose of adoption in the state of New York, the following pre-adoption requirements shall be observed:

(a) The adoptive parents or parent must present to a judge or surrogate having jurisdiction of adoption proceedings, in the county of residence of such adoptive parents or parent, a verified written application containing the information set forth in subdivision two of this section, in such form as the judge or surrogate may prescribe for an order of pre-adoption investigation, to determine whether the adoption may be in the best interests of the child. (b) The adoptive parents or parent must appear for examination before the judge or surrogate of the court where the pre-adoption proceedings are instituted.

(c) The application must be accompanied by duly authenticated documentary evidence: (1) that the child is an alien under the age of sixteen and (2) that he is an orphan because of the death or disappearance of both parents, or because of abandonment, or desertion by, or separation or loss from, both parents, or who has only one parent due to the death or disappearance of, abandonment, or desertion by, or separation or loss from the other parent, and the remaining parent is incapable of providing care for such orphan and has in writing irrevocably released him for emigration and adoption, and has consented to the proposed adoption. In all cases where the orphan has no remaining parent under the circumstances set forth above, documentary evidence must be presented that the person, public authority or duly constituted agency having lawful custody of the orphan at the time of the making of the application, hereunder, has in writing irrevocably released him for immigration and adoption and has consented to the proposed adoption and (3) that the adoptive parents agree to adopt and treat the adoptive child as their or his or her own lawful child.

(d) In addition thereto such additional releases and consents as the court may in its sound discretion require.

2. The verified written application shall contain the following information: the names and place of residence of the adoptive parent or parents; whether they are of full age; whether they are married or unmarried and, if married, whether they are living together as husband and wife; the name, date and place of birth of the adoptive child as nearly as the same can be ascertained; the religious faith of the adoptive parent or parents; the religious faith of the adoptive child and his parents as nearly as the same can be ascertained; the medical history of the adoptive child as nearly as the same can be ascertained; the occupation and approximate income of the adoptive parent or parents, and the name by which the adoptive child is to be known; that no previous application has been made to any court or judge for the relief sought or if so made, the disposition of it and a statement as to whether the adoptive child has been previously adopted, if such fact is known to the adoptive parent or parents; the facts which establish that the child is an eligible orphan who would be entitled to enter the United States with non-quota immigrant status for the purpose of adoption in New York state, pursuant to the provisions in the federal immigration and nationality act, in such case made; the circumstances whereby, and names and addresses of the intermediaries, if any, through whom the adoptive parent or parents learned of the existence and eligibility of the child and the names and addresses of the person or persons, public authority or duly constituted agency in the land of the child's residence executing the written release of the child for emigration and adoption, and the consent to such adoption, the circumstances under which the release and consent were obtained, insofar as they are known to the adoptive parent or parents.

2-a. The verified written application shall contain the following information: the heritage of the parents as nearly as the same can be

ascertained, which shall include nationality, ethnic background and race; education, which shall be the number of years of school completed by the parents at the time of the birth of the adoptive child; general physical appearance of the parents at the time of the birth of the adoptive child, which shall include height, weight, color of hair, eyes, skin; occupation of the parents at the time of the birth of the adoptive child; health and medical history of the parents at the time of the birth of the adoptive child, including all available information setting forth conditions or diseases believed to be hereditary, any drugs or medication taken during the pregnancy by the child's mother; and any other information which may be a factor influencing the child's present or future health, talents, hobbies and special interests of parents.

3. Upon receiving the verified written application, required documentary evidence, agreement and consents, the judge or surrogate, upon finding that the applicable provisions of section one hundred fifteen-a have been complied with and that it appears that the proposed adoption may be in the best interests of the child, shall issue an order of pre-adoption investigation hereunder. The order of pre-adoption investigation shall require that the report of such investigation be made by a disinterested person who in the opinion of the judge or surrogate is qualified by training and experience, or by an authorized agency specifically designated by him to examine into the statements set forth in the application. The investigator shall make a written report of his investigation into the truth and accuracy of the statements in the application and where applicable, into the validity of the documentary evidence, submitted with the application, and he shall ascertain as fully as possible, and incorporate in his report the various factors which may bear upon the determination of the application for adoption including, but not limited to, the following information:

- (a) the marital and family status, and history, of adoptive parents;
- (b) the physical and mental health of the adoptive parents;
- (c) the property owned by and the income of the adoptive parents;
- (d) the compensation paid or agreed upon with respect to the placement of the child for adoption;
- (e) whether either adoptive parent has ever been respondent in any proceeding concerning allegedly neglected, abandoned or delinquent children;
- (f) the desirability of bringing the child into New York state for private-placement adoption;
- (g) any other facts relating the familial, social, religious, emotional and financial circumstances of the adoptive parents which may be relevant to a determination of suitability of the adoption.

The written report of pre-adoption investigation shall be submitted to the judge or surrogate within thirty days after the same is directed to be made, unless for good cause shown the judge or surrogate shall grant a reasonable extension of such period. The report shall be filed with the judge or surrogate, in any event, before the court shall issue its pre-adoption certificate that it appears that the adoption is in the best interests of the child.

4. On the return of the pre-adoption investigation order the judge or surrogate shall examine the written report of the pre-adoption investigation, and shall determine upon the basis of such written report and such further proof, if any, as he may deem necessary, whether to issue a pre-adoption certificate as provided for in this subdivision.

If the court is satisfied that the adoption may be in the best interests of the child, and that there has been compliance with all requirements hereof and is satisfied that the moral and temporal

interests of the child will be promoted by the adoption, the judge or surrogate shall issue an original certificate under seal of the court and two certified copies thereof, setting forth the fact that a pre-adoption investigation has been conducted, and reciting the documents and papers submitted therewith and stating that in the opinion of the court there is compliance with all applicable laws and that it appears from such investigation that the moral and temporal interests of the child will be promoted by the proposed adoption. The original certificate shall be filed with the clerk of the court, one certified copy with the state commissioner of social services, and the adoptive parents shall receive the second certified copy. The fact that the adoptive child was born out of wedlock shall in no case appear in such certificate. The written report of pre-adoption investigation together with all other papers pertaining to the pre-adoption investigation and the original certificate shall be kept by the court as a permanent record and such papers must be sealed by the judge and withheld from inspection. No person shall be allowed access to such sealed records and original certificate and any index thereof except upon an order of the court in which the pre-adoption certificate was made or an order of a justice of the supreme court. No order for access and inspection shall be granted except on due notice to the adoptive parents and on good cause shown. In like manner as a court of general jurisdiction exercises such powers, the court in which the pre-adoption certificate was made may open, vacate or set aside such certificate for fraud, newly discovered evidence or other sufficient cause.

5. The private-placement adoption of children who have been brought into the United States and the state for such purpose and placed with the adoptive parent or parents, shall be effected after issuance of the pre-adoption certificate, in the manner provided by this title, excepting that (a) the petition shall also recite the pre-adoption proceedings, and (b) the court may in its discretion for good cause shown, waive a subsequent investigation. In such case the order of adoption shall recite the reason for such action.

6. In any case where there has been a failure to comply with the requirements of this section, if applicable, no order of adoption shall be made until one year after the court shall have received the petition to adopt. The court may shorten such waiting period for good cause shown, and, in such case the order of adoption shall recite the reason for such action.

7. The provisions of this section, shall not be applicable to the adoption of children placed out or to be placed out for adoption by an authorized agency as defined in section three hundred seventy-one of the social services law.

8. Notwithstanding any provision of law to the contrary, where a child is placed with a couple or individual in New York state for the purpose of adoption, and where said adoption has theretofore been finalized in the country of birth, outside the United States, the couple or person may petition the court in their county of residence in New York state, for the readoption of said child in accordance with the provisions of this chapter, providing for adoptions originally commenced in this state. In any proceeding for readoption, proof of finalization of an adoption outside the United States shall be prima facie evidence of the consent of those parties required to give consent to an adoption pursuant to section one hundred eleven of this article.

§ 115-b. Special provisions relating to consents in private-placement adoptions. 1. A duly executed and acknowledged consent to a private-placement adoption shall state that no action or proceeding may

be maintained by the consenting parent for the custody of the child to be adopted except as provided in this section. Notwithstanding any other section of law, a consent to adoption executed by a person who is in foster care shall only be executed before a judge of the family court.

2. Judicial consents. (a) A consent to a private placement adoption may be executed or acknowledged before any judge or surrogate in this state having jurisdiction over adoption proceedings. Such consent shall state that it is irrevocable upon such execution or acknowledgment. A consent executed or acknowledged before a court in another state shall satisfy the requirements of this section if it is executed by a resident of the other state before a court of record which has jurisdiction over adoption proceedings in that state, and a certified copy of the transcript of that proceeding, showing compliance with paragraph (b) of this subdivision, is filed as part of the adoption proceeding in this state.

(b) At the time that a parent appears before a judge or surrogate to execute or acknowledge a consent to adoption, the judge or surrogate shall inform such parent of the consequences of such act pursuant to the provisions of this section, including informing such parent of the right to be represented by legal counsel of the parent's own choosing; of the right to obtain supportive counseling and of any rights the parent may have 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. The judge or surrogate shall give such parent a copy of such consent upon the execution thereof.

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 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 days.

(b) Notwithstanding that such written notice is received within said forty-five 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 days of the execution of the document and where the consent is not revoked within said forty-five 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 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 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.

5. For the purposes of commencing an adoption proceeding, the clerk of a court of competent jurisdiction shall accept an adoption petition for filing which is complete on its face and shall not require any supplementary documentation as a condition of filing. Nothing in this section shall compel a court to hear an adoption petition until all documents necessary to the adoption proceeding have been filed to the satisfaction of the court.

6. (a) A parent may revoke his consent to adoption only by giving notice, in writing, of such revocation, no later than forty-five 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.

(b) If, within forty-five 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.

(i) Such notice to the adoptive parents shall set forth that if within fifteen days from the date of such notice the court has not received from the adoptive parents or their attorneys notice, in writing, of their intention to oppose such revocation by the parents, the adoption proceeding will be dismissed and that, in case of such dismissal, the court will send to the parents, the adoptive parents and their respective attorneys the notice of dismissal, as provided in paragraph

(c) of this subdivision.

(ii) Such notice to the adoptive parents shall further set forth that if, within fifteen days from the date of such notice, the court shall receive from the adoptive parents notice, in writing, of their intention to oppose such revocation by the parents, the court will, upon notice to the parents, the adoptive parents and their respective attorneys, proceed, as provided in paragraph (d) of this subdivision, to a determination of whether such notice of revocation by the parents shall be given force and effect and to a determination of what disposition shall be made of the custody of the child.

(c) If the adoption proceeding is dismissed pursuant to the provisions of paragraph (b) of this subdivision,

(i) Written notice of such dismissal shall forthwith be sent to the parent, the adoptive parents and their respective attorneys.

(ii) Such notice of dismissal shall set forth the name and address of the parent, the name and address of the attorney for the parent, if any, the name and address of the attorney for the adoptive parents.

(iii) Such notice of dismissal shall further set forth that if the child is not returned to the custody of the parent within ten days from the date of such notice of dismissal, the court will forthwith upon request, in writing, by the parent or by the attorney for the parent, furnish to said parent or attorney so requesting, the names and address of the adoptive parents.

(iv) Such notice of dismissal shall further state that, in the event the custody of the child is not returned to the parent by the adoptive parents upon request therefor, a proceeding to obtain custody may be instituted by the parent in the Supreme Court or the Family Court.

(d) If, pursuant to the provisions of paragraph (b) of this subdivision, the adoptive parents give timely and proper notice of their intention to oppose the revocation of the parent's consent:

(i) The court shall promptly notify, in writing, the parent, the adoptive parents, their respective attorneys, and the attorney for the child appointed pursuant to section two hundred forty-nine of the family court act or a guardian ad litem appointed pursuant to section four hundred three-a of the surrogate's court procedure act, that the court will, upon the date specified in such notice by the court, or as soon thereafter as the parties may be heard pursuant to this paragraph, hear and determine whether revocation of the consent of the parent was timely and properly given and whether the adoptive parent's notice of intent to oppose such revocation was timely and properly given and if necessary, hear and determine what disposition should be made with respect to the custody of the child.

(ii) The court shall, upon the date specified, take proof as to whether the best interests of the child will be served by returning custody of the child to the parents, or by the adoption of the child by the adoptive parents, or by placement of the child with an authorized agency for foster care with or without authority to consent to the adoption of the child, or by other disposition of the custody of the child.

(iii) If the court determines that the best interests of the child will be served by returning custody of the child to the parent or by placement of the child with an authorized agency or by disposition other than adoption by the adoptive parents, the revocation of consent shall be given force and effect and the court shall make such disposition of the custody of the child as will best serve the interests of the child.

(iv) If the court determines that the best interests of the child will be served by adoption of the child by the adoptive parents, the court

shall enter an order denying any force or effect to the notice of revocation of consent and shall dispose of the custody of the child as if no such notice of revocation had been given by the parent.

(v) In such proceeding the parent or parents who consented to such adoption shall have no right to the custody of the child superior to that of the adoptive parents, notwithstanding that the parent or parents who consented to the adoption are fit, competent and able to duly maintain, support and educate the child. The custody of such child shall be awarded solely on the basis of the best interests of the child, and there shall be no presumption that such interests will be promoted by any particular custodial disposition.

7. Nothing contained in this section shall limit or affect the power and authority of the court in an adoption proceeding, pursuant to the provisions of section one hundred sixteen of this title, to remove the child from the home of the adoptive parents, upon the ground that the welfare of the child requires such action, and thereupon to return the child to a birth parent or place the child with an authorized agency, or, in the case of a surrogate, transfer the child to the family court; nor shall this section bar actions or proceedings brought on the ground of fraud, duress or coercion in the execution or inducement of an adoption consent.

8. Notwithstanding any other provision of this section, a parent having custody of a child whose adoption is sought by his or her spouse need only consent that his or her child be adopted by a named stepfather or stepmother.

9. Any consent to adoption subject to the provisions of this section shall include an adoption information registry birth parent registration consent form, stating whether or not such biological parent or parents whose consent is subject to the provisions of this section, consents to the receipt of identifying information by the child to be adopted upon registration with the adoption information registry established by section forty-one hundred thirty-eight-c of the public health law and upon the adoptee reaching the age of eighteen. If such consent is made, it shall be revocable by either of the biological parents at any time. The revocation of the consent by one of the parents shall revoke the consent of both parents. The failure of a biological parent to complete the consent form shall have no effect on the finality of the consent to adoption. A copy of the form required by this subdivision, shall be forwarded to the state adoption information registry for inclusion in the records maintained by such registry. Any fees authorized to be charged by the state adoption registry for filing documentation with such registry shall be waived for the form required by this subdivision.

§ 115-c. Temporary guardianship by adoptive parent. In any case where physical custody of a child is transferred from the child's parent or guardian to another person or persons for the purposes of adoption and a consent to the adoption of such child has been executed pursuant to section one hundred fifteen-b of this title, the adoptive parent or parents shall, within ten court days of taking physical custody, either file a petition for adoption with a court of competent jurisdiction or file an application for temporary guardianship of the person of the child pursuant to this section with the court in which the adoption will be filed, pursuant to section seventeen hundred twenty-five of the surrogate's court procedure act or section six hundred sixty-one of the family court act except as otherwise provided herein. Such application shall include an affidavit by the adoptive parent or parents describing any change of circumstances since their certification as a qualified adoptive parent or parents, pursuant to section one hundred fifteen-d of

this title, which may be material to such certification. Such a petition for adoption shall also be deemed an application for temporary guardianship, where no prior application for an order for temporary guardianship has been filed.

In any case where the adoptive parent or parents take physical custody of an adoptive child and requirements for certification as a qualified adoptive parent or parents have been waived, pursuant to section one hundred fifteen-d of this title, an application for temporary guardianship or petition for adoption for such child shall be filed with the court not later than five court days from obtaining physical custody of such child. Such time period may be extended upon motion of any person or upon the court's own motion for good cause shown.

§ 115-d. Petition for certification. 1. Except as provided for in subdivision eight of this section, a person or persons petitioning for certification as a qualified adoptive parent or parents shall upon a form, promulgated by the chief administrator of the courts, provide to the court:

(a) the applicant's name or applicants' names, residential address and telephone number;

(b) a statement by the applicant or applicants that they are seeking certification by the court as a person or persons qualified to take physical custody of an infant prior to or contemporaneous with the filing of a private-placement adoption petition;

(c) a statement by the applicant or applicants as to whether such applicant or applicants have been the subject of an indicated report of child abuse or maltreatment, pursuant to title six of article six of the social services law; and

(d) a statement that a pre-placement investigation will be undertaken by a disinterested person, as such term is defined in subdivision four of this section, and that a written report of such investigation will be furnished directly to the court by such disinterested person with a copy of such report to be delivered simultaneously to the applicant or applicants. Such disinterested person shall certify to the court that he or she is a disinterested person and has no interest in the outcome of the party's or parties' application. Such disinterested person shall further disclose to the court any fee paid or to be paid to such person for services rendered in connection with the pre-placement investigation.

Such petition shall also require information regarding:

(i) the marital and family status and history of the adoptive parent or parents;

(ii) the physical and mental health of the adoptive parent or parents;

(iii) the property owned by and the income of adoptive parent or parents;

(iv) whether the adoptive parent or either of the adoptive parents has ever been a respondent in any proceeding concerning allegedly abused, neglected, abandoned or delinquent children; and

(v) whether the applicant or applicants have made any prior application for certification as a qualified adoptive parent or parents and, if so, the disposition of such application for certification.

2. In any case where the applicant or applicants do not intend to cause a pre-placement investigation to be undertaken pursuant to the provisions of paragraph (d) of subdivision one of this section, such applicant or applicants shall request the court to appoint a disinterested person to conduct such pre-placement investigation. The investigative written report shall be submitted to the judge or surrogate within thirty days, unless for good cause shown the judge or

surrogate shall grant a reasonable extension of such period.

3. Such applicant or applicants shall be financially responsible for the costs of any pre-placement investigation conducted pursuant to subdivision one or two of this section.

3-a. (a) The court shall submit fingerprint cards and order a report from the division of criminal justice services setting forth any existing criminal history record of the applicant for certification as a qualified adoptive parent.

(b) Notwithstanding any other provision of law to the contrary, a petition for certification as a qualified adoptive parent shall be denied where a criminal history record of the applicant reveals a conviction for (i) a felony conviction at any time involving: (1) child abuse or neglect; (2) spousal abuse; (3) a crime against a child, including child pornography; or (4) a crime involving violence, including rape, sexual assault, or homicide, other than a crime involving physical assault or battery; or (ii) a felony conviction within the past five years for physical assault, battery, or a drug-related offense.

(c) For the purposes of this subdivision, "spousal abuse" is an offense defined in section 120.05, 120.10, 121.12, or 121.13 of the penal law where the victim of such offense was the defendant's spouse; provided, however, spousal abuse shall not include a crime in which the applicant was the defendant, and the court finds in accordance with this subdivision that he or she was the victim of physical, sexual or psychological abuse by the victim of such offense and such abuse was a factor in causing the applicant to commit such offense.

4. A pre-placement investigation conducted pursuant to the provisions of this section shall be made by a disinterested person who in the opinion of the judge or surrogate is qualified by training and experience to examine into the allegations set forth in the application and any other factors which may be relevant to the suitability of the applicant or applicants as a qualified adoptive parent or parents. For the purposes of this section, a disinterested person shall also include a licensed master social worker, licensed clinical social worker, the probation service of the family court or an authorized agency specifically designated by the court to conduct pre-placement investigations.

5. Such disinterested person shall file with the court a written report of his or her investigation into the truth and accuracy of the allegations set forth in the application and his or her investigation of the various factors which may be relevant to the suitability of the applicant or applicants as qualified adoptive parents. Such investigation shall include, but not be limited to, a personal interview and visit at the applicant's or applicants' home and an investigation of any other facts relating to the familial, social, religious, emotional and financial circumstances of the adoptive parent or parents which may be relevant to certification as a qualified adoptive parent or parents.

6. Certification and provisional certification. If after consideration of the report submitted by the disinterested person, and all other relevant and material factors, the court grants the application, the applicant or applicants may accept physical custody of a child for the purposes of adoption, either prior to or contemporaneous with the filing of an adoption petition. The order granting the petition shall be valid for a period not to exceed eighteen months and shall be accepted as proof of certification by any court of competent jurisdiction within the state. The court may in its discretion grant a conditional order of certification upon satisfactory completion and submission of a petition

wherein the prospective adoptive parent or parents indicate no prior criminal convictions or founded findings of child abuse or neglect, and after completion of a disinterested person investigation provided for in this section, pending completion of any further reports, investigations or inquiries ordered by the court or required by any other statute or court rule. A conditional order of certification shall be valid and remain in force and effect until replaced by an order of certification or by an order denying the petition, whichever shall first occur, but in no event shall such provisional certification continue beyond one hundred eighty days from the date of original issuance. If the court denies the petition, the reasons for such denial shall be stated on the record or in the order.

7. Nothing in this section shall be deemed to waive, limit or restrict the provisions of any other law requiring any inquiry, disinterested person investigation or court review of any persons seeking to adopt a child under any provision of law.

8. The provisions of this section shall not apply to petitions brought by a step-parent for the adoption of a step-child where the step-child has resided with the birth parent and the step-parent for a continuous period of at least one year.

9. Extension of certification. When a petition for adoption is filed by a qualified parent or parents previously certified and the balance of the time period remaining under such certification in accordance with subdivision six of this section is less than one year, the court may on its own motion or on the motion of the petitioners extend the time period of the original certification to a date eighteen months from the date of filing of the adoption petition. When a petition for adoption is filed by a qualified parent or parents who have previously been certified by an order which has expired within a year preceding the date of the adoption petition, the court may extend the termination date of the earlier certification until eighteen months from the filing of such petition, provided the petitioner apply for such extension and set forth any change of circumstances of the qualified parent or parents since issuance and expiration of the last certification which may be relevant and material to the extension of such certification and affix thereto written verification of any such changed circumstance or lack thereof by a disinterested person as defined in subdivision four of this section. Except as is provided for by this subdivision, the court shall not extend a previously expired order of certification. Any further certification shall require the filing of a new petition for certification in accordance with subdivision six of this section.

In any instance when the court determines whether to extend a certification under this subdivision, the court, in its discretion, may order each or any of (a) a report from the statewide central registry of child abuse and maltreatment to determine whether the child or the petitioner is or has been the subject of or another person named in an indicated report, as such terms are defined in section four hundred twelve of the social services law, filed with such register, (b) a report from the division of criminal justice services setting forth any criminal record of such petitioner or petitioners, and (c) an additional pre-placement investigation to be undertaken by a disinterested person. Nothing herein shall be deemed to require that the court enter such an order.

§ 115-e. Effect of death of potential adoptive parent. Notwithstanding any other provision of law to the contrary, when a petition for adoption by two persons has been duly filed, and one of the petitioners dies before the adoption is complete, it shall be treated as a change of

circumstance. This change may be reviewed to assure that the adoption is in the best interest of the child. The death of one of the adoptive parents shall not, by itself, invalidate a certification nor shall the death of one of the adoptive parents cause a new petition for adoption to be filed. The deceased adoptive parent shall be considered one of the legal parents, unless the surviving adoptive parent requests otherwise.

§ 116. Orders of investigation and order of adoption. 1. When the adoptive child is less than eighteen years of age, no order of adoption shall be made until three months after the court shall have received the petition to adopt, except where the spouse of the adoptive parent is the birth parent of the child and the child has resided with the birth parent and adoptive parent for more than three months, such waiting period shall not be required. The judge or surrogate may shorten such waiting period for good cause shown, and, in such case the order of adoption shall recite the reason for such action. The three months residence period specified in section one hundred twelve of title two of this article and the three months waiting period provided in this subdivision may run concurrently in whole or in part.

2. Stage one of private-placement adoption. At the time of receiving the petition, agreement and consents, the judge or surrogate, upon finding that the applicable provisions of this title have been complied with and that it appears that the adoption may be in the best interests of the child, shall issue an order of investigation hereunder. The order of investigation shall require that the report of such investigation be made in accordance with subdivision three of this section, and may require or authorize further investigations from time to time until the granting of the order of adoption. Such order shall direct that such investigation shall not unnecessarily duplicate any previous investigations which have been made of the petitioner or petitioners pursuant to section one hundred fifteen-d of this title. Should such investigation give apparent cause, the judge or surrogate shall require the petitioner or petitioners to show cause why the child should not be removed from the home, upon due notice to all persons whose consent is required for the adoption, and in any case where the consent of the birth mother would not otherwise be required, the judge or surrogate may in his discretion require that she be given due notice. On the return date the judge or surrogate shall take proof of the facts shown by any such investigation. If the court is satisfied that the welfare of the child requires that it be removed from the home, the judge or surrogate shall by order remove the child from the home of the petitioner or petitioners and return the child to a birth parent or place the child with an appropriate authorized agency, or, in the case of a surrogate, transfer the child to the family court. The judge or surrogate may also require that notice be given to an appropriate authorized agency.

3. The judge or surrogate shall cause to be made an investigation by a disinterested person who in the opinion of the judge or surrogate is qualified by training and experience, or by an authorized agency specifically designated by him to examine into the allegations set forth in the petition. A post-placement investigation conducted pursuant to the provisions of this section shall be made by a disinterested person who in the opinion of the judge or surrogate is qualified by training and experience to perform post-placement investigations. Such disinterested person shall certify to the court that he or she is a disinterested person and has no interest in the outcome of petitioner's or petitioners' application. Such disinterested person shall further disclose to the court any fee paid or to be paid to such person for services rendered in connection with the post-placement investigation.

The investigator shall make a written report of his investigation into the truth and accuracy of the allegations of the petition, and, where applicable, into the statements contained in the affidavit required by section one hundred fifteen of this title, and he shall ascertain as fully as possible, and incorporate in his report the various factors which may bear upon the determination of the application for adoption including, but not limited to, the following information:

(a) the marital and family status, and history, of the adoptive parents and adoptive child;

(b) the physical and mental health of the adoptive parents and adoptive child;

(c) the property owned by and the income of the adoptive parents;

(d) the compensation paid or agreed upon with respect to the placement of the child for adoption;

(e) whether either adoptive parent has ever been respondent in any proceeding concerning allegedly abused, neglected, abandoned or delinquent children;

(f) any other facts relating to the familial, social, religious, emotional and financial circumstances of the adoptive parents which may be relevant to a determination of adoption.

The written report of investigation shall be submitted to the judge or surrogate within thirty days after the same is directed to be made, unless for good cause shown the judge or surrogate shall grant a reasonable extension of such period. The report shall be filed with the judge or surrogate, in any event, before the final order of adoption is granted.

4. Stage two of private-placement adoption. If the judge or surrogate has found that there has been compliance with all the requirements hereof and is satisfied that the best interests of the child will be promoted by granting an order of adoption, the provisions of section one hundred fourteen of title two of this article shall apply.

5. As used in this section, "disinterested person" includes the probation service of the family court, a licensed master social worker, licensed clinical social worker, or an authorized agency specifically designated by the court to conduct pre-placement investigations.

TITLE IV

EFFECT OF ADOPTION FROM AN AUTHORIZED AGENCY, OF PRIVATE-PLACEMENT ADOPTION, AND ABROGATIONS THEREOF

Section 117. Effect of adoption.

§ 117. Effect of adoption. 1. (a) After the making of an order of adoption the birth parents of the adoptive child shall be relieved of all parental duties toward and of all responsibilities for and shall have no rights over such adoptive child or to his property by descent or succession, except as hereinafter stated.

(b) The rights of an adoptive child to inheritance and succession from and through his birth parents shall terminate upon the making of the order of adoption except as hereinafter provided.

(c) The adoptive parents or parent and the adoptive child shall sustain toward each other the legal relation of parent and child and shall have all the rights and be subject to all the duties of that relation including the rights of inheritance from and through each other

and the birth and adopted kindred of the adoptive parents or parent.

(d) When a birth or adoptive parent, having lawful custody of a child, marries or remarries and consents that the stepparent may adopt such child, such consent shall not relieve the parent so consenting of any parental duty toward such child nor shall such consent or the order of adoption affect the rights of such consenting spouse and such adoptive child to inherit from and through each other and the birth and adopted kindred of such consenting spouse.

(e) Notwithstanding the provisions of paragraphs (a), (b) and (d) of this subdivision, as to estates of persons dying after the thirty-first day of August, nineteen hundred eighty-seven, if:

(1) the decedent is the adoptive child's birth grandparent or is a descendant of such grandparent, and

(2) an adoptive parent (i) is married to the child's birth parent, (ii) is the child's birth grandparent, or (iii) is descended from such grandparent,

the rights of an adoptive child to inheritance and succession from and through either birth parent shall not terminate upon the making of the order of adoption.

However, an adoptive child who is related to the decedent both by birth relationship and by adoption shall be entitled to inherit only under the birth relationship unless the decedent is also the adoptive parent, in which case the adoptive child shall then be entitled to inherit pursuant to the adoptive relationship only.

(f) The right of inheritance of an adoptive child extends to the distributees of such child and such distributees shall be the same as if he were the birth child of the adoptive parent.

(g) Adoptive children and birth children shall have all the rights of fraternal relationship including the right of inheritance from each other. Such right of inheritance extends to the distributees of such adoptive children and birth children and such distributees shall be the same as if each such child were the birth child of the adoptive parents.

(h) The consent of the parent of a child to the adoption of such child by his or her spouse shall operate to vest in the adopting spouse only the rights as distributee of a birth parent and shall leave otherwise unaffected the rights as distributee of the consenting spouse.

(i) This subdivision shall apply only to the intestate descent and distribution of real and personal property.

2. (a) Except as hereinafter stated, after the making of an order of adoption, adopted children and their issue thereafter are strangers to any birth relatives for the purpose of the interpretation or construction of a disposition in any instrument, whether executed before or after the order of adoption, which does not express a contrary intention or does not expressly include the individual by name or by some classification not based on a parent-child or family relationship.

(b) As to the wills of persons executed after the thirty-first day of August, nineteen hundred eighty-six, or to lifetime instruments executed after such date whether executed before or after the order of adoption, a designation of a class of persons described in section 2-1.3 of the estates, powers and trusts law shall, unless the will or instrument expresses a contrary intention, be deemed to include an adoptive child who was a member of such class in his or her birth relationship prior to adoption, and the issue of such child, only if:

(1) an adoptive parent (i) is married to the child's birth parent, (ii) is the child's birth grandparent, or (iii) is a descendant of such grandparent, and

(2) the testator or creator is the child's birth grandparent or a

descendant of such grandparent.

(c) A person who, by reason of this subdivision, would be a member of the designated class, or a member of two or more designated classes pursuant to a single instrument, both by birth relationship and by adoption shall be entitled to benefit only under the birth relationship, unless the testator or creator is the adoptive parent, in which case the person shall then be entitled to benefit only under the adoptive relationship.

(d) The provisions of this subdivision shall not impair or defeat any rights which have vested on or before the thirty-first day of August, nineteen hundred eighty-six, or which have vested prior to the adoption regardless of when the adoption occurred.

3. The provisions of law affected by the provisions of this section in force prior to March first, nineteen hundred sixty-four shall apply to the estates or wills of persons dying prior thereto and to lifetime instruments theretofore executed which on said date were not subject to grantor's power to revoke or amend.