

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

FIRST SESSION

**LEGISLATIVE BILL 94**

Final Reading

Introduced by Howard, 9; Christensen, 44; Cook, 13; Cornett, 45;  
McGill, 26; Wallman, 30; Dubas, 34.

Read first time January 06, 2011

Committee: Judiciary

A BILL

1 FOR AN ACT relating to adoption; to amend sections 43-107, 43-109,  
2 and 43-146.01, Reissue Revised Statutes of Nebraska; to  
3 provide a requirement for the adoption of children  
4 committed to the Department of Health and Human Services;  
5 to harmonize provisions; and to repeal the original  
6 sections.

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

1           Section 1. Section 43-107, Reissue Revised Statutes of  
2 Nebraska, 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. A medical  
8 history shall be provided, if available, on the biological mother and  
9 father and their biological families, including, but not limited to,  
10 siblings, parents, grandparents, aunts, and uncles, unless the child  
11 is foreign born or was abandoned. The medical history or histories  
12 shall be reported on a form provided by the department and filed  
13 along with the report of adoption as provided by section 71-626. If  
14 the medical history or histories do not accompany the report of  
15 adoption, the department shall inform the court and the State Court  
16 Administrator. The medical history or histories shall be made part of  
17 the court record. After the entry of a decree of adoption, the court  
18 shall retain a copy and forward the original medical history or  
19 histories to the department. This subsection shall only apply when  
20 the relinquishment or consent for an adoption is given on or after  
21 September 1, 1988.

22 (3) After the filing of a petition for adoption and  
23 before the entry of a decree of adoption for a child who is committed  
24 to the Department of Health and Human Services, the person or persons  
25 petitioning to adopt the child shall be given the opportunity to read

1 the case file on the child maintained by the department or its duly  
2 authorized agent. The department shall not include in the case file  
3 to be read any information or documents that the department  
4 determines cannot be released based upon state statute, federal  
5 statute, federal rule, or federal regulation. The department shall  
6 provide a document for such person's or persons' signatures verifying  
7 that he, she, or they have been given an opportunity to read the case  
8 file and are aware that he, she, or they can review the child's file  
9 at any time following finalization of the adoption upon making a  
10 written request to the department. The department shall file such  
11 document with the court prior to the entry of a decree of adoption in  
12 the case. This subsection shall only apply to adoptions when the  
13 petition for adoption is filed on or after the effective date of this  
14 act.

15           Sec. 2. Section 43-109, Reissue Revised Statutes of  
16 Nebraska, is amended to read:

17           43-109 (1) If, upon the hearing, the court finds that  
18 such adoption is for the best interests of such minor child or such  
19 adult child, a decree of adoption shall be entered. No decree of  
20 adoption shall be entered unless (a) it appears that the child has  
21 resided with the person or persons petitioning for such adoption for  
22 at least six months next preceding the entering of the decree of  
23 adoption, except that such residency requirement shall not apply in  
24 an adoption of an adult child, (b) the medical histories required by  
25 subsection (2) of section 43-107 have been made a part of the court

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

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

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

20 Sec. 3. Section 43-146.01, Reissue Revised Statutes of  
21 Nebraska, is amended to read:

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

1 September 1, 1988.

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

5 (3) Except as otherwise provided in ~~subsection (2)~~  
6 subsections (2) and (3) of section 43-107, subdivisions (1)(b), ~~and~~  
7 (1)(c), and (1)(d) of section 43-109, and subsection (4) of this  
8 section: Sections 43-101 to 43-118, 43-143 to 43-146, 43-146.17,  
9 71-626, 71-626.01, and 71-627.02 shall apply to all adoptions.

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

13 Sec. 4. Original sections 43-107, 43-109, and 43-146.01,  
14 Reissue Revised Statutes of Nebraska, are repealed.