

## LEGISLATIVE BILL 886

Approved by the Governor April 19, 1994

Introduced by Kristensen, 37

AN ACT relating to vital statistics; to amend sections 71-604, 71-627.02, 71-640.01, 71-640.02, and 71-649, Reissue Revised Statutes of Nebraska, 1943, and sections 71-601, 71-628, and 71-644, Revised Statutes Supplement, 1992; to define terms; to change provisions relating to certification of live births as prescribed; to provide for issuance of a birth certificate after sex reassignment surgery; to provide for electronic filing, issuance, and preservation; to provide for records of amendment of vital records; to change provisions relating to birth certificates of foreign-born adoptees and children born out of wedlock; to change and eliminate provisions relating to surnames on birth certificates as prescribed; to provide penalties; to harmonize provisions; to eliminate a provision relating to the filing medium and to copies; to provide operative dates; and to repeal the original sections, and also section 71-607, Reissue Revised Statutes of Nebraska, 1943.

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

Section 1. That section 71-601, Revised Statutes Supplement, 1992, be amended to read as follows:

71-601. The Department of Health shall provide for the registration of ~~births, deaths, marriages, and divorces~~ vital events and shall adopt, and promulgate, and enforce such rules and regulations as are necessary to carry out the purposes of sections 71-601 to ~~71-634~~ 71-649 and sections ~~2, 4 to 6, 11, and 12~~ of this act.

Sec. 2. ~~For purposes of sections 71-601 to 71-649 and sections 2, 4 to 6, 11, and 12 of this act:~~

(1) ~~Certificate shall mean the record of a vital event; and~~

(2) ~~Certification shall mean the process of recording, filing, amending, or preserving a certificate, which process may be by any means, including, but not limited to, microfilm, electronic, imaging, photographic, typewritten, or other means designated by the Department of Health.~~

Sec. 3. That section 71-604, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-604. (1) A certificate for each live birth which occurs in the State of Nebraska shall be filed on a standard Nebraska certificate form. Such certificate shall be filed with the Bureau of Vital Statistics within five business days after the birth.

(2) When a birth occurs in an institution or en route to a hospital or other institution, the certificate of birth shall be prepared in the facility and shall be signed by the person certifying the birth in his or her own handwriting thereto, the person in charge of the institution or his or her authorized designee shall obtain the personal data, prepare the certificate which shall include the name, title, and address of the attendant, certify that the child was born alive at the place and time and on the date stated either by standard procedure or by an approved electronic process, and file the certificate. The physician or other person in attendance shall provide the medical information required for the certificate and certify the facts of birth within seventy-two hours after the birth.

(3) When a birth occurs outside an institution, the certificate of birth shall be prepared and filed by one of the following:

- (a) The physician in attendance at or immediately after the birth;
- (b) The father, the mother, or, in the absence of the father and the inability of the mother, the person in charge of the premises where the birth occurred; or
- (c) Any other person in attendance at or immediately after the birth.

Sec. 4. ~~Upon receipt of a notarized affidavit from the physician that performed sex reassignment surgery on an individual born in this state and a certified copy of an order of a court of competent jurisdiction changing the name of such person, the Department of Health shall prepare a new certificate of birth in the new name and sex of such person in substantially the same form as that used for other live births. The evidence from which the new certificate is prepared and the original certificate of birth shall be available for inspection only upon the order of a court of competent jurisdiction.~~

Sec. 5. The Department of Health may accept for filing and issue certified copies of vital records generated from microfilm, imaging, electronic means, or any other medium as designated by the department.

Sec. 6. To preserve vital records, the Department of Health may prepare typewritten, photographic, electronic, or other reproductions of certificates or reports of the Bureau of Vital Statistics. Such reproductions, when verified and approved by the department, shall be accepted as the original records, and the documents from which permanent reproductions have been made may be disposed of as provided by rules and regulations of the department.

Sec. 7. That section 71-627.02, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-627.02. Upon receipt of a Report of Adoption or a certified copy of a decree of adoption issued by any court of competent jurisdiction in the State of Nebraska, as to any foreign-born person, the Director of Health through the Bureau of Vital Statistics shall prepare a birth certificate in the new name of the adopted person. The birth certificate shall show specifically (1) the new name of the adopted person, (2) the date of birth and sex of the adopted person, (3) statistical information concerning the adoptive parents in place of the natural parents, and (4) the true or probable place of birth including the city or town and country.

Sec. 8. That section 71-628, Revised Statutes Supplement, 1992, be amended to read as follows:

71-628. In case of the legitimation of any child born in Nebraska by the subsequent marriage of ~~its~~ such child's parents as provided in section 43-1409, the Bureau of Vital Statistics, upon the receipt of a certified copy of the marriage certificate of the parents and a statement of the husband parents acknowledging paternity, shall prepare a new certificate of birth in the new name of the child so legitimated, in substantially the same form as that used for other live births, and shall charge a filing fee of seven dollars. The department shall charge and collect an additional fee of one dollar for each new certificate of birth prepared. Such fees collected shall be remitted to the State Treasurer for credit to the General Fund.

Sec. 9. That section 71-640.01, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-640.01. The information pertaining to the name identification of the father at the time of birth of an infant born in this state and reported on a birth certificate, filled out and filed pursuant to sections 71-601 to 71-648 71-649 and sections 2, 4 to 6, 11, and 12 of this act, shall comply with the following:

(1) If the mother was married at the time of either conception or birth of the child, or at any time between conception and birth, the name of such mother's the husband shall be entered on the certificate as the father of the child and the surname of the child shall be entered on the certificate as being (a) the same as that of the husband, unless (a) paternity has been determined otherwise by a court of competent jurisdiction, (b) the surname of the mother, (c) the maiden surname of the mother, or (d) the hyphenated surname of both parents the mother and the mother's husband execute affidavits attesting that the husband is not the father of the child, in which case information about the father shall be omitted from the certificate, or (c) the mother executes an affidavit attesting that the husband is not the father and that the putative father is the father, the putative father executes an affidavit attesting that he is the father, and the husband executes an affidavit attesting that he is not the father. In such event, the putative father shall be shown as the father on the certificate. For affidavits executed under subdivision (b) or (c) of this subdivision, each signature shall be individually notarized;

(2) If the mother was not married at the time of either conception or birth of the child, or at any time between conception and birth, the name of the father shall not be entered on the certificate without the written consent of the mother and the person named as the father; in which case and upon the written request of both such parents the surname of the child shall be that of the father or the hyphenated surname of both parents;

(3) In any case in which paternity of a child is determined by a court of competent jurisdiction, the name of the father shall be entered on the certificate in accordance with the finding of the court; and

(4) and the surname of the child may be entered on the certificate the same as the surname of the father;

(4) In all other cases, the surname of the child shall be the legal surname of the mother; and

(5) If the father is not named on the certificate, no other information about the father shall be entered thereon.

The identification of the father as provided in this section shall not be deemed to affect the legitimacy of the child or duty to support as set forth in sections 42-377 and 43-1401.

Sec. 10. That section 71-640.02, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-640.02. The Bureau of Vital Statistics shall enter on the birth certificate of any child born out of wedlock the surname name of the father or the surnames of both parents joined by a hyphen as the surname of the child upon receipt of (1) a certified copy of a court order entered after January 31, 1973, showing that paternity has been established or a statement in writing by the father that he is the father of the child; and (2) the written request of (a) the parent having legal custody of the child; or (b) the guardian or agency having legal custody of the child. The surname of the child shall be determined in accordance with section 11 of this act.

Sec. 11. (1) In any case in which paternity of a child is determined by a court of competent jurisdiction, the surname of the child may be entered on the record the same as the surname of the father.

(2) The surname of the child shall be the parents' prerogative, except that the Department of Health shall not accept a birth certificate with a child's surname that implies any obscene or objectionable words or abbreviations.

Sec. 12. The name of the father as shown on the birth certificate may be changed and a new certificate issued only when a determination of paternity is made by a court of competent jurisdiction. The evidence from which the new certificate is prepared and the original certificate of birth shall be available for inspection only upon the order of a court of competent jurisdiction.

Sec. 13. That section 71-644, Revised Statutes Supplement, 1992, be amended to read as follows:

71-644. When a certificate is amended, the Bureau of Vital Statistics shall (1) complete the item in any case where the item was left blank on the existing certificate or (2) draw a single line through the item to be amended and insert the correct data immediately above or to the side thereof. The line drawn through the original entry shall not obliterate such entry. A certificate or report that is amended under sections 71-635 to 71-644 shall indicate that it has been amended as provided by rules and regulations of the Department of Health. A record shall be maintained which identifies the evidence upon which the amendment was based, the date of the amendment, and the identity of the person making the amendment.

Sec. 14. That section 71-649, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

71-649. (1) Any person who (a) willfully and knowingly makes any false statement in a certificate, record, or report required to be filed pursuant to sections 71-601 to 71-648, or and sections 2, 4 to 6, 11, and 12 of this act, in an application for an amendment thereof, or in an application for a certified copy of a vital record, or willfully and knowingly supplies false information intending that such information be used in the preparation of any such report, record, or certificate, or amendment thereof; (b) without lawful authority and with the intent to deceive, makes, counterfeits, alters, amends, or mutilates any certificate, record, or report required to be filed pursuant to such sections 71-601 to 71-648, or a certified copy of such certificate, record, or report; (c) willfully and knowingly obtains, possesses, uses, sells, furnishes, or attempts to obtain, possess, use, sell, or furnish to another, for any purpose of deception, any certificate, record, report, or certified copy thereof so made, counterfeited, altered, amended, or mutilated; (d) with the intention to deceive, willfully and knowingly obtains, possesses, uses, sells, furnishes, or attempts to obtain, possess, use, sell, or furnish to another any certificate of birth or certified copy of a certificate of birth knowing that such certificate or certified copy was issued upon a certificate which is false in whole or in part or which relates to the birth of another person, whether living or deceased; (e) willfully and knowingly furnishes or possesses a certificate of birth or certified copy of a certificate of birth with the knowledge or intention that it be used for the purposes of deception by a person other than the person to whom the certificate of birth relates; or (f) without lawful authority possesses any certificate, record, or report, required by such sections 71-601 to 71-648, or a copy or certified copy of such certificate, record, or report knowing the same to have been stolen or otherwise unlawfully obtained, shall be guilty of a Class IV felony.

(2) Any person who (a) willfully and knowingly refuses to provide information required by such sections 71-601 to 71-648, or rules and regulations adopted under sections 71-648-01 and 71-649, this section and

section 71-640.01 or (b) willfully and knowingly neglects or violates any of the provisions of sections 71-601 to 71-648, and sections 2, 4 to 6, 11, and 12 of this act or refuses to perform any of the duties imposed upon him ~~thereunder~~ or her under such sections shall be guilty of a Class I misdemeanor.

(3) The Department of Health may include on any appropriate certificate or document a statement warning of the consequences for any violation of this section.

Sec. 15. Sections 3 and 16 of this act shall become operative on January 1, 1995. The other sections of this act shall become operative on their effective date.

Sec. 16. That original section 71-604, Reissue Revised Statutes of Nebraska, 1943, is repealed.

Sec. 17. That original sections 71-627.02, 71-640.01, 71-640.02, and 71-649, Reissue Revised Statutes of Nebraska, 1943, and sections 71-601, 71-628, and 71-644, Revised Statutes Supplement, 1992, and also section 71-607, Reissue Revised Statutes of Nebraska, 1943, are repealed.