

LEGISLATIVE BILL 372

Approved by the Governor February 8, 1988

Introduced by Conway, 17

AN ACT relating to adoption; to amend sections 43-107, 43-119, 43-129, and 71-626.01, Reissue Revised Statutes of Nebraska, 1943, and sections 43-109 and 43-113, Revised Statutes Supplement, 1986; to provide requirements for adoptions; to require medical histories as prescribed; to provide certain forms; to provide access to certain information as prescribed; to provide procedures; to provide for fees and rules and regulations; to define a term; to correct an internal reference; to harmonize provisions; to provide an operative date; and to repeal the original sections.

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

Section 1. That section 43-107, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

43-107. (1) Upon the filing of a petition for adoption, the county judge shall, except in the adoption of children by stepparents when the requirement of an investigation is discretionary, request the Department of Social Services, or any child placement agency licensed by ~~said the~~ department, to examine into the allegations set forth in the petition and to ascertain any other facts, relating to such minor child and the person or persons petitioning to adopt such child, as may be relevant to the propriety of such adoption, except that the county judge shall not be required to request such an examination if the judge determines that information compiled in a previous examination or study is sufficiently current and comprehensive. Upon the request being made, the Department of Social Services or other licensed agency shall conduct an investigation and report its findings to the county judge in writing at least one week prior to the date set for hearing.

(2) Upon the filing of a petition for adoption, the county judge shall require that a complete medical history be provided on the child and, if available, on the biological mother and father unless the child is foreign born or was abandoned. The medical history or histories shall be made part of the court

record and a copy of the medical history or histories shall be forwarded by the county court to the Bureau of Vital Statistics of the Department of Health. This subsection shall only apply to petitions filed on or after September 1, 1988.

Sec. 2. That section 43-109, Revised Statutes Supplement, 1986, be amended to read as follows:

43-109. (1) If, upon the hearing, the court ~~shall find~~ finds that such adoption is for the best interests of such minor child or such adult child of the adopting person's spouse, a decree of adoption shall be entered. No decree of adoption shall be entered unless (a) ~~it shall appear~~ appears that the child has resided with the person or persons petitioning for such adoption for at least six months next preceding the entering of the decree of adoption, except that such residency requirement shall not apply in an adoption of an adult child of the adopting person's spouse, (b) the medical histories required by subsection (2) of section 43-107 have been made a part of the court record and have been forwarded by the county court to the Bureau of Vital Statistics of the Department of Health, and (c) the court record includes an affidavit or affidavits signed by the relinquishing biological parent, or parents if both are available, in which it is affirmed that, pursuant to section 3 of this act, prior to the relinquishment of the child for adoption, the relinquishing parent was, or parents if both are available were, (i) presented a copy or copies of the nonconsent form provided for in section 11 of this act and (ii) given an explanation of the effects of filing or not filing the nonconsent form. Subdivisions (b) and (c) of this subsection shall only apply to decrees of adoption entered on or after September 1, 1988.

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

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

Sec. 3. Prior to the relinquishment of a child for adoption, a representative of the Department of Social Services or of any child placement agency licensed by the department or an attorney and a witness shall present a copy or copies of the nonconsent form as provided in section 11 of this act to the relinquishing parent or parents and explain the effects of signing such form.

Sec. 4. That section 43-113, Revised Statutes

Supplement, 1986, be amended to read as follows:

43-113. Except as otherwise provided in the Nebraska Indian Child Welfare Act, all papers pertaining to the adoption shall be kept by the county judge as a permanent record of the county court and withheld from inspection. No person shall have access to such records except on the order of the county judge of the court in which the decree of adoption was entered on good cause shown or as provided in sections 43-138 to 43-140 or sections 16 to 18 of this act.

Sec. 5. That section 43-119, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

43-119. For purposes of sections 43-120 to 43-146 and sections 6 to 21 of this act, unless the context otherwise requires, the definitions found in sections 43-120 to 43-123 and section 22 of this act shall be used.

Sec. 6. Sections 3 and 7 to 22 of this act shall provide the procedures for gaining access to information concerning adopted persons placed for adoption on or after September 1, 1988. Sections 43-119 to 43-142 shall remain in effect for persons placed for adoption prior to September 1, 1988. Except as otherwise provided in subsection (2) of section 43-107 and subdivisions (1)(b) and (1)(c) of section 43-109, sections 43-101 to 43-118, 43-143 to 43-146, 71-626, 71-626.01, and 71-627.02 shall apply to all adoptions.

Sec. 7. A child placement agency, the department, or a private agency handling the adoption, as the case may be, shall maintain and shall provide to the adopting parents upon placement of the person with such parents and to the adopted person, upon his or her request, the available medical history of the person placed for adoption and of the biological parents. The medical history shall not include the names of the biological parents of the adopted person or any other identifying information.

Sec. 8. If at any time an individual licensed to practice medicine and surgery pursuant to sections 71-1,102 to 71-1,107.14 or certified as qualified to practice clinical psychology pursuant to sections 71-1,222 to 71-1,226, through his or her professional relationship with an adopted person, determines that information contained on the original birth certificate of the adopted person may be necessary for the treatment of the health of the adopted person, whether physical or mental in nature, he or she may petition a court of competent jurisdiction for the release of the

information contained on the original birth certificate, and the court may release the information on good cause shown.

Sec. 9. An adopted person twenty-one years of age or older born in this state who desires access to the names of relatives or access to his or her original certificate of birth shall file a written request for such information with the bureau. The bureau shall provide a form for making such request.

Sec. 10. (1) Upon receipt of a request for information made under section 9 of this act, the bureau shall check the records of the adopted person to determine whether an unrevoked nonconsent form is on file from a biological parent pursuant to section 11 of this act.

(2) If no nonconsent form has been filed pursuant to section 11 of this act, the following information shall be released to the adopted person:

(a) The name and address of the court which issued the adoption decree;

(b) The name and address of the child placement agency, if any, involved in the adoption;

(c) The fact that an agency or the department may assist the adopted person in searching for relatives as provided in sections 15 to 19 of this act;

(d) A copy of the person's original birth certificate; and

(e) A copy of the person's medical history and any medical records on file.

(3) If an unrevoked nonconsent form has been filed pursuant to section 11 of this act, no information may be released to the adopted person except a copy of the person's medical history as provided in section 43-107 if requested. The medical history shall not include the names of the biological parents or relatives of the adopted person or any other identifying information.

Sec. 11. A biological parent may at any time file a notice of nonconsent with the bureau stating that at no time prior to his or her death may any information on the adopted person's original birth certificate or any other identifying information, except medical histories as provided in section 43-107, be released to such adopted person. Failure by a biological parent to sign the notice of nonconsent shall be deemed a notice of consent by such parent to release the adopted person's original birth certificate to such adopted person.

Sec. 12. The nonconsent form provided for in

section 11 of this act shall be designed by the bureau and shall contain the following information:

(1) The name of the person completing the form and, if different, the name of such person at the time of birth of the adopted person;

(2) The relationship of the person to the adopted person;

(3) The date of birth of the adopted person;

(4) The sex of the adopted person;

(5) The place of birth of the adopted person;

(6) A statement that no information contained in the original birth certificate or any other identifying information, except medical histories as provided in section 43-107, shall be released prior to the death of the parent signing the form;

(7) A statement that the person signing understands the effect and consequences of filing or not filing a nonconsent form; and

(8) A notice in the following form:

IMPORTANT NOTICE

You do not have to sign this form. If you do sign it, you are entitled to a copy of it. Your signature on this form means that the Bureau of Vital Statistics will not disclose any information contained in the original birth certificate of the adopted person or any other identifying information to any person prior to your death without a court order. If you later decide that you do not object to the release of such information, you may file a form stating that purpose.

Sec. 13. At any time after signing the notice of nonconsent provided for in section 11 of this act, the biological parent may revoke such notice. A form of revocation shall be provided by the bureau and shall take effect at the time of filing of the form with the bureau. The revocation form shall contain the following notice:

IMPORTANT NOTICE

You do not have to sign this form. If you do sign it, you are entitled to a copy of it. Your signature on this form means that the Bureau of Vital Statistics may at any time disclose to the adopted person any information contained on the original birth certificate of the adopted person.

Sec. 14. If the bureau has verified information indicating that both biological parents of the adopted person are deceased or if only one biological parent is known and verified information indicates that such parent is deceased, all information on the adopted person's original birth certificate

regarding such deceased parent or parents shall be released to the adopted person upon request. The bureau shall establish a policy for verifying information about the death of the biological parent or parents.

Sec. 15. If an adopted person twenty-one years of age or older, after following the procedures set forth in sections 9 and 10 of this act, is unable to obtain information about the adopted person's relatives and there is no unrevoked nonconsent form as provided in section 11 of this act on file with the bureau, such person may then contact the child placement agency which handled the adoption or the department.

Sec. 16. After being contacted by an adopted person as provided in section 15 of this act, the department or agency, as the case may be, shall verify with the bureau that no unrevoked nonconsent form is on file. If an unrevoked nonconsent form is not on file, the department or agency, as the case may be, shall apply to the clerk of the county court which issued the adoption decree or the bureau for any information in the court or bureau records regarding the names and locations of the relatives of the adopted person. Any information which is available shall be given by the court or bureau only to the department or agency. The department or agency shall keep such information confidential.

Sec. 17. If the clerk of the court or the bureau provides any information to the department or agency, the person providing the information shall record in the records of the adopted person the nature of the information disclosed, to whom the information was disclosed, and the date of the disclosure.

Sec. 18. (1) Upon determining the identity and location of the relative being sought, the department or agency shall attempt to contact the relative to determine such relative's willingness to be contacted by the adopted person.

(2) Information about the relative shall not be released to the adopted person by the department or agency unless such relative agrees to be contacted by the adopted person.

Sec. 19. The department or agency may charge such reasonable fees as are necessary to recover expenses in carrying out sections 15 to 18 of this act. The department may adopt and promulgate rules and regulations necessary to carry out sections 6 to 22 of this act.

Sec. 20. The department or an agency which receives information as provided in section 16 of this

act shall file a written report with the clerk of the court or bureau within nine months of receipt of the information. The report shall indicate whether the relative has been located and whether a contact between the relative and the adopted person has been arranged or has occurred. If the relative has not been located, the report shall set forth the efforts made to identify and locate the relative.

Sec. 21. The forms provided by sections 11 and 13 of this act shall be notarized and filed with the bureau which shall keep such forms with all other records of the adopted person.

Sec. 22. Medical history shall mean medical history as defined by the Department of Health in its rules and regulations.

Sec. 23. That section 43-129, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

43-129. If at any time an individual licensed to practice medicine and surgery pursuant to sections 71-1,102 to ~~71-1,107-04~~ 71-1,107.14 or certified as qualified to practice clinical psychology pursuant to sections ~~71-3832 to 71-3836~~ 71-1,222 to 71-1,226, through his or her professional relationship with an adopted person, determines that information contained on the original birth certificate of the adopted person may be necessary for the treatment of the health of the adopted person, whether physical or mental in nature, he or she may petition a court of competent jurisdiction for the release of the information contained on the original birth certificate, and the court may release the information on good cause shown.

Sec. 24. That section 71-626.01, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-626.01. (1) The Bureau of Vital Statistics, Department of Health, shall establish a new certificate of birth for a person born in the State of Nebraska, whenever it receives any of the following: **except as hereafter provided:**

(a) A report of adoption as provided in section 71-626 on a form supplied by the Bureau of Vital Statistics, Department of Health, or a certified copy of the decree of adoption together with the information required in such report, except **PROVIDED**, that a new certificate of birth shall not be established if so requested in writing by the court decreeing the adoption, the adoptive parents, or the adopted person; or

(b) A report of adoption or a certified copy of the decree of adoption entered in a court of competent jurisdiction of any other state or nation declaring adopted a person born in the State of Nebraska, together with the information necessary to identify the original certificate of birth and to establish the new certificate of birth, except that a new certificate of birth shall not be established when so requested by the court decreeing the adoption, the adoptive parents, or the adopted person.

(2) The new certificate of birth for a person born in the State of Nebraska shall be on the form in use at the time of its preparation and shall include the following items in addition to such other information as may be necessary to complete the form:

- (a) The adoptive name of the person;
- (b) The names and personal particulars of the adoptive parents;
- (c) The date and place of birth as transcribed from the original certificate;
- (d) The name of the attendant, printed or typed;
- (e) The same birth number as was assigned to the original certificate; and
- (f) The original filing date.

The data necessary to locate the existing certificate and the data necessary to complete the new certificate shall be submitted to the Bureau of Vital Statistics.

(3) When an adoptive certificate of birth is established, the actual place of birth and date of birth shall be shown. It shall be substituted for the original certificate of birth. Thereafter, the original certificate and the evidence of adoption shall not be subject to inspection except (a) upon order of a court of competent jurisdiction, ~~(b) or~~ as provided in sections 43-138 to 43-140, (c) as provided in sections 16 to 18 of this act, or (d) as provided by regulation rules and regulations of the Department of Health. Upon receipt of notice that an adoption has been set aside, the original certificate of birth shall be restored to its place in the files and the new certificate and evidence shall not be subject to inspection except upon order of a court of competent jurisdiction.

(4) Whenever a new certificate of birth is established by the Bureau of Vital Statistics, Department of Health, all copies of the original certificate of birth in the custody of any custodian of permanent local records in this state shall be sealed

from inspection.

(5) The Department of Health may adopt and promulgate such rules and regulations as are necessary and proper to assist it in the implementation and administration of section 71-626 and this section.

Sec. 25. This act shall become operative on September 1, 1988.

Sec. 26. That original sections 43-107, 43-119, 43-129, and 71-626.01, Reissue Revised Statutes of Nebraska, 1943, and sections 43-109 and 43-113, Revised Statutes Supplement, 1986, are repealed.