

LEGISLATIVE BILL 712

Approved by the Governor June 1, 1995

Introduced by Matzke, 47; Wesely, 26

AN ACT relating to parental rights; to amend sections 30-2608, 43-102, 43-104, 43-104.02, 43-104.04, 43-104.05, 43-105, 43-906, and 43-1202, Reissue Revised Statutes of Nebraska, and sections 43-104.03 and 43-1411, Revised Statutes Supplement, 1994; to provide, in the adoption of a child born out of wedlock, for an affidavit, for notice to the biological father as prescribed, for appointment of guardians ad litem, for determination or termination of parental rights, for a biological father registry, and for the alternative of court appointment of a guardian other than the surviving natural parent of a minor in probate proceedings; to harmonize provisions; to change and eliminate provisions relating to paternity claims and relinquishment for adoption requirements; to repeal the original sections; and to outright repeal section 43-104.06, Reissue Revised Statutes of Nebraska.

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

Section 1. Whenever a child is claimed to be born out of wedlock and the biological mother contacts an adoption agency or attorney to relinquish her rights to the child, or the biological mother joins in a petition for adoption to be filed by her husband, the agency or attorney contacted shall attempt to establish the identity of the biological father and further attempt to inform the biological father of his right to execute a relinquishment and consent to adoption, or a denial of paternity and waiver of rights, in the form mandated by section 43-106, pursuant to sections 1 to 17 of this act.

Sec. 2. In all cases of adoption of a minor child born out of wedlock, the biological mother shall complete and sign an affidavit in writing and under oath. The affidavit shall be executed by the biological mother before or at the time of execution of the consent or relinquishment and shall be attached as an exhibit to any petition to finalize the adoption. If the biological mother is under the age of nineteen, the affidavit may be executed by the agency or attorney representing the biological mother based upon information provided by the biological mother. The affidavit shall be in substantially the following form:

AFFIDAVIT OF IDENTIFICATION

I, ....., the mother of a child, state under oath or affirm as follows:

(1) My child was born, or is expected to be born, on the ..... day of ....., at ....., in the State of .....

(2) I reside at ....., in the City or Village of ....., County of ....., State of .....

(3) I am of the age of ..... years, and my date of birth is .....

(4) I acknowledge that I have been asked to identify the father of my child.

(5) (CHOOSE ONE)

(5A) I know and am identifying the biological father (or possible biological fathers) as follows:

The name of the biological father is .....

His ..... last-known ..... home ..... address ..... is .....

..... His last-known work address is .....

..... He is ..... years of age, or he is .....

deceased, having died on or about the ..... day of .....

..... at ....., in the State of .....

.....

(For other possible biological fathers, please use additional sheets of paper as needed.)

(5B) I am unwilling or unable to identify the biological father (or possible biological fathers). I do not wish or I am unable to name the biological father of the child for the following reasons:

..... Conception of my child occurred as a result of sexual assault or incest

..... Providing notice to the biological father of my child would threaten my safety or the safety of my child

..... Other reason: .....  
(6) If the biological mother is unable to name the biological father, the physical description of the biological father (or possible biological fathers) and other information which may assist in identifying him, including the city or county and state where conception occurred:  
.....  
.....

(use additional sheets of paper as needed).  
(7) Under penalty of perjury, the undersigned certifies that the statements set forth in this affidavit are true and correct.

(8) I have read this affidavit and have had the opportunity to review and question it. It was explained to me by ..... I am signing it as my free and voluntary act and understand the contents and the effect of signing it.

Dated this ..... day of .....  
(Acknowledgment) .....

(Signature) .....

Sec. 3. The agency or attorney representing the biological mother shall inform the mother of the legal and medical need to determine, whenever possible, the paternity of the child prior to an adoption and that her failure or refusal to accurately identify the biological father or possible biological fathers could threaten the legal validity of any adoptive placement of the child.

Sec. 4. If the biological mother's affidavit, required by section 2 of this act, identifies only one possible biological father of the child and states that there are no other possible biological fathers of the child, and if the named father executes a valid relinquishment and consent to adoption of the child in the form mandated by section 43-106 or executes a denial of paternity and waiver of rights in the form mandated by section 43-106, the court may enter a decree of adoption pursuant to section 43-109 without regard to sections 5 to 16 of this act. A named biological father's relinquishment and consent or a named biological father's waiver of rights is irrevocable upon signing and is not voidable for any period after signing. Such relinquishment and consent or such waiver of rights may only be challenged on the basis of fraud or duress for up to six months after signing.

Sec. 5. In order to attempt to inform the biological father or possible biological fathers of the right to execute a relinquishment and consent to adoption or a denial of paternity and waiver of rights, the agency or attorney representing the biological mother shall notify, by registered mail, return receipt requested:

(1) Any person adjudicated by a court in this state or by a court in another state or territory of the United States to be the biological father of the child;

(2) Any person who has filed a notice of intent to claim paternity and obtain custody pursuant to section 43-104.02;

(3) Any person who is recorded on the child's birth certificate as the child's father;

(4) Any person who might be the biological father of the child who was openly living with the child's biological mother within the twelve months prior to the birth of the child;

(5) Any person who has been identified as the biological father or possible biological father of the child by the child's biological mother pursuant to section 2 of this act;

(6) Any person who was married to the child's biological mother within six months prior to the birth of the child and prior to the execution of the relinquishment; and

(7) Any other person who the agency or attorney representing the biological mother may have reason to believe may be the biological father of the child.

Sec. 6. The notice sent by the agency or attorney pursuant to section 5 of this act shall be served sufficiently in advance of the birth of the child, whenever possible, to allow compliance with section 43-104.02 and shall state:

(1) The biological mother's name, the fact that she is pregnant or has given birth to the child, and the expected or actual date of delivery;

(2) That the child has been relinquished by the biological mother, that she intends to execute a relinquishment, or that the biological mother has joined or plans to join in a petition for adoption to be filed by her husband;

(3) That the person being notified has been identified as a possible biological father of the child;

(4) That the possible biological father may have certain rights with respect to such child if he is in fact the biological father;

(5) That the possible biological father has the right to (a) deny paternity, (b) waive any parental rights he may have, (c) relinquish and consent to adoption of the child, or (d) file a notice of intent to claim paternity and obtain custody of the child pursuant to section 43-104.02;

(6) That to deny paternity, to waive his parental rights, or to relinquish and consent to the adoption, the biological father must contact the undersigned agency or attorney representing the biological mother, and that if he wishes to seek custody of the child he should seek legal counsel from his own attorney immediately; and

(7) That if he is the biological father and if the child is not relinquished for adoption, he has a duty to contribute to the support and education of the child and to the pregnancy-related expenses of the mother and a right to seek visitation.

The agency or attorney representing the biological mother may enclose with the notice a document which is an admission or denial of paternity and a waiver of rights by the biological father, which the biological father may choose to complete, in the form mandated by section 43-106, and return to the agency or attorney.

Sec. 7. (1) If the agency or attorney representing the biological mother is unable through reasonable efforts to locate and serve notice on the biological father or possible biological fathers as contemplated in sections 5 and 6 of this act, the agency or attorney shall notify the biological father or possible biological fathers by publication.

(2) The publication shall be made once a week for three consecutive weeks in a legal newspaper of general circulation in the Nebraska county or county of another state which is most likely to provide actual notice to the biological father. The publication shall include:

(a) The first name or initials of the father or possible father or the entry "John Doe, real name unknown", if applicable;

(b) A description of the father or possible father if his first name is or initials are unknown;

(c) The approximate date of conception of the child and the city and state in which conception occurred, if known;

(d) The date of birth or expected birth of the child;

(e) That he has been identified as the biological father or possible biological father of a child whom the biological mother currently intends to place for adoption and the approximate date that placement will occur;

(f) That he has the right to (i) deny paternity, (ii) waive any parental rights he may have, (iii) relinquish and consent to adoption of the child, or (iv) file a notice of intent to claim paternity and obtain custody of the child within five business days of the birth of the child or within five business days of this notice, whichever is later, pursuant to section 43-104.02; and

(g) That (i) in order to deny paternity, waive his parental rights, relinquish and consent to the adoption, or receive additional information to determine whether he is the father of the child in question, he must contact the undersigned agency or attorney representing the biological mother and (ii) if he wishes to seek custody of the child, he must seek legal counsel from his own attorney immediately.

Sec. 8. The notification procedure set forth in sections 5 to 7 of this act shall, whenever possible, be completed prior to a child being placed in an adoptive home. If the information provided in the biological mother's affidavit prepared pursuant to section 2 of this act presents clear evidence that providing notice to a biological father or possible biological father as contemplated in sections 5 to 7 of this act would be likely to threaten the safety of the biological mother or the child or that conception was the result of sexual assault or incest, notice is not required to be given. If the biological father or possible biological fathers are not given actual or constructive notice prior to the time of placement, the agency or attorney shall give the adoptive parents a statement of legal risk indicating the legal status of the biological father's parental rights as of the time of placement, and the adoptive parents shall sign a statement of legal risk acknowledging their acceptance of the placement, notwithstanding the legal risk.

Sec. 9. In all cases involving the adoption of a minor child born out of wedlock, the agency or attorney representing the biological mother shall execute an affidavit stating that due diligence was used to identify and give actual or constructive notice to the biological father or possible biological fathers of the child and stating the methods used to attempt to identify and give actual or constructive notice to those persons or the reason why no attempts were made to identify and notify those persons. The affidavit

shall be attached to any petition filed in an adoption proceeding.

Sec. 10. In all cases of adoption of a minor child born out of wedlock, the petition to finalize the adoption shall specifically allege compliance with sections 1 to 9 of this act, and shall attach as exhibits all documents which are evidence of such compliance. No notice of the filing of the petition to finalize or the hearing on the petition shall be given to a biological father or possible biological father who (1) executed a valid relinquishment and consent or a valid denial of paternity and waiver of rights pursuant to section 4 of this act or (2) was provided notice under sections 5 to 7 of this act and failed to timely file an intent to claim paternity and obtain custody pursuant to section 43-104.02.

Sec. 11. If a petition to finalize an adoption is filed and fails to establish substantial compliance with sections 1 to 9 of this act, the court shall receive evidence by affidavit of the facts and circumstances of the biological mother's relationship with the biological father or possible biological fathers at the time of conception of the child and at the time of the biological mother's relinquishment of the child, including any evidence that providing notice to a biological father would be likely to threaten the safety of the biological mother or the child or that the conception was the result of sexual assault or incest. If, under the facts and circumstances presented, the court finds that the agency or attorney representing the biological mother did not exercise due diligence in complying with sections 1 to 9 of this act, or if the court finds that there is no credible evidence that providing notice to a biological father would be likely to threaten the safety of the biological mother or the child or that the conception was the result of sexual assault or incest, the court shall order the attorney or agency to exercise due diligence in complying with sections 1 to 9 of this act. If the attorney or agency fails to exercise due diligence in complying with such sections or at any time upon the petition or application of any interested party the court may appoint a guardian ad litem to represent the interests of the biological father. The guardian ad litem shall be chosen from a qualified pool of local attorneys. The guardian ad litem shall receive reasonable compensation for the representation, the amount to be determined at the discretion of the court.

Sec. 12. The guardian ad litem for the biological father shall:

(1) Identify the biological father whenever possible;  
(2) Notify the biological father or possible biological fathers of the proposed relinquishment of the child and inform the biological father or possible biological fathers of their parental rights and duties with regard to the child;

(3) Notify the court if all reasonable attempts to both identify and notify the biological father or possible biological fathers are unsuccessful;  
and

(4) Determine, by deposition, by affidavit, by interview, or through testimony at a hearing, the following: whether the mother was married at the time of conception of the child or at any time thereafter, whether the mother was cohabitating with a man at the time of conception or birth of the child, whether the mother has received support payments or promises of support with respect to the child or in connection with her pregnancy, whether conception was the result of sexual assault or incest, and whether any man has formally or informally acknowledged or declared his possible paternity of the child.

Sec. 13. The guardian ad litem for the biological father shall complete the investigation of the interests of the biological father within twenty days after appointment unless the court finds reasonable cause to extend the time period. The court shall hold a hearing as soon as practicable to determine whether the child was born out of wedlock, to determine the identity of the biological father, if possible, and to determine the rights of the biological father. The court may exercise its contempt powers with respect to any individual who admits having knowledge of information regarding the paternity of the child but who refuses to disclose that information to the guardian ad litem or to the court.

Sec. 14. (1) Notice of the hearing under section 13 of this act shall be given to every person identified by the guardian ad litem as the biological father or a possible biological father. Notice shall be given in the manner appropriate under the rules of civil procedure for the service of process in this state and in any additional manner that the court directs. Proof of notice shall be filed with the court before the hearing.

(2) Notice is not required to be given to a person who may be the father of a child conceived as a result of a sexual assault or incest or if notification is likely to result in a threat to the safety of the biological mother or the child.

Sec. 15. At any hearing to determine a biological father's parental

rights to the child, the court shall receive evidence with regard to the biological father's actual paternity of the child and whether he is a fit, proper, and suitable custodial parent for the child. The court shall determine that the biological father's consent is not required for a valid adoption of the child upon a finding of one or more of the following:

(1) The father abandoned or neglected the child after having knowledge of the child's birth;

(2) The father is not a fit, proper, and suitable custodial parent for the child;

(3) The father had knowledge of the child's birth and failed to provide reasonable financial support for the mother or child;

(4) The father abandoned the mother without reasonable cause and with knowledge of the pregnancy and failed to provide reasonable support for the mother during the pregnancy;

(5) The child was conceived as a result of a nonconsensual sex act or an incestual act;

(6) Notice was provided pursuant to sections 5 to 7 of this act and the father failed to timely file an intent to claim paternity and obtain custody pursuant to section 43-104.02;

(7) The father failed to timely file a petition to adjudicate his claim of paternity and right to custody as contemplated in section 43-104.05; or

(8) The man is not, in fact, the biological father of the child.

The court shall determine the custody of the child according to the best interest of the child, weighing the superior rights of a biological parent who has been found to be a fit, proper, and suitable parent against any detriment the child would suffer if removed from the custody of persons with whom the child has developed a substantial relationship.

Sec. 16. If, after viewing the evidence submitted to support a petition to finalize an adoption or any evidence submitted by a guardian ad litem if one is appointed, the court determines that no biological father can be identified, or that no identified father can be notified without likely threat to the safety of the biological mother or the child, or upon a finding of due diligence and substantial compliance with sections 1 to 9 of this act and a finding that no biological father has timely filed under section 43-104.02, the court shall enter an order finalizing the adoption of the child. Subject to the disposition of an appeal, upon the expiration of thirty days after an order is issued under this section, the order shall not be reversed, vacated, or modified in any manner or upon any ground including fraud, misrepresentation, or failure to provide notice under sections 5 to 7 of this act.

Sec. 17. All proceedings pursuant to sections 1 to 16 of this act have the highest priority and shall be advanced on the court docket to provide for their earliest practical disposition. An adjournment or continuance of a proceeding pursuant to sections 1 to 16 of this act shall not be granted without a showing of good cause.

Sec. 18. Section 30-2608, Reissue Revised Statutes of Nebraska, is amended to read:

30-2608. The father and mother are the natural guardians of their minor children and are equally duly entitled to their custody and to direct their education, being themselves competent to transact their own business and not otherwise unsuitable. If either dies or is disqualified for acting, or has abandoned his or her family, the guardianship devolves upon the other except as otherwise provided in this section.

In the appointment of a parent as a guardian when the other parent has died and the child was born out of wedlock, the court shall consider the wishes of the deceased parent as expressed in a valid will executed by the deceased parent. If in such valid will the deceased parent designates someone other than the other natural parent as guardian for the minor children, the court shall take into consideration the designation by the deceased parent. In determining whether or not the natural parent should be given priority in awarding custody, the court shall also consider the natural parent's acknowledgment of paternity, payment of child support, and whether the natural parent is a fit, proper, and suitable custodial parent for the child.

The court may appoint a guardian for a minor if all parental rights of custody have been terminated or suspended by prior or current circumstances or prior court order. A guardian appointed by will as provided in section 30-2606 whose appointment has not been prevented or nullified under section 30-2607 has priority over any guardian who may be appointed by the court but the court may proceed with an appointment upon a finding that the testamentary guardian has failed to accept the testamentary appointment within thirty days after notice of the guardianship proceeding.



Sec. 19. Section 43-102, Reissue Revised Statutes of Nebraska, is amended to read:

43-102. Except as otherwise provided in the Nebraska Indian Child Welfare Act, any person or persons desiring to adopt a minor child or an adult child of such person's spouse shall file, in the county court of the county in which the person or persons desiring to adopt such child reside, a petition for adoption signed and sworn to by the person or persons desiring to adopt, the consent or consents required by section 43-104 or 43-104.07, ~~the certificates and other documents required by sections 43-104.02 to 43-104.06 or the documents required by section 43-104.07, the documents required by sections 1 to 17 of this act,~~ and a completed preplacement adoptive home study if required by section 43-107.

Except as set out in subdivisions (1)(b)(ii), (iii), and (iv) of section 43-107, an adoption decree shall not be issued until at least six months after an adoptive home study has been completed by the department or a licensed child placement agency.

Sec. 20. Section 43-104, Reissue Revised Statutes of Nebraska, is amended to read:

43-104. Except as otherwise provided in the Nebraska Indian Child Welfare Act, no adoption shall be decreed unless the petition therefor is accompanied by written consents thereto executed by (1) the minor child, if over fourteen years of age, or the adult child of the adopting person's spouse, (2) any district court or separate juvenile court in the State of Nebraska having jurisdiction of the custody of a minor child by virtue of divorce proceedings had in any district court or separate juvenile court in the State of Nebraska ~~or by virtue of section 43-1203,~~ and (3) both parents if living, the surviving parent of a child born in lawful wedlock, ~~or, subject to sections 43-104.02 to 43-104.06,~~ the mother of a child born out of wedlock, ~~or both the mother and father of a child born out of wedlock as determined pursuant to sections 1 to 17 of this act,~~ except that consent shall not be required of any parent who (a) has relinquished the child for adoption by a written instrument, (b) has abandoned the child for at least six months next preceding the filing of the adoption petition, (c) has been deprived of his or her parental rights to such child by the order of any court of competent jurisdiction, or (d) is incapable of consenting.

Sec. 21. (1) The Department of Social Services shall establish a biological father registry which shall record the names and addresses of (a) any person adjudicated by a court of this state to be the father of a child born out of wedlock, (b) any person who has filed with the registry a notice of intent to claim paternity and obtain custody of such child, and (c) any person adjudicated by a court of another state or territory of the United States to be the father of such child, if a certified copy of the court order has been filed with the registry by that person or any other person.

(2) A notice of intent to claim paternity filed with the registry shall include the claimant's name and address, the name and last-known address of the mother, and the month and year of the birth or the expected birth of the child. The person filing the notice shall notify the registry of any change of address pursuant to procedures prescribed by regulations of the department.

(3) Any person filing a notice of intent to claim paternity with the biological father registry may revoke such notice, and upon receipt of such revocation by the registry, the effect shall be as if no filing had ever been made.

(4) The department shall not divulge the names and addresses of persons listed with the registry to any other person except as authorized by law or upon order of a court for good cause shown.

(5) The department may develop information about the registry and may distribute such information through their existing publications, to the news media and the public. The department may provide information about the registry to the Department of Correctional Services and the Department of Health, who may distribute such information through their existing publications.

Sec. 22. Section 43-104.02, Reissue Revised Statutes of Nebraska, is amended to read:

43-104.02. ~~(1)~~ Relinquishment or consent for the purpose of adoption given only by a mother of a child born out of wedlock pursuant to section 43-104 shall be sufficient to place the child for adoption and the rights of any alleged father shall not be recognized thereafter in any court unless the As provided in section 21 of this act, a person claiming to be the father of the child has filed and who intends to claim paternity and obtain custody of the child shall file with the biological father registry maintained by the Department of Social Services on forms provided by the department,

within five business days after the birth of such the child, or within five business days after receipt of the notice contemplated in section 5 of this act, or within five business days after the last date of any published notice provided pursuant to section 7 of this act, whichever is later, a notice of intent to claim paternity and obtain custody. A notice of intent to claim paternity and obtain custody of the child shall be considered to have been filed if it is received by the Department of Social Services or postmarked prior to the end of the fifth business day contemplated in this subsection.

(2) The notice shall contain the claimant's name and address, the name and last-known address of the mother, and the month and year of the birth or the expected birth of the child.

Sec. 23. Section 43-104.03, Revised Statutes Supplement, 1994, is amended to read:

43-104.03. Within three days after the filing of a notice of intent to claim paternity with the biological father registry pursuant to section 43-104.02, the Director of Social Services shall cause a certified copy of such notice to be mailed by certified mail to (1) the mother or prospective mother of such child at the last-known address shown on the notice of intent to claim paternity and obtain custody or (2) an agent specifically designated in writing by the mother or prospective mother to receive such notice. The notice shall be admissible in any action for paternity under sections 43-1401 to 43-1418, shall estop the claimant from denying paternity of such child thereafter, and shall contain language that the claimant acknowledges liability for contribution to the support and education of the child after birth and for contribution to the pregnancy-related medical expenses of the mother.

Sec. 24. Section 43-104.04, Reissue Revised Statutes of Nebraska, is amended to read:

43-104.04. If a notice of intent to claim paternity is not timely filed within five days with the biological father registry pursuant to section 43-104.02, the mother of a child born out of wedlock or an agent specifically designated in writing by the mother may request, and the Department of Social Services shall supply, a certificate that no notice of intent to claim paternity has been filed with the department biological father registry and the filing of such certificate pursuant to section 43-102 shall eliminate the need or necessity of a consent or relinquishment for adoption by the natural father of such child.

Sec. 25. Section 43-104.05, Reissue Revised Statutes of Nebraska, is amended to read:

43-104.05. If a notice of intent to claim paternity and obtain custody is timely filed with the biological father registry pursuant to section 43-104.02, within five days after the birth of such child, either the claimant-father, the mother, or her agent specifically designated in writing may shall, within thirty days after filing the notice, file a petition in the county court in the county where such child is a resident for an adjudication of the claim of paternity and right to custody. If such a petition is not filed within thirty days after filing the notice, the claimant-father's consent to adoption of the child shall not be required and any alleged parental rights of the claimant-father shall not be recognized thereafter in any court. After the filing of such petition, the court shall set a hearing date upon proper notice to the parties not less than ten nor more than twenty days after such filing. If the mother contests the claim of paternity, the court shall take such testimony as shall enable it to determine the facts. The claimant-father's rights and the custody of the child shall be determined pursuant to section 15 of this act. The court shall appoint a guardian ad litem to represent the best interests of the child.

Sec. 26. Section 43-105, Reissue Revised Statutes of Nebraska, is amended to read:

43-105. If consent is not required of both parents, if living, or the surviving parent of a child born in lawful wedlock, or the mother or mother and father of a child born out of wedlock, because of the provisions of subdivision (3) of section 43-104, substitute consents shall be filed as follows: (1) Consent to the adoption of a minor child, who has been committed to the Nebraska Center for Children and Youth or the Department of Social Services, may be given by the department or its duly authorized agent in accordance with section 43-906; (2) when a parent has relinquished a minor child for adoption to any child placement agency licensed or approved by the department or its duly authorized agent, consent to the adoption of such child may be given by such agency; and (3) in all other cases when consent cannot be given as provided in subdivision (3) of section 43-104, consent shall be given by the guardian or guardian ad litem of such minor child appointed by a court, which consent shall be authorized by the court having jurisdiction of such

guardian or guardian ad litem.

Sec. 27. Section 43-906, Reissue Revised Statutes of Nebraska, is amended to read:

43-906. Except as otherwise provided in the Nebraska Indian Child Welfare Act, the Department of Social Services, or its duly authorized agent, may consent to the adoption of children committed to it upon the order of a juvenile court if the parental rights of the parents or of the mother of a child born out of wedlock have been terminated and if no father of a child born out of wedlock has timely asserted his paternity rights under section 43-104.02, or upon the relinquishment to such department by their parents or the mother and, if required under sections 1 to 17 of this act, the father of a child born out of wedlock. The parental rights of parents of a child born out of wedlock shall be determined pursuant to section 43-104.05 and sections 1 to 17 of this act, or by the mother of a child born out of wedlock, except that the department may consent to the adoption of children committed to it by an order of a juvenile court prior to July 13, 1967, without an order terminating parental rights.

Sec. 28. Section 43-1202, Reissue Revised Statutes of Nebraska, is amended to read:

43-1202. As used in For purposes of the Nebraska Child Custody Jurisdiction Act:

(1) Contstant shall mean a person, including a parent, who claims a right to custody or visitation rights with respect to a child;

(2) Custody determination shall mean a court decision and court orders and instructions providing for the custody of a child, including visitation rights, but shall not include a decision relating to child support or any other monetary obligation of any person;

(3) Custody proceeding shall mean:

(a) Proceedings in which a custody determination is one of several issues such as an action for dissolution, separation, or annulment of a marriage or an action involving a doubtful marriage;

(b) Proceedings in a juvenile court in which a person under the age of eighteen years is alleged to be a child as described in subdivision (3) of section 43-247;

(c) Proceedings to establish the rights of the father of a child born out of wedlock as such rights are allowed by sections 43-104.05 and 43-104.06 section 43-104.05 and sections 1 to 17 of this act; and

(d) Proceedings to determine custody as provided by section 43-111.01 after a court has denied a petition for adoption;

(4) Custody decree shall mean a custody determination contained in a judicial decree or order made in a custody proceeding and shall include an initial decree and a modification decree;

(5) Home state shall mean the state in which the child immediately preceding the time involved lived with his or her parents, a parent, or a person acting as parent, for at least six consecutive months, and in the case of a child less than six months old the state in which the child lived from birth with any of the persons mentioned. Periods of temporary absence of any of the named persons shall be counted as part of the six-month or other period;

(6) Initial decree shall mean the first custody decree concerning a particular child;

(7) Modification decree shall mean a custody decree which modifies or replaces a prior decree, whether made by the court which rendered the prior decree or by another court;

(8) Physical custody shall mean actual possession and control of a child;

(9) Person acting as parent shall mean a person, other than a parent, who has physical custody of a child and who has either been awarded custody by a court or claims a right to custody; and

(10) State shall mean any state, territory, or possession of the United States, the Commonwealth of Puerto Rico, and the District of Columbia.

Sec. 29. Section 43-1411, Revised Statutes Supplement, 1994, is amended to read:

43-1411. A civil proceeding to establish the paternity of a child may be instituted, in any district court of the district where the child is domiciled or found or, for cases under the Uniform Interstate Family Support Act, if the child is not domiciled or found in Nebraska, where the mother or where the alleged father is domiciled, by (1) the mother or the alleged father of such child, either during pregnancy or within four years after the child's birth, unless consent or relinquishment has been made by the mother or pursuant to section 43-105 or sections 1 to 17 of this act for purposes of adoption or (2) the guardian or next friend of such child or the state, either



during pregnancy or within eighteen years after the child's birth. Summons shall issue and be served as in other civil proceedings, except that such summons may be directed to the sheriff of any county in the state and may be served in any county.

Sec. 30. Original sections 30-2608, 43-102, 43-104, 43-104.02, 43-104.04, 43-104.05, 43-105, 43-906, and 43-1202, Reissue Revised Statutes of Nebraska, and sections 43-104.03 and 43-1411, Revised Statutes Supplement, 1994, are repealed.

Sec. 31. The following section is outright repealed: Section 43-104.06, Reissue Revised Statutes of Nebraska.