

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

SECOND SESSION

LEGISLATIVE BILL 768

Introduced by Howard, 9.

Read first time January 04, 2012

Committee: Judiciary

A BILL

1 FOR AN ACT relating to adoption; to amend sections 43-107, 43-109,
2 and 43-146.01, Revised Statutes Supplement, 2011; to
3 change provisions relating to access to the case file; to
4 harmonize provisions; and to repeal the original
5 sections.
6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 43-107, Revised Statutes Supplement,
2 2011, is amended to read:

3 43-107 (1)(a) For adoption placements occurring or in
4 effect prior to January 1, 1994, upon the filing of a petition for
5 adoption, the county judge shall, except in the adoption of children
6 by stepparents when the requirement of an investigation is
7 discretionary, request the Department of Health and Human Services or
8 any child placement agency licensed by the department to examine the
9 allegations set forth in the petition and to ascertain any other
10 facts relating to such minor child and the person or persons
11 petitioning to adopt such child as may be relevant to the propriety
12 of such adoption, except that the county judge shall not be required
13 to request such an examination if the judge determines that
14 information compiled in a previous examination or study is
15 sufficiently current and comprehensive. Upon the request being made,
16 the department or other licensed agency shall conduct an
17 investigation and report its findings to the county judge in writing
18 at least one week prior to the date set for hearing.

19 (b)(i) For adoption placements occurring on or after
20 January 1, 1994, a preplacement adoptive home study shall be filed
21 with the court prior to the hearing required in section 43-103, which
22 study is completed by the Department of Health and Human Services or
23 a licensed child placement agency within one year before the date on
24 which the adoptee is placed with the petitioner or petitioners and
25 indicates that the placement of a child for the purpose of adoption

1 would be safe and appropriate.

2 (ii) An adoptive home study shall not be required when
3 the petitioner is a stepparent of the adoptee unless required by the
4 court, except that for petitions filed on or after January 1, 1994,
5 the judge shall order the petitioner or his or her attorney to
6 request the Nebraska State Patrol to file a national criminal history
7 record information check and to request the department to conduct and
8 file a check of the central register created in section 28-718 for
9 any history of the petitioner of behavior injurious to or which may
10 endanger the health or morals of a child. An adoption decree shall
11 not be issued until such records are on file with the court. The
12 petitioner shall pay the cost of the national criminal history record
13 information check and the check of the central register.

14 (iii) The placement of a child for foster care made by or
15 facilitated by the department or a licensed child placement agency in
16 the home of a person who later petitions the court to adopt the child
17 shall be exempt from the requirements of a preplacement adoptive home
18 study. The petitioner or petitioners who meet such criteria shall
19 have a postplacement adoptive home study completed by the department
20 or a licensed child placement agency and filed with the court at
21 least one week prior to the hearing for adoption.

22 (iv) A voluntary placement for purposes other than
23 adoption made by a parent or guardian of a child without assistance
24 from an attorney, physician, or other individual or agency which
25 later results in a petition for the adoption of the child shall be

1 exempt from the requirements of a preplacement adoptive home study.
2 The petitioner or petitioners who meet such criteria shall have a
3 postplacement adoptive home study completed by the department or a
4 licensed child placement agency and filed with the court at least one
5 week prior to the hearing for adoption.

6 (v) The adoption of an adult child as provided in
7 subsection (2) of section 43-101 shall be exempt from the
8 requirements of an adoptive home study unless the court specifically
9 orders otherwise. The court may order an adoptive home study, a
10 background investigation, or both if the court determines that such
11 would be in the best interests of the adoptive party or the person to
12 be adopted.

13 (vi) Any adoptive home study required by this section
14 shall be conducted by the department or a licensed child placement
15 agency at the expense of the petitioner or petitioners unless such
16 expenses are waived by the department or licensed child placement
17 agency. The department or licensed agency shall determine the fee or
18 rate for the adoptive home study.

19 (vii) The preplacement or postplacement adoptive home
20 study shall be performed as prescribed in rules and regulations of
21 the department and shall include at a minimum an examination into the
22 facts relating to the petitioner or petitioners as may be relevant to
23 the propriety of such adoption. Such rules and regulations shall
24 require an adoptive home study to include a national criminal history
25 record information check and a check of the central register created

1 in section 28-718 for any history of the petitioner or petitioners of
2 behavior injurious to or which may endanger the health or morals of a
3 child.

4 (2) Upon the filing of a petition for adoption, the judge
5 shall require that a complete medical history be provided on the
6 child, except that in the adoption of a child by a stepparent the
7 provision of a medical history shall be discretionary. On and after
8 August 27, 2011, the complete medical history or histories required
9 under this subsection shall include the race, ethnicity, nationality,
10 Indian tribe when applicable and in compliance with the Nebraska
11 Indian Child Welfare Act, or other cultural history of both
12 biological parents, if available. A medical history shall be
13 provided, if available, on the biological mother and father and their
14 biological families, including, but not limited to, siblings,
15 parents, grandparents, aunts, and uncles, unless the child is foreign
16 born or was abandoned. The medical history or histories shall be
17 reported on a form provided by the department and filed along with
18 the report of adoption as provided by section 71-626. If the medical
19 history or histories do not accompany the report of adoption, the
20 department shall inform the court and the State Court Administrator.
21 The medical history or histories shall be made part of the court
22 record. After the entry of a decree of adoption, the court shall
23 retain a copy and forward the original medical history or histories
24 to the department. This subsection shall only apply when the
25 relinquishment or consent for an adoption is given on or after

1 September 1, 1988.

2 (3) After the filing of a petition for adoption and
3 before the entry of a decree of adoption for a child who is committed
4 to the Department of Health and Human Services, the person or persons
5 petitioning to adopt the child shall be given the opportunity to read
6 the case file on the child maintained by the department or its duly
7 authorized agent. The department shall not include in the case file
8 to be read any information or documents that the department
9 determines cannot be released based upon state statute, federal
10 statute, federal rule, or federal regulation. The department shall
11 provide a document for such person's or persons' signatures verifying
12 that he, she, or they have been given an opportunity to read the case
13 file and are aware that he, she, or they can review the child's file
14 at any time following finalization of the adoption upon making a
15 written request to the department. The department shall file such
16 document with the court prior to the entry of a decree of adoption in
17 the case. ~~This subsection shall only apply to adoptions when the~~
18 ~~petition for adoption is filed on or after August 27, 2011.~~

19 Sec. 2. Section 43-146.01, Revised Statutes Supplement,
20 2011, is amended to read:

21 43-146.01 (1) Sections 43-106.02, 43-121, 43-123.01, and
22 43-146.02 to 43-146.16 shall provide the procedures for gaining
23 access to information concerning an adopted person when a
24 relinquishment or consent for an adoption is given on or after
25 September 1, 1988.

1 (2) Sections 43-119 to 43-142 shall remain in effect for
2 a relinquishment or consent for an adoption which is given prior to
3 September 1, 1988.

4 (3) Except as otherwise provided in ~~subsections (2) and~~
5 ~~(3)~~ subsection (2) of section 43-107, subdivisions (1)(b), (1)(c),
6 and (1)(d) of section 43-109, and subsection (4) of this section:
7 Sections 43-101 to 43-118, 43-143 to 43-146, 43-146.17, 71-626,
8 71-626.01, and 71-627.02 shall apply to all adoptions.

9 (4) Sections 43-143 to 43-146 shall not apply to adopted
10 persons for whom a relinquishment or consent for adoption was given
11 on and after July 20, 2002.

12 Sec. 3. Section 43-109, Revised Statutes Supplement,
13 2011, is amended to read:

14 43-109 (1) If, upon the hearing, the court finds that
15 such adoption is for the best interests of such minor child or such
16 adult child, a decree of adoption shall be entered. No decree of
17 adoption shall be entered unless (a) it appears that the child has
18 resided with the person or persons petitioning for such adoption for
19 at least six months next preceding the entering of the decree of
20 adoption, except that such residency requirement shall not apply in
21 an adoption of an adult child, (b) the medical histories required by
22 subsection (2) of section 43-107 have been made a part of the court
23 record, (c) the court record includes an affidavit or affidavits
24 signed by the relinquishing biological parent, or parents if both are
25 available, in which it is affirmed that, pursuant to section

1 43-106.02, prior to the relinquishment of the child for adoption, the
2 relinquishing parent was, or parents if both are available were, (i)
3 presented a copy or copies of the nonconsent form provided for in
4 section 43-146.06 and (ii) given an explanation of the effects of
5 filing or not filing the nonconsent form, and (d) if the child to be
6 adopted is committed to the Department of Health and Human Services,
7 the document required by subsection (3) of section 43-107 is a part
8 of the court record. Subdivisions (b) and (c) of this subsection
9 shall only apply when the relinquishment or consent for an adoption
10 is given on or after September 1, 1988. ~~Subdivision (d) of this~~
11 ~~subsection shall only apply when the petition for adoption is filed~~
12 ~~on or after August 27, 2011.~~

13 (2) If the adopted child was born out of wedlock, that
14 fact shall not appear in the decree of adoption.

15 (3) The court may decree such change of name for the
16 adopted child as the petitioner or petitioners may request.

17 Sec. 4. Original sections 43-107, 43-109, and 43-146.01,
18 Revised Statutes Supplement, 2011, are repealed.