

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

SECOND SESSION

**LEGISLATIVE BILL 940**

Introduced by Harr, 8.

Read first time January 11, 2012

Committee: Judiciary

A BILL

1 FOR AN ACT relating to adoption; to amend sections 43-104.05 and  
2 43-104.18, Reissue Revised Statutes of Nebraska; to  
3 provide for and change compensation provisions for  
4 guardians ad litem in certain cases; and to repeal the  
5 original sections.  
6 Be it enacted by the people of the State of Nebraska,

1                   Section 1. Section 43-104.05, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3                   43-104.05 (1) If a Notice of Objection to Adoption and  
4 Intent to Obtain Custody is timely filed with the biological father  
5 registry pursuant to section 43-104.02, either the putative father,  
6 the mother, or her agent specifically designated in writing shall,  
7 within thirty days after the filing of such notice, file a petition  
8 for adjudication of the notice and a determination of whether the  
9 putative father's consent to the proposed adoption is required. The  
10 petition shall be filed in the county court in the county where such  
11 child was born or, if a separate juvenile court already has  
12 jurisdiction over the custody of the child, in the county court of  
13 the county in which such separate juvenile court is located.

14                   (2) If such a petition is not filed within thirty days  
15 after the filing of such notice and the mother of the child has  
16 executed a valid relinquishment and consent to the adoption within  
17 sixty days of the filing of such notice, the putative father's  
18 consent to adoption of the child shall not be required, he is not  
19 entitled to any further notice of the adoption proceedings, and any  
20 alleged parental rights and responsibilities of the putative father  
21 shall not be recognized thereafter in any court.

22                   (3) After the timely filing of such petition, the court  
23 shall set a trial date upon proper notice to the parties not less  
24 than twenty nor more than thirty days after the date of such filing.  
25 If the mother contests the putative father's claim of paternity, the

1 court shall order DNA testing to establish whether the putative  
2 father is the biological father. The court shall assess the costs of  
3 such testing between the parties in an equitable manner. Whether the  
4 putative father's consent to the adoption is required shall be  
5 determined pursuant to section 43-104.22. The court shall appoint a  
6 guardian ad litem to represent the best interests of the child. The  
7 guardian ad litem shall be chosen from a qualified pool of local  
8 attorneys. The guardian ad litem shall receive reasonable  
9 compensation for the representation, the amount to be determined at  
10 the discretion of the court. Such compensation shall be assessed as  
11 costs against the parties as determined by the court to be fair and  
12 equitable. If the court determines any party ordered to pay such  
13 costs is indigent, then, upon notice to the county attorney, the  
14 court may order the county to pay the compensation for the guardian  
15 ad litem.

16 (4)(a) The county court of the county where the child was  
17 born or the separate juvenile court having jurisdiction over the  
18 custody of the child shall have jurisdiction over proceedings under  
19 this section from the date of notice provided under section 43-104.12  
20 or the last date of published notice under section 43-104.14,  
21 whichever notice is earlier, until thirty days after the conclusion  
22 of adoption proceedings concerning the child, including appeals,  
23 unless such jurisdiction is transferred under subdivision (b) of this  
24 subsection.

25 (b) Except as otherwise provided in this subdivision, the

1 court shall, upon the motion of any party, transfer the case to the  
2 district court for further proceedings on the matters of custody,  
3 visitation, and child support with respect to such child if (i) such  
4 court determines under section 43-104.22 that the consent of the  
5 putative father is required for adoption of the minor child and the  
6 putative father refuses such consent or (ii) the mother of the child,  
7 within thirty days after the conclusion of proceedings under this  
8 section, including appeals, has not executed a valid relinquishment  
9 and consent to the adoption. The court, upon its own motion, may  
10 retain the case for good cause shown.

11 Sec. 2. Section 43-104.18, Reissue Revised Statutes of  
12 Nebraska, is amended to read:

13 43-104.18 If a petition to finalize an adoption is filed  
14 and fails to establish substantial compliance with sections 43-104.08  
15 to 43-104.16, the court shall receive evidence by affidavit of the  
16 facts and circumstances of the biological mother's relationship with  
17 the biological father or possible biological fathers at the time of  
18 conception of the child and at the time of the biological mother's  
19 relinquishment of the child, including any evidence that providing  
20 notice to a biological father would be likely to threaten the safety  
21 of the biological mother or the child or that the conception was the  
22 result of sexual assault or incest. If, under the facts and  
23 circumstances presented, the court finds that the agency or attorney  
24 representing the biological mother did not exercise due diligence in  
25 complying with sections 43-104.08 to 43-104.16, or if the court finds

1 that there is no credible evidence that providing notice to a  
2 biological father would be likely to threaten the safety of the  
3 biological mother or the child or that the conception was the result  
4 of sexual assault or incest, the court shall order the attorney or  
5 agency to exercise due diligence in complying with sections 43-104.08  
6 to 43-104.16. If the attorney or agency fails to exercise due  
7 diligence in complying with such sections or at any time upon the  
8 petition or application of any interested party the court may appoint  
9 a guardian ad litem to represent the interests of the biological  
10 father. The guardian ad litem shall be chosen from a qualified pool  
11 of local attorneys. The guardian ad litem shall receive reasonable  
12 compensation for the representation, the amount to be determined at  
13 the discretion of the court. Such compensation shall be assessed as  
14 costs against the parties as determined by the court to be fair and  
15 equitable. If the court determines any party ordered to pay such  
16 costs is indigent, then, upon notice to the county attorney, the  
17 court may order the county to pay the compensation for the guardian  
18 ad litem.

19                   Sec. 3. Original sections 43-104.05 and 43-104.18,  
20 Reissue Revised Statutes of Nebraska, are repealed.