

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIFTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 845

Introduced by Briese, 41.

Read first time January 05, 2018

Committee: Judiciary

- 1 A BILL FOR AN ACT relating to custody; to state findings and intent; to
- 2 define terms; to provide for supportive services for parents with
- 3 disabilities or prospective parents with disabilities with respect
- 4 to custody as prescribed.
- 5 Be it enacted by the people of the State of Nebraska,

1 Section 1. The Legislature finds that:

2 (1) Individuals with disabilities continue to face unfair,
3 preconceived, and unnecessary societal biases as well as antiquated
4 attitudes regarding their ability to successfully parent their children;

5 (2) Individuals with disabilities face these biases and antiquated
6 attitudes in family law proceedings where custody is at stake;

7 (3) Because of these societal biases and antiquated attitudes,
8 children of parents with a disability are unnecessarily being removed
9 from their parents' care or being restricted from enjoying meaningful
10 time with their parents; and

11 (4) Children are being denied the opportunity to enjoy the
12 experience of living in loving homes with parents with a disability or
13 other caretakers with a disability.

14 Sec. 2. It is the intent of the Legislature to protect the best
15 interests of children parented by individuals with disabilities or
16 children who could be parented by individuals with disabilities through
17 the establishment of procedural safeguards that require adherence to the
18 federal Americans with Disabilities Act of 1990 and respect for the due
19 process and equal protection rights of parents with disabilities or
20 prospective parents with disabilities in the context of custody.

21 Sec. 3. For purposes of sections 1 to 4 of this act:

22 (1) Individual with a disability means a person (a) who has a
23 physical or mental impairment that substantially limits one or more major
24 life activities, (b) who has a history or record of such an impairment,
25 or (c) who is perceived by others as having such an impairment; and

26 (2) Supportive parenting services means services that may assist a
27 parent with a disability or a prospective parent with a disability in the
28 effective use of alternative methods to enable the parent or prospective
29 parent to discharge parental responsibilities as successfully as a parent
30 who does not have a disability.

31 Sec. 4. (1) A parent's disability shall not serve as a basis for

1 denial or restriction of custody in family law matters when the custody
2 is determined to be otherwise in the best interests of the child.

3 (2) When in a court proceeding relating to custody a parent's or
4 prospective parent's disability is alleged to have a detrimental impact
5 on a child, the party raising the allegation bears the burden of proving
6 by clear and convincing evidence that the disability is endangering or
7 will likely endanger the health, safety, or welfare of the child. If this
8 burden is met, the parent with a disability or prospective parent with a
9 disability shall have the opportunity to demonstrate how the
10 implementation of supportive parenting services will alleviate any
11 concerns that have been raised. The court may require that such
12 supportive parenting services be put in place, with an opportunity to
13 review the need for continuation of such services within a reasonable
14 period of time.

15 (3) If a court determines that the right of a parent with a
16 disability to custody should be denied or limited in any manner, the
17 court shall make specific written findings stating the basis for such a
18 determination and why supportive parenting services are not a reasonable
19 accommodation to prevent such denial or limitation.