

LEGISLATURE OF NEBRASKA
ONE HUNDREDTH LEGISLATURE
FIRST SESSION
LEGISLATIVE BILL 413

Introduced by Flood, 19

Read first time January 16, 2007

Committee: Judiciary

A BILL

1 FOR AN ACT relating to children; to amend sections 28-316,
2 43-104.02, and 43-104.05, Reissue Revised Statutes of
3 Nebraska; to change provisions governing children born
4 out of wedlock and the offense of violation of custody;
5 and to repeal the original sections.
6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 28-316, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 28-316 (1) Any person, including a natural or foster
4 parent, who, knowing that he or she has no legal right to do so
5 or, heedless in that regard, (a) takes or entices any child under
6 the age of eighteen years from the custody of ~~its~~ his or her parent
7 having legal custody, guardian, or other lawful custodian or (b)
8 retains physical control over any child under the age of eighteen
9 in contravention of an order of any district or juvenile court of
10 this state, with the intent to deprive the lawful custodian of the
11 custody of such child, commits the offense of violation of custody.

12 (2) Except as provided in subsection (3) of this section,
13 violation of custody is a Class II misdemeanor.

14 (3) Violation of custody in contravention of an order of
15 any district or juvenile court of this state granting the custody
16 of a child under the age of eighteen years to any person, agency,
17 or institution, with the intent to deprive the lawful custodian of
18 the custody of such child, is a Class IV felony.

19 Sec. 2. Section 43-104.02, Reissue Revised Statutes of
20 Nebraska, is amended to read:

21 43-104.02 (1) As provided in section 43-104.01, a person
22 claiming to be the father of the child and who intends to claim
23 paternity and obtain custody of the child shall file with the
24 biological father registry maintained by the Department of Health
25 and Human Services Finance and Support on forms provided by the

1 department, within five business days after the birth of the
2 child, or within five business days after receipt of the notice
3 contemplated in section 43-104.12, or within five business days
4 after the last date of any published notice provided pursuant
5 to section 43-104.14, whichever is later, a notice of intent to
6 claim paternity and obtain custody. Such notice shall include the
7 social security number of the person claiming to be the father.
8 A notice of intent to claim paternity and obtain custody of the
9 child shall be considered to have been filed if it is received by
10 the Department of Health and Human Services Finance and Support or
11 postmarked prior to the end of the fifth business day contemplated
12 in this section.

13 (2) If a notice of intent to claim paternity and obtain
14 custody is filed pursuant to this section, the child that is the
15 subject of the petition shall not be allowed to leave the state
16 until the thirty-day period authorized by section 43-104.05 for the
17 filing of a petition for an adjudication of the claim of paternity
18 and right to custody has elapsed.

19 Sec. 3. Section 43-104.05, Reissue Revised Statutes of
20 Nebraska, is amended to read:

21 43-104.05 If a notice of intent to claim paternity and
22 obtain custody is timely filed with the biological father registry
23 pursuant to section 43-104.02, either the claimant-father, the
24 mother, or her agent specifically designated in writing shall,
25 within thirty days after filing the notice, file a petition for

1 an adjudication of the claim of paternity and right to custody.
2 The petition shall be filed in the county court in the county
3 where such child was born or, if a separate juvenile court already
4 has jurisdiction over the child, in such separate juvenile court.
5 If such a petition is not filed within thirty days after filing
6 the notice, the claimant-father's consent to adoption of the child
7 shall not be required, he is not entitled to any further notice,
8 and any alleged parental rights of the claimant-father shall not
9 be recognized thereafter in any court. After the filing of such
10 petition, the court shall set a trial date upon proper notice to
11 the parties not less than twenty nor more than thirty days after
12 such filing. If the mother contests the claim of paternity, the
13 court shall take such testimony as shall enable it to determine the
14 facts. The claimant-father's rights and the custody of the child
15 shall be determined pursuant to section 43-104.22. The court shall
16 appoint a guardian ad litem to represent the best interests of the
17 child.

18 The child that is the subject of the petition shall not
19 be allowed to leave the state until the claimant-father's rights
20 and the custody of the child have been determined by the court or a
21 person who has custody of the child and intends to leave the state
22 with the child submits to the jurisdiction of the court.

23 Sec. 4. Original sections 28-316, 43-104.02, and
24 43-104.05, Reissue Revised Statutes of Nebraska, are repealed.