

ONE HUNDREDTH LEGISLATURE

FIRST SESSION

LEGISLATIVE RESOLUTION 128

Introduced by Aguilar, 35;

PURPOSE: (1) Under current Nebraska law, even though there is no definition of mother, it has been determined that a woman delivering a child is the mother of that child. The presumption would follow then that the delivering woman's husband is the father of the child. The paternity issue can be resolved administratively by completing the process set out in Neb. Rev. Stat. section 71-640.01. However, there is no administrative process to allow for maternity to be established by someone other than the woman delivering the child, such as the case in which a surrogate mother is the woman delivering the child. Currently, the Office of Vital Records of the Nebraska Health and Human Services System requires these individuals to obtain a court order to enter a person, other than the gestational surrogate, as the mother on such birth certificates. Nebraska law currently provides no specific authority for the Office of Vital Records to enter the name of someone other than the mother, the woman delivering the baby, on the birth certificate absent an adoption proceeding.

(2) In addition, a biological parent or parents should not have to go through an adoption proceeding to adopt his or her own biological child. There is no specific court filing to bring this type of action and any resulting order is under the equitable

power of the court. As a result, inconsistent findings across the state could occur. A court in one jurisdiction may believe that it has equitable power to enter the order while another may not.

(3) The purpose of this study is to examine administrative processes and laws which would permit the establishment of a parent and child relationship in the event of a gestational surrogacy. Specifically, this study shall include, but not be limited to, the following relating to gestational surrogacy:

(1) Examination of all relevant laws, rules, and regulations of other states;

(2) Examination of all current administrative processes, policies, and rules and regulations in the Office of Vital Records of the Nebraska Health and Human Services System;

(3) Examination of all relevant Nebraska court cases;

(4) Examination of all relevant administrative processes, policies, and rules and regulations used in other states; and

(5) Examination of all relevant court cases from other states.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE ONE HUNDREDTH LEGISLATURE OF NEBRASKA, FIRST SESSION:

1. That the Health and Human Services Committee of the Legislature shall be designated to conduct an interim study to carry out the purposes of this resolution.

2. That the committee shall upon the conclusion of its study make a report of its findings, together with its recommendations, to the Legislative Council or Legislature.