

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 426

Introduced by DeBoer, 10; Bolz, 29; Cavanaugh, 6; Howard, 9; Hunt, 8;
Pansing Brooks, 28.

Read first time January 18, 2019

Committee: Judiciary

1 A BILL FOR AN ACT relating to adoptions; to amend sections 43-101,
2 43-104.08, 43-104.13, 43-104.15, 43-104.18, 43-104.19, 43-108, and
3 43-111, Reissue Revised Statutes of Nebraska; to provide for
4 adoption by two adult persons jointly; to update terminology; to
5 harmonize provisions; and to repeal the original sections.

6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 43-101, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 43-101 (1) Except as otherwise provided in the Nebraska Indian Child
4 Welfare Act, any minor child may be adopted by any adult person or two
5 adult persons jointly, regardless of their marital status, subject to
6 sections 43-101 to 43-115. Any parent of a minor child may consent to the
7 adoption of the minor child by the parent's spouse or by another adult
8 who will share parental responsibility for the child with such parent,
9 without the parent having to relinquish his or her legal rights to the
10 child. No persons and any adult child may be adopted by the spouse of
11 such child's parent in the cases and subject to sections 43-101 to
12 43-115, except that no person having a spouse husband or wife may adopt a
13 minor child unless the spouse husband or wife joins in the petition
14 therefor. If the husband or wife so joins in the petition therefor, in
15 which case the adoption shall be by them jointly, except that an adult
16 husband or wife may adopt a child of the other spouse whether born in or
17 out of wedlock.

18 (2) Any adult child may be adopted by any adult person or two adult
19 persons jointly, regardless of their martial status, persons subject to
20 sections 43-101 to 43-115, except that no person having a spouse husband
21 or wife may adopt an adult child unless the spouse husband or wife joins
22 in the petition therefor. If the husband or wife so joins the petition
23 therefor, in which case the adoption shall be by them jointly. The
24 adoption of an adult child by another adult or adults who are not the
25 stepparent of the adult child may be permitted if the adult child has had
26 a parent-child relationship with the prospective parent or parents for a
27 period of at least six months next preceding the adult child's age of
28 majority and (a) the adult child has no living parents, (b) the adult
29 child's parent or parents had been deprived of parental rights to such
30 child by the order of any court of competent jurisdiction, (c) the parent
31 or parents, if living, have relinquished the adult child for adoption by

1 a written instrument, (d) the parent or parents had abandoned the child
2 for at least six months next preceding the adult child's age of majority,
3 or (e) the parent or parents are incapable of consenting. The substitute
4 consent provisions of section 43-105 do not apply to adoptions under this
5 subsection.

6 Sec. 2. Section 43-104.08, Reissue Revised Statutes of Nebraska, is
7 amended to read:

8 43-104.08 Whenever a child is claimed to be born out of wedlock and
9 the biological mother contacts an adoption agency or attorney to
10 relinquish her rights to the child, or the biological mother joins in a
11 petition for adoption to be filed by another adult person ~~her husband~~,
12 the agency or attorney contacted shall attempt to establish the identity
13 of the biological father and further attempt to inform the biological
14 father of his right to execute a relinquishment and consent to adoption,
15 or a denial of paternity and waiver of rights, in the form mandated by
16 section 43-106, pursuant to sections 43-104.08 to 43-104.25.

17 Sec. 3. Section 43-104.13, Reissue Revised Statutes of Nebraska, is
18 amended to read:

19 43-104.13 The notice sent by the agency or attorney pursuant to
20 section 43-104.12 shall be served sufficiently in advance of the birth of
21 the child, whenever possible, to allow compliance with subdivision (1) of
22 section 43-104.02 and shall state:

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

26 (2) That the child has been relinquished by the biological mother,
27 that she intends to execute a relinquishment and consent to adoption, or
28 that the biological mother has joined or plans to join in a petition for
29 adoption to be filed by another adult person ~~her husband~~;

30 (3) That the person being notified has been identified as a possible
31 biological father of the child;

1 (4) That the possible biological father may have certain rights with
2 respect to such child if he is in fact the biological father;

3 (5) That the possible biological father has the right to (a) deny
4 paternity, (b) waive any parental rights he may have, (c) relinquish and
5 consent to adoption of the child, (d) file a Notice of Objection to
6 Adoption and Intent to Obtain Custody pursuant to section 43-104.02, or
7 (e) object to the adoption in a proceeding before any Nebraska court
8 which has, prior to his receipt of this notice, adjudicated him to be the
9 biological father of the child;

10 (6) That to deny paternity, to waive his parental rights, or to
11 relinquish and consent to the adoption, the biological father must
12 contact the undersigned agency or attorney representing the biological
13 mother, and that if he wishes to object to the adoption and seek custody
14 of the child he should seek legal counsel from his own attorney
15 immediately; and

16 (7) That if he is the biological father and if the child is not
17 relinquished for adoption, he has a duty to contribute to the support and
18 education of the child and to the pregnancy-related expenses of the
19 mother and a right to seek a court order for custody, parenting time,
20 visitation, or other access with the child.

21 The agency or attorney representing the biological mother may
22 enclose with the notice a document which is an admission or denial of
23 paternity and a waiver of rights by the biological father, which the
24 biological father may choose to complete, in the form mandated by section
25 43-106, and return to the agency or attorney.

26 Sec. 4. Section 43-104.15, Reissue Revised Statutes of Nebraska, is
27 amended to read:

28 43-104.15 The notification procedure set forth in sections 43-104.12
29 to 43-104.14 shall, whenever possible, be completed prior to a child
30 being placed in an adoptive home. If the information provided in the
31 biological mother's affidavit prepared pursuant to section 43-104.09

1 presents clear evidence that providing notice to a biological father or
2 possible biological father as contemplated in sections 43-104.12 to
3 43-104.14 would be likely to threaten the safety of the biological mother
4 or the child or that conception was the result of sexual assault or
5 incest, notice is not required to be given. If the biological father or
6 possible biological fathers are not given actual or constructive notice
7 prior to the time of placement, the agency or attorney shall give the
8 adoptive parent or parents a statement of legal risk indicating the legal
9 status of the biological father's parental rights as of the time of
10 placement, and the adoptive parent or parents shall sign a statement of
11 legal risk acknowledging his, her, or their acceptance of the placement,
12 notwithstanding the legal risk.

13 Sec. 5. Section 43-104.18, Reissue Revised Statutes of Nebraska, is
14 amended to read:

15 43-104.18 If a petition to finalize an adoption is filed and fails
16 to establish substantial compliance with sections 43-104.08 to 43-104.16,
17 the court shall receive evidence by affidavit of the facts and
18 circumstances of the biological mother's relationship with the biological
19 father or possible biological fathers at the time of conception of the
20 child and at the time of the biological mother's relinquishment and
21 consent to adoption of the child, including any evidence that providing
22 notice to a biological father would be likely to threaten the safety of
23 the biological mother or the child or that the conception was the result
24 of sexual assault or incest. If, under the facts and circumstances
25 presented, the court finds that the agency or attorney representing the
26 biological mother did not exercise due diligence in complying with
27 sections 43-104.08 to 43-104.16, or if the court finds that there is no
28 credible evidence that providing notice to a biological father would be
29 likely to threaten the safety of the biological mother or the child or
30 that the conception was the result of sexual assault or incest, the court
31 shall order the attorney or agency to exercise due diligence in complying

1 with sections 43-104.08 to 43-104.16. If the attorney or agency fails to
2 exercise due diligence in complying with such sections or at any time
3 upon the petition or application of any interested party, the court may
4 appoint a guardian ad litem to represent the interests of the biological
5 father. The guardian ad litem shall be chosen from a qualified pool of
6 local attorneys. The guardian ad litem shall receive reasonable
7 compensation for the representation, the amount to be determined at the
8 discretion of the court.

9 Sec. 6. Section 43-104.19, Reissue Revised Statutes of Nebraska, is
10 amended to read:

11 43-104.19 The guardian ad litem for the biological father shall:

12 (1) Identify the biological father whenever possible;

13 (2) Notify the biological father or possible biological fathers of
14 the proposed relinquishment and consent to adoption of the child and
15 inform the biological father or possible biological fathers of their
16 parental rights and duties with regard to the child;

17 (3) Notify the court if all reasonable attempts to both identify and
18 notify the biological father or possible biological fathers are
19 unsuccessful; and

20 (4) Determine, by deposition, by affidavit, by interview, or through
21 testimony at a hearing, the following: whether the mother was married at
22 the time of conception of the child or at any time thereafter, whether
23 the mother was cohabitating with a man at the time of conception or birth
24 of the child, whether the mother has received support payments or
25 promises of support with respect to the child or in connection with her
26 pregnancy, whether conception was the result of sexual assault or incest,
27 and whether any man has formally or informally acknowledged or declared
28 his possible paternity of the child.

29 Sec. 7. Section 43-108, Reissue Revised Statutes of Nebraska, is
30 amended to read:

31 43-108 The minor child to be adopted, unless such child is over

1 fourteen years of age, and the person or persons desiring to adopt the
2 child must appear in person before the judge at the time of hearing,
3 except that when the petitioners are married ~~husband and wife~~ and one of
4 them is present in court, the court, in its discretion, may accept the
5 affidavit of an absent spouse who is in the armed forces of the United
6 States and it appears to the court the absent spouse will not be able to
7 be present in court for more than a year because of his or her military
8 assignment, which affidavit sets forth that the absent spouse favors the
9 adoption.

10 Sec. 8. Section 43-111, Reissue Revised Statutes of Nebraska, is
11 amended to read:

12 43-111 Except as provided in sections 43-101 and section ~~section~~ 43-106.01
13 and the Nebraska Indian Child Welfare Act, after a decree of adoption has
14 been entered, the natural parents of the adopted child shall be relieved
15 of all parental duties toward and all responsibilities for such child and
16 have no rights over such adopted child or to his or her property by
17 descent and distribution.

18 Sec. 9. Original sections 43-101, 43-104.08, 43-104.13, 43-104.15,
19 43-104.18, 43-104.19, 43-108, and 43-111, Reissue Revised Statutes of
20 Nebraska, are repealed.