

LEGISLATURE OF NEBRASKA

ONE HUNDRED THIRD LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 380

Introduced by Howard, 9; Ashford, 20; Avery, 28; Conrad, 46; Harr,
8; McGill, 26; Nordquist, 7.

Read first time January 18, 2013

Committee: Judiciary

A BILL

1 FOR AN ACT relating to adoption; to amend sections 43-101, 43-104.08,
2 43-104.13, 43-104.15, 43-104.18, 43-104.19, and 43-111,
3 Reissue Revised Statutes of Nebraska; to provide for
4 adoption by two adult persons jointly; to harmonize
5 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
2 Nebraska, is amended to read:

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

18 (2) Any adult child may be adopted by any person or two
19 persons jointly subject to sections 43-101 to 43-115, except that no
20 person having a husband or wife may adopt an adult child unless the
21 husband or wife joins in the petition therefor. If the husband or
22 wife so joins the petition therefor, the adoption shall be by them
23 jointly. The adoption of an adult child by another adult or adults
24 who are not the stepparent of the adult child may be permitted if the
25 adult child has had a parent-child relationship with the prospective

1 parent or parents for a period of at least six months next preceding
2 the adult child's age of majority and (a) the adult child has no
3 living parents, (b) the adult child's parent or parents had been
4 deprived of parental rights to such child by the order of any court
5 of competent jurisdiction, (c) the parent or parents, if living, have
6 relinquished the adult child for adoption by a written instrument,
7 (d) the parent or parents had abandoned the child for at least six
8 months next preceding the adult child's age of majority, or (e) the
9 parent or parents are incapable of consenting. The substitute consent
10 provisions of section 43-105 do not apply to adoptions under this
11 subsection.

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

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

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

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

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

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

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

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

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

25 (6) That to deny paternity, to waive his parental rights,

1 or to relinquish and consent to the adoption, the biological father
2 must contact the undersigned agency or attorney representing the
3 biological mother, and that if he wishes to object to the adoption
4 and seek custody of the child he should seek legal counsel from his
5 own attorney immediately; and

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

11 The agency or attorney representing the biological mother
12 may enclose with the notice a document which is an admission or
13 denial of paternity and a waiver of rights by the biological father,
14 which the biological father may choose to complete, in the form
15 mandated by section 43-106, and return to the agency or attorney.

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

18 43-104.15 The notification procedure set forth in
19 sections 43-104.12 to 43-104.14 shall, whenever possible, be
20 completed prior to a child being placed in an adoptive home. If the
21 information provided in the biological mother's affidavit prepared
22 pursuant to section 43-104.09 presents clear evidence that providing
23 notice to a biological father or possible biological father as
24 contemplated in sections 43-104.12 to 43-104.14 would be likely to
25 threaten the safety of the biological mother or the child or that

1 conception was the result of sexual assault or incest, notice is not
2 required to be given. If the biological father or possible biological
3 fathers are not given actual or constructive notice prior to the time
4 of placement, the agency or attorney shall give the adoptive parent
5 or parents a statement of legal risk indicating the legal status of
6 the biological father's parental rights as of the time of placement,
7 and the adoptive parent or parents shall sign a statement of legal
8 risk acknowledging their acceptance of the placement, notwithstanding
9 the legal risk.

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

12 43-104.18 If a petition to finalize an adoption is filed
13 and fails to establish substantial compliance with sections 43-104.08
14 to 43-104.16, the court shall receive evidence by affidavit of the
15 facts and circumstances of the biological mother's relationship with
16 the biological father or possible biological fathers at the time of
17 conception of the child and at the time of the biological mother's
18 relinquishment and consent to adoption of the child, including any
19 evidence that providing notice to a biological father would be likely
20 to threaten the safety of the biological mother or the child or that
21 the conception was the result of sexual assault or incest. If, under
22 the facts and circumstances presented, the court finds that the
23 agency or attorney representing the biological mother did not
24 exercise due diligence in complying with sections 43-104.08 to
25 43-104.16, or if the court finds that there is no credible evidence

1 that providing notice to a biological father would be likely to
2 threaten the safety of the biological mother or the child or that the
3 conception was the result of sexual assault or incest, the court
4 shall order the attorney or agency to exercise due diligence in
5 complying with sections 43-104.08 to 43-104.16. If the attorney or
6 agency fails to exercise due diligence in complying with such
7 sections or at any time upon the petition or application of any
8 interested party the court may appoint a guardian ad litem to
9 represent the interests of the biological father. The guardian ad
10 litem shall be chosen from a qualified pool of local attorneys. The
11 guardian ad litem shall receive reasonable compensation for the
12 representation, the amount to be determined at the discretion of the
13 court.

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

16 43-104.19 The guardian ad litem for the biological father
17 shall:

18 (1) Identify the biological father whenever possible;

19 (2) Notify the biological father or possible biological
20 fathers of the proposed relinquishment and consent to adoption of the
21 child and inform the biological father or possible biological fathers
22 of their parental rights and duties with regard to the child;

23 (3) Notify the court if all reasonable attempts to both
24 identify and notify the biological father or possible biological
25 fathers are unsuccessful; and

1 (4) Determine, by deposition, by affidavit, by interview,
2 or through testimony at a hearing, the following: Whether the mother
3 was married at the time of conception of the child or at any time
4 thereafter, whether the mother was cohabitating with a man at the
5 time of conception or birth of the child, whether the mother has
6 received support payments or promises of support with respect to the
7 child or in connection with her pregnancy, whether conception was the
8 result of sexual assault or incest, and whether any man has formally
9 or informally acknowledged or declared his possible paternity of the
10 child.

11 Sec. 7. Section 43-111, Reissue Revised Statutes of
12 Nebraska, is amended to read:

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

19 Sec. 8. Original sections 43-101, 43-104.08, 43-104.13,
20 43-104.15, 43-104.18, 43-104.19, and 43-111, Reissue Revised Statutes
21 of Nebraska, are repealed.