

## LEGISLATIVE BILL 205

Approved by the Governor March 30, 1993

Introduced by Rasmussen, 20; Schimek, 27

AN ACT relating to adoption; to amend sections 43-138, 43-139, 43-141, 43-146.11, 43-146.12, and 43-146.14, Reissue Revised Statutes of Nebraska, 1943; to change provisions relating to obtaining information on an adopted person and fees for such information; to provide for the transfer of certain records; to provide for communication agreements as prescribed; to provide for civil actions; and to repeal the original sections.

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

Section 1. That section 43-138, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

43-138. After being contacted by an adopted person, if no valid nonconsent form, as provided in section 43-132 or 43-143, is 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~~ records of the court or the bureau regarding the ~~names and locations of the relatives of the adopted person or his or her relatives, including names, locations, and any birth, marriage, divorce, or death certificates.~~ Any information which is available shall be given only to the department or agency. The department or agency shall keep such information confidential and shall not disclose it either directly or indirectly to the adopted person. The provisions of this section shall not apply to persons subject to the Nebraska Indian Child Welfare Act.

Sec. 2. That section 43-139, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

43-139. ~~If the clerk of the court provides~~ When any information is provided to the department or agency pursuant to section 43-138, the ~~clerk~~ 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. 3. That section 43-141, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

43-141. The department or agency may charge ~~such fees as are necessary~~ a reasonable fee in an amount established by the department or agency in rules and regulations to recover expenses in carrying out sections 43-137 to 43-140. The department or agency shall use the fees to defray costs incurred to carry out such sections. The department or agency may waive the fee if the requesting party shows that the fee would work an undue financial hardship on the party. The department may adopt and promulgate rules and regulations to carry out

such sections.

Sec. 4. That section 43-146.11, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

43-146.11. After being contacted by an adopted person as provided in section 43-146.10, 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 adopted person or his or her relatives, including names, and locations, and any birth, marriage, divorce, or death certificates. ~~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. 5. That section 43-146.12, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

43-146.12. ~~If the clerk of the court or the bureau provides~~ When any information is provided to the department or agency pursuant to section 43-146.11, 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. 6. That section 43-146.14, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

43-146.14. The department or agency may charge ~~such reasonable fees as are necessary~~ a reasonable fee in an amount established by the department or agency in rules and regulations to recover expenses in carrying out sections 43-146.10 to 43-146.13. The department or agency shall use the fees to defray costs incurred to carry out such sections. The department or agency may waive the fee if the requesting party shows that the fee would work an undue financial hardship on the party. The department may adopt and promulgate rules and regulations ~~necessary~~ to carry out sections 43-123.01 and 43-146.01 to 43-146.16.

Sec. 7. The Department of Public Institutions shall transfer all client records from the Nebraska Industrial Home at Milford to the Department of Social Services. These records shall be maintained by the Department of Social Services as confidential records but shall be accessible as provided by statute or by the rules and regulations of the Department of Social Services. The Department of Public Institutions and the Department of Health shall have complete access to these records without restriction.

Sec. 8. The prospective adoptive parent or parents and the birth parent or parents of a prospective adoptee may enter into an agreement regarding communication or contact after the adoption between or among the prospective adoptee and his or her birth parent or parents if the prospective adoptee is in the custody of the Department of Social

Services. Any such agreement shall not be enforceable unless approved by the county court pursuant to section 9 of this act.

Sec. 9. (1) Before approving an agreement under section 8 of this act, the county court shall appoint a guardian ad litem if the prospective adoptee is not already represented by a guardian ad litem, and the guardian ad litem of the prospective adoptee shall represent the best interests of the child concerning such agreement. The county court may enter an order approving the agreement upon motion of one of the prospective adoptee's birth parents or one of the prospective adoptive parents if the terms of the agreement are approved in writing by the prospective adoptive parent or parents and the birth parent or parents and if the court finds, after consideration of the recommendations of the guardian ad litem and the Department of Social Services and other factors, that such communication with the birth parent or parents and the maintenance of birth family history would be in the best interests of the prospective adoptee.

(2) In determining if the agreement is in the best interests of the prospective adoptee, the county court shall consider the following factors as favoring communication with the birth parent or parents: Whether the prospective adoptee and birth parent or parents lived together for a substantial period of time; the prospective adoptee exhibits attachment or bonding to such birth parent or parents; and the adoption is a foster-parent adoption with the birth parent or parents having relinquished the prospective adoptee due to an inability to provide him or her with adequate parenting.

Sec. 10. Failure to comply with the terms of an order entered pursuant to section 9 of this act shall not be grounds for setting aside an adoption decree, for revocation of a written consent to adoption after the consent has been approved by the county court, or for revocation of a relinquishment of parental rights after the relinquishment has been accepted in writing by the Department of Social Services as provided in section 43-106.01.

Sec. 11. An order entered pursuant to section 9 of this act may be enforced by a civil action, and the prevailing party may be awarded, as part of the costs of the action, reasonable attorney's fees. The court shall not modify an order issued under such section unless it finds that the modification is necessary to serve the best interests of the adoptee and (1) that the modification is agreed to by the adoptive parent or parents and the birth parent or parents or (2) exceptional circumstances have arisen since the order was entered that justify modification of the order.

Sec. 12. That original sections 43-138, 43-139, 43-141, 43-146.11, 43-146.12, and 43-146.14, Reissue Revised Statutes of Nebraska, 1943, are repealed.