

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 868

Introduced by Lathrop, 12.

Read first time January 09, 2020

Committee: Judiciary

- 1 A BILL FOR AN ACT relating to the Parenting Act; to amend section
- 2 43-2939, Reissue Revised Statutes of Nebraska; to change provisions
- 3 relating to mediator duties; and to repeal the original section.
- 4 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 43-2939, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 43-2939 (1) A Parenting Act mediator, including an attorney serving
4 as a parenting plan mediator pursuant to subsection (4) of section
5 43-2938, prior to meeting with the parties in an initial mediation
6 session, shall provide an individual initial screening session with each
7 party to assess the presence of child abuse or neglect, unresolved
8 parental conflict, domestic intimate partner abuse, other forms of
9 intimidation or coercion, or a party's inability to negotiate freely and
10 make informed decisions. If any of these conditions exist, the mediator
11 shall not proceed with the mediation session but shall proceed with a
12 specialized alternative dispute resolution process that addresses safety
13 measures for the parties, if the mediator is on the approved specialized
14 list of an approved mediation center or court conciliation program, or
15 shall refer the parties to a mediator who is so qualified. When public
16 records such as current or expired protection orders, criminal domestic
17 violence cases, and child abuse or neglect proceedings are provided to a
18 mediator, such records shall be considered during the individual initial
19 screening session to determine appropriate dispute resolution methods.
20 The mediator has the duty to determine whether to proceed in joint
21 session, individual sessions, or caucus meetings with the parties in
22 order to address safety and freedom to negotiate. In any mediation or
23 specialized alternative dispute resolution, a mediator has the ongoing
24 duty to assess appropriateness of the process and safety of the process
25 upon the parties.

26 (2) No mediator who represents or has represented one or both of the
27 parties or has had either of the parties as a client as an attorney or a
28 counselor shall mediate the case, unless such services have been provided
29 to both participants and mediation shall not proceed in such cases unless
30 the prior relationship has been disclosed, the role of the mediator has
31 been made distinct from the earlier relationship, and the participants

1 have been given the opportunity to fully choose to proceed. All other
2 potential conflicts of interest shall be disclosed and discussed before
3 the parties decide whether to proceed with that mediator.

4 (3) No mediator who is also a licensed attorney may, after
5 completion of the mediation process, represent either party in the role
6 of attorney in the same matter through subsequent legal proceedings.

7 (4) The mediator shall facilitate the mediation process. Prior to
8 the commencement of mediation, the mediator shall notify the parties
9 that, if the mediator has reasonable cause to believe that a child has
10 been subjected to child abuse or neglect or if the mediator observes a
11 child being subjected to conditions or circumstances which reasonably
12 would result in child abuse or neglect, the mediator is obligated under
13 section 28-711 to report such information to the authorized child abuse
14 and neglect reporting agency and shall report such information unless the
15 information has been previously reported. The mediator shall have access
16 to court files for purposes of mediation under the Parenting Act. The
17 mediator shall be impartial and shall use his or her best efforts to
18 effect an agreement or parenting plan as required under the act. The
19 mediator may interview the child if, in the mediator's opinion, such an
20 interview is necessary or appropriate. The parties shall not bring the
21 child to any sessions with the mediator unless specific arrangements have
22 been made with the mediator in advance of the session. The mediator shall
23 assist the parties in assessing their needs and the best interests of the
24 child involved in the proceeding and may include other persons in the
25 mediation process as necessary or appropriate. The mediator shall advise
26 the parties that they should consult with an attorney.

27 (5) The mediator may terminate mediation if one or more of the
28 following conditions exist:

29 (a) There is no reasonable possibility that mediation will promote
30 the development of an effective parenting plan;

31 (b) Allegations are made of direct physical or significant emotional

1 harm to a party or to a child that have not been heard and ruled upon by
2 the court; or

3 (c) Mediation will otherwise fail to serve the best interests of the
4 child.

5 (6) Until July 1, 2010, either party may terminate mediation at any
6 point in the process. On and after July 1, 2010, a party may not
7 terminate mediation until after an individual initial screening session
8 and one mediation or specialized alternative dispute resolution session
9 are held. The session after the individual initial screening session
10 shall be an individual specialized alternative dispute resolution session
11 if the screening indicated the existence of any condition specified in
12 subsection (1) of this section.

13 Sec. 2. Original section 43-2939, Reissue Revised Statutes of
14 Nebraska, is repealed.