

LEGISLATURE OF NEBRASKA
ONE HUNDRED EIGHTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 978

Introduced by DeBoer, 10.

Read first time January 05, 2024

Committee: Judiciary

1 A BILL FOR AN ACT relating to adoptions; to amend sections 43-104.15 and
2 43-107, Reissue Revised Statutes of Nebraska, and sections 43-101,
3 43-101.01, 43-102, 43-104, 43-104.08, and 43-104.13, Revised
4 Statutes Cumulative Supplement, 2022; to provide for adoption by a
5 second adult person; to define a term; to change provisions relating
6 to consent to adoption, home studies, and terminology; to eliminate
7 obsolete provisions; to harmonize provisions; and to repeal the
8 original sections.
9 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 43-101, Revised Statutes Cumulative Supplement,
2 2022, is amended to read:

3 43-101 (1) Subject to sections 43-101 to 43-115 and except ~~Except~~ as
4 otherwise provided in the Nebraska Indian Child Welfare Act and
5 subsections (4) and (5) of this section:

6 (a) Any ~~any~~ minor child may be adopted by any adult person or
7 persons;

8 (b) Any minor ~~and any adult~~ child may be adopted by the spouse of
9 such child's parent; ~~and in the cases and subject to sections 43-101 to~~
10 ~~43-115, except that no person having a spouse may adopt a minor child~~
11 ~~unless the spouse joins in the petition therefor. If the spouse so joins~~
12 ~~in the petition therefor, the adoption shall be by them jointly, except~~
13 ~~that an adult spouse may adopt a child of the other spouse whether born~~
14 ~~in or out of wedlock.~~

15 (c) Any minor child who has a sole legal parent may be adopted by a
16 second adult person if:

17 (i) The sole legal parent consents as provided in section 43-104;

18 (ii) The child has a parent-child relationship with the second adult
19 person; and

20 (iii) An adoptive home study is completed as provided in section
21 43-107.

22 (2) Subject to sections 43-101 to 43-115 and except as otherwise
23 provided in subsections (4) and (5) of this section:

24 (a) Any adult child may be adopted by the spouse of such adult
25 child's parent; and

26 (b) ~~(2) Any adult child may be adopted by any person or persons~~
27 ~~subject to sections 43-101 to 43-115, except that no person having a~~
28 ~~spouse may adopt an adult child unless the spouse joins in the petition~~
29 ~~therefor. If the spouse so joins the petition therefor, the adoption~~
30 ~~shall be by them jointly. The adoption of an adult child by another adult~~
31 ~~or adults who are not the stepparent of the adult child may be permitted~~

1 if the adult child has had a parent-child relationship with the
2 prospective parent or parents for a period of at least six months next
3 preceding the adult child's age of majority and:

4 (i) The ~~(a)~~ the adult child has no living parents;

5 (ii) The ~~(b)~~ the adult child's parent or parents had been deprived
6 of parental rights to such child by the order of any court of competent
7 jurisdiction;

8 (iii) The ~~(c)~~ the parent or parents, if living, have relinquished
9 the adult child for adoption by a written instrument;

10 (iv) The ~~(d)~~ the parent or parents had abandoned the child for at
11 least six months next preceding the adult child's age of majority
12 or for a substantial portion of the time since the adult child reached the age
13 of majority;

14 (v) The ~~(e)~~ the parent or parents are incapable of consenting;
15 or

16 (vi) The adult child has a sole legal parent who consents as
17 provided in section 43-104.

18 (3) The substitute consent provisions of section 43-105 do not apply
19 to adoptions under this subsection (2) of this section.

20 (4) No person with a spouse may adopt a minor child or an adult
21 child unless the spouse of such person joins in the petition for
22 adoption, in which case the adoption shall be made by such persons
23 jointly.

24 (5) An adoption shall not be permitted under this section if it
25 would result in a minor or adult child having more than two legal
26 parents.

27 Sec. 2. Section 43-101.01, Revised Statutes Cumulative Supplement,
28 2022, is amended to read:

29 43-101.01 For purposes of sections 43-101 to 43-115:

30 (1) Acknowledged father means an individual who has:

31 (a) Executed a valid acknowledgment of paternity; or

1 (b) Acknowledged paternity through establishment of a familial
2 relationship with the child for a period of at least six months;

3 (2) Adjudicated father means an individual who has been determined
4 by a court of competent jurisdiction, in this state or in another state
5 or territory of the United States, to be the biological or legal father
6 of a minor child; ~~and~~

7 (3) Juvenile court means the separate juvenile court where it has
8 been established pursuant to sections 43-2,111 to 43-2,127 and the county
9 court sitting as a juvenile court in all other counties; and -

10 (4) Sole legal parent means a legal parent of a child with respect
11 to whom no other person has parental rights.

12 Sec. 3. Section 43-102, Revised Statutes Cumulative Supplement,
13 2022, is amended to read:

14 43-102 (1) Except as otherwise provided in the Nebraska Indian Child
15 Welfare Act, any person or persons desiring to adopt a minor child or an
16 adult child shall file a petition for adoption signed and sworn to by the
17 person or persons desiring to adopt. The following shall be filed prior
18 to the hearing required under section 43-103:

19 (a) The consent or consents required by sections 43-101, 43-104, and
20 43-105 or section 43-104.07;

21 (b) The documents required by section 43-104.07 or the documents
22 required by sections 43-104.08 to 43-104.24;

23 (c) A completed preplacement adoptive home study if required by
24 section 43-107;

25 (d) The completed and signed affidavit described in section
26 43-104.09 if required by such section;

27 (e) The completed and signed affidavit described in section
28 43-104.16 if required by such section; and

29 (f) When a consent is not required under subdivision (4)(c) of
30 section 43-104, a certified copy of the termination order.

31 (2) The county court of the county in which the person or persons

1 desiring to adopt a child reside has jurisdiction of adoption
2 proceedings, except that if a juvenile court already has jurisdiction
3 over the child to be adopted under the Nebraska Juvenile Code, such
4 juvenile court has concurrent jurisdiction with the county court in such
5 adoption proceeding. If a child to be adopted is a ward of any court or a
6 ward of the state at the time of placement and at the time of filing an
7 adoption petition, the person or persons desiring to adopt shall not be
8 required to be residents of Nebraska. The petition and all other court
9 filings for an adoption proceeding shall be filed with the clerk of the
10 county court. The party shall state in the petition whether such party
11 requests that the proceeding be heard by the county court or, in cases in
12 which a juvenile court already has jurisdiction over the child to be
13 adopted under the Nebraska Juvenile Code, such juvenile court. Such
14 proceeding is considered a county court proceeding even if heard by a
15 juvenile court judge and an order of the juvenile court in such adoption
16 proceeding has the force and effect of a county court order. The
17 testimony in an adoption proceeding heard before a juvenile court judge
18 shall be preserved as in any other juvenile court proceeding.

19 Sec. 4. Section 43-104, Revised Statutes Cumulative Supplement,
20 2022, is amended to read:

21 43-104 (1) Except as otherwise provided in this section and in the
22 Nebraska Indian Child Welfare Act, no adoption shall be decreed unless
23 written consents thereto are filed in the county court of the county in
24 which the person or persons desiring to adopt reside or in the county
25 court in which the juvenile court having jurisdiction over the custody of
26 the child is located and the written consents are executed by:

27 (a) The minor child, if over fourteen years of age; ~~and~~

28 (b) Both parents of a child born in lawful wedlock if living, the
29 surviving parent of a child born in lawful wedlock, the mother of a child
30 born out of wedlock, or both the mother and father of a child born out of
31 wedlock as determined pursuant to sections 43-104.08 to 43-104.24; ~~and -~~

1 (c) In the case of an adoption by a second adult person under
2 subdivision (1)(c) or (2)(b) of section 43-101, the sole legal parent.
3 Such consent shall state that the child or adult child has a sole legal
4 parent and that such sole legal parent wishes for the child or adult
5 child to be adopted by a second adult person.

6 (2) A written consent or relinquishment for adoption under this
7 section shall not be valid unless signed at least forty-eight hours after
8 the birth of the child.

9 (3) A petition for adoption shall attest that, at the time of
10 filing:

11 (a) There were no pending motions in any other court having
12 jurisdiction over the minor child; and

13 (b) If a juvenile court has jurisdiction over the child, that
14 adoption is the permanency goal in proceedings in juvenile court.

15 (4) Consent shall not be required of any parent:

16 (a) Who relinquished the child for adoption by a written instrument;

17 (b) Who abandoned the child for at least six months next preceding
18 the filing of the adoption petition;

19 (c) Whose parental rights to such child have been terminated by the
20 order of any court of competent jurisdiction; or

21 (d) Who is incapable of consenting.

22 (5) Consent shall not be required of a putative father who has
23 failed to timely file:

24 (a) A Notice of Objection to Adoption and Intent to Obtain Custody
25 pursuant to section 43-104.02 and, with respect to the absence of such
26 filing, a certificate has been filed pursuant to section 43-104.04; or

27 (b) A petition pursuant to section 43-104.05 for the adjudication of
28 such father's objection to the adoption and a determination of whether
29 his consent to the adoption is required and the mother of the child has
30 timely executed a valid relinquishment and consent to the adoption
31 pursuant to such section.

1 (6) Consent shall not be required of an acknowledged or adjudicated
2 father (a) when he ~~who~~ has failed to timely file a petition pursuant to
3 section 43-104.05 for the adjudication of such notice and a determination
4 of whether his consent to the adoption is required and (b) the mother of
5 the child has timely executed a valid relinquishment and consent to the
6 adoption pursuant to such section.

7 (7) Consent shall not be required of an acknowledged father, an
8 adjudicated father, or a putative father who is not required to consent
9 to the adoption pursuant to section 43-104.05 or 43-104.22.

10 (8) The validity of a relinquishment and consent for adoption is not
11 affected by the fact that a relinquishing person is a minor.

12 (9)(a) In private adoptions not involving relinquishment of a child
13 to the state or to a licensed child placement agency, a parent or parents
14 who relinquish a child for adoption shall be provided legal counsel of
15 their choice independent from that of the adoptive parent or parents.
16 Such counsel shall be provided at the expense of the adoptive parent or
17 parents prior to the execution of a written relinquishment and consent to
18 adoption or execution of a communication and contact agreement under
19 section 43-166, unless specifically waived in writing.

20 (b) In private adoptions and adoptions involving relinquishment of a
21 child to a licensed child placement agency other than the state, a parent
22 or parents contemplating relinquishment of a child for adoption shall be
23 offered, at the expense of the adoptive parent or parents or the agency,
24 at least three hours of professional counseling prior to executing a
25 written relinquishment of parental rights or written consent to adoption.
26 Such relinquishment or consent shall state whether the relinquishing
27 parent or parents received or declined counseling.

28 Sec. 5. Section 43-104.08, Revised Statutes Cumulative Supplement,
29 2022, is amended to read:

30 43-104.08 Whenever a child is claimed to be born out of wedlock and
31 the biological mother contacts an adoption agency or attorney to

1 relinquish her rights to the child, or the biological mother joins in a
2 petition for adoption to be filed by the second adult person ~~her spouse~~,
3 the agency or attorney contacted shall attempt to establish the identity
4 of the biological father and further attempt to inform the biological
5 father of his rights, including the right to object to the adoption and
6 the procedure and required timing to object, and his right to execute a
7 relinquishment and consent to adoption, or a denial of paternity and
8 waiver of rights, in the form mandated by section 43-106, pursuant to
9 sections 43-104.08 to 43-104.24.

10 Sec. 6. Section 43-104.13, Revised Statutes Cumulative Supplement,
11 2022, is amended to read:

12 43-104.13 The notice sent by the agency or attorney pursuant to
13 section 43-104.12 shall be served sufficiently in advance of the birth of
14 the child, whenever possible, to allow compliance with subdivision (1)(a)
15 of section 43-104.02 and shall state:

16 (1) The biological mother's name, the fact that she is pregnant or
17 has given birth to the child, and the expected or actual date of
18 delivery;

19 (2) That the child has been relinquished by the biological mother,
20 that she intends to execute a relinquishment and consent to adoption, or
21 that the biological mother has joined or plans to join in a petition for
22 adoption to be filed by another adult person ~~her spouse~~;

23 (3) That the person being notified has been identified as a possible
24 biological father of the child, whether putative, acknowledged, or
25 adjudicated;

26 (4) That the person being notified may have certain rights with
27 respect to such child if he is in fact the biological father;

28 (5) That the person being notified has the right to (a) deny
29 paternity, (b) waive any parental rights he may have, (c) relinquish and
30 consent to adoption of the child, (d) file a Notice of Objection to
31 Adoption and Intent to Obtain Custody any time during the pregnancy or as

1 late as ten business days after birth pursuant to section 43-104.02 if he
2 is a putative father, and (e) object to the adoption in court within
3 forty-five days after the later of receipt of notice under this section
4 or the birth of the child if he is an acknowledged or adjudicated father;

5 (6) That to deny paternity, to waive his parental rights, or to
6 relinquish and consent to the adoption, the person being notified must
7 contact the undersigned agency or attorney representing the biological
8 mother, and that if he wishes to object to the adoption and seek custody
9 of the child he should seek legal counsel from his own attorney
10 immediately; and

11 (7) That if the person being notified is the biological father and
12 if the child is not relinquished for adoption, he has a duty to
13 contribute to the support and education of the child and to the
14 pregnancy-related expenses of the mother and a right to seek a court
15 order for custody, parenting time, visitation, or other access with the
16 child.

17 The agency or attorney representing the biological mother may
18 enclose with the notice a document which is an admission or denial of
19 paternity and a waiver of rights by the person being notified, which such
20 person may choose to complete, in the form mandated by section 43-106,
21 and return to the agency or attorney.

22 Sec. 7. Section 43-104.15, Reissue Revised Statutes of Nebraska, is
23 amended to read:

24 43-104.15 The notification procedure set forth in sections 43-104.12
25 to 43-104.14 shall, whenever possible, be completed prior to a child
26 being placed in an adoptive home. If the information provided in the
27 biological mother's affidavit prepared pursuant to section 43-104.09
28 presents clear evidence that providing notice to a biological father or
29 possible biological father as contemplated in sections 43-104.12 to
30 43-104.14 would be likely to threaten the safety of the biological mother
31 or the child or that conception was the result of sexual assault or

1 incest, notice is not required to be given. If the biological father or
2 possible biological fathers are not given actual or constructive notice
3 prior to the time of placement, the agency or attorney shall give the
4 adoptive parent or parents a statement of legal risk indicating the legal
5 status of the biological father's parental rights as of the time of
6 placement, and the adoptive parent or parents shall sign a statement of
7 legal risk acknowledging ~~their~~ acceptance of the placement,
8 notwithstanding the legal risk.

9 Sec. 8. Section 43-107, Reissue Revised Statutes of Nebraska, is
10 amended to read:

11 43-107 ~~(1)(a) For adoption placements occurring or in effect prior~~
12 ~~to January 1, 1994, upon the filing of a petition for adoption, the~~
13 ~~county judge shall, except in the adoption of children by stepparents~~
14 ~~when the requirement of an investigation is discretionary, request the~~
15 ~~Department of Health and Human Services or any child placement agency~~
16 ~~licensed by the department to examine the allegations set forth in the~~
17 ~~petition and to ascertain any other facts relating to such minor child~~
18 ~~and the person or persons petitioning to adopt such child as may be~~
19 ~~relevant to the propriety of such adoption, except that the county judge~~
20 ~~shall not be required to request such an examination if the judge~~
21 ~~determines that information compiled in a previous examination or study~~
22 ~~is sufficiently current and comprehensive. Upon the request being made,~~
23 ~~the department or other licensed agency shall conduct an investigation~~
24 ~~and report its findings to the county judge in writing at least one week~~
25 ~~prior to the date set for hearing.~~

26 (1)(a) A ~~(b)(i)~~ For adoption placements occurring on or after
27 January 1, 1994, a preplacement adoptive home study shall be filed with
28 the court prior to the hearing required in section 43-103. Such , which
29 study shall be is completed by the Department of Health and Human
30 Services or a licensed child placement agency within one year before the
31 date on which the adoptee is placed with the petitioner or petitioners

1 and indicates that the placement of a child for the purpose of adoption
2 would be safe and appropriate.

3 **(b) (ii)** An adoptive home study shall not be required when the
4 petitioner is a stepparent of the adoptee unless required by the court.
5 An adoptive home study may be waived by the court upon a showing of good
6 cause by the petitioner when the petitioner is a biological grandparent
7 or a step-grandparent who is married to the biological grandparent at the
8 time of the adoption if both are adopting the child. ~~The For all~~
9 ~~petitions filed on or after January 1, 1994,~~ the judge shall order the
10 petitioner or his or her attorney to request the Nebraska State Patrol to
11 file a national criminal history record information check by submitting
12 the request accompanied by two sets of fingerprint cards or an equivalent
13 electronic submission and the appropriate fee to the Nebraska State
14 Patrol for a Federal Bureau of Investigation background check and to
15 request the department to conduct and file a check of the central
16 registry created in section 28-718 for any history of the petitioner of
17 behavior injurious to or which may endanger the health or morals of a
18 child. An adoption decree shall not be issued until such records are on
19 file with the court. The petitioner shall pay the cost of the national
20 criminal history record information check and the check of the central
21 registry.

22 **(c) (iii)** The placement of a child for foster care made by or
23 facilitated by the department or a licensed child placement agency in the
24 home of a person who later petitions the court to adopt the child shall
25 be exempt from the requirements of a preplacement adoptive home study.
26 The petitioner or petitioners who meet such criteria shall have a
27 postplacement adoptive home study completed by the department or a
28 licensed child placement agency and filed with the court at least one
29 week prior to the hearing for adoption.

30 **(d) (iv)** A voluntary placement for purposes other than adoption made
31 by a parent or guardian of a child without assistance from an attorney,

1 physician, or other individual or agency which later results in a
2 petition for the adoption of the child shall be exempt from the
3 requirements of a preplacement adoptive home study. The petitioner or
4 petitioners who meet such criteria shall have a postplacement adoptive
5 home study completed by the department or a licensed child placement
6 agency and filed with the court at least one week prior to the hearing
7 for adoption.

8 (e) In the case of an adoption by a second adult person under
9 subdivision (1)(c) of section 43-101, if the child of a sole legal parent
10 was adopted by that parent less than six months prior to the filing of an
11 adoption petition by the second adult person and if the second adult
12 person was included in an adoptive home study conducted in accordance
13 with this section, a new adoptive home study is not required unless the
14 court specifically orders otherwise. The court may order an adoptive home
15 study, a background investigation, or both if the court determines that
16 such would be in the best interests of the adoptive party or the person
17 to be adopted. If the petition for adoption by the second adult person
18 was filed six months or more after the adoption by the sole legal parent,
19 a separate adoptive home study report is required as otherwise provided
20 in this section.

21 (f) ~~(v)~~ The adoption of an adult child as provided in subsection (2)
22 of section 43-101 shall be exempt from the requirements of an adoptive
23 home study unless the court specifically orders otherwise. The court may
24 order an adoptive home study, a background investigation, or both if the
25 court determines that such would be in the best interests of the adoptive
26 party or the person to be adopted.

27 (g) ~~(vi)~~ Any adoptive home study required by this section shall be
28 conducted by the department or a licensed child placement agency at the
29 expense of the petitioner or petitioners unless such expenses are waived
30 by the department or licensed child placement agency. The department or
31 licensed agency shall determine the fee or rate for the adoptive home

1 study.

2 (h) ~~(vii)~~ The preplacement or postplacement adoptive home study
3 shall be performed as prescribed in rules and regulations of the
4 department and shall include at a minimum an examination into the facts
5 relating to the petitioner or petitioners as may be relevant to the
6 propriety of such adoption. Such rules and regulations shall require an
7 adoptive home study to include a national criminal history record
8 information check and a check of the central registry created in section
9 28-718 for any history of the petitioner or petitioners of behavior
10 injurious to or which may endanger the health or morals of a child.

11 (2) Upon the filing of a petition for adoption, the judge shall
12 require that a complete medical history be provided on the child, except
13 that in the adoption of a child by a stepparent, biological grandparent,
14 or step-grandparent who is married to the biological grandparent at the
15 time of the adoption if both are adopting the child, the provision of a
16 medical history shall be discretionary. ~~The On and after August 27, 2011,~~
17 ~~the~~ complete medical history or histories required under this subsection
18 shall include the race, ethnicity, nationality, Indian tribe when
19 applicable and in compliance with the Nebraska Indian Child Welfare Act,
20 or other cultural history of both biological parents, if available. A
21 medical history shall be provided, if available, on the biological mother
22 and father and their biological families, including, but not limited to,
23 siblings, parents, grandparents, aunts, and uncles, unless the child is
24 foreign born or was abandoned. The medical history or histories shall be
25 reported on a form provided by the department and filed along with the
26 report of adoption as provided by section 71-626. If the medical history
27 or histories do not accompany the report of adoption, the department
28 shall inform the court and the State Court Administrator. The medical
29 history or histories shall be made part of the court record. After the
30 entry of a decree of adoption, the court shall retain a copy and forward
31 the original medical history or histories to the department.—This

1 ~~subsection shall only apply when the relinquishment or consent for an~~
2 ~~adoption is given on or after September 1, 1988.~~

3 (3) After the filing of a petition for adoption and before the entry
4 of a decree of adoption for a child who is committed to the Department of
5 Health and Human Services, the person or persons petitioning to adopt the
6 child shall be given the opportunity to read the case file on the child
7 maintained by the department or its duly authorized agent. The department
8 shall not include in the case file to be read any information or
9 documents that the department determines cannot be released based upon
10 state statute, federal statute, federal rule, or federal regulation. The
11 department shall provide a document for such person's or persons'
12 signatures verifying that such person or persons ~~he, she, or they~~ have
13 been given an opportunity to read the case file and are aware that such
14 person or persons ~~he, she, or they~~ can review the child's file at any
15 time following finalization of the adoption upon making a written request
16 to the department. The department shall file such document with the court
17 prior to the entry of a decree of adoption in the case.

18 Sec. 9. Original sections 43-104.15 and 43-107, Reissue Revised
19 Statutes of Nebraska, and sections 43-101, 43-101.01, 43-102, 43-104,
20 43-104.08, and 43-104.13, Revised Statutes Cumulative Supplement, 2022,
21 are repealed.