

LEGISLATURE OF NEBRASKA  
ONE HUNDRED SECOND LEGISLATURE  
FIRST SESSION  
**LEGISLATIVE BILL 324**

Introduced by Howard, 9.

Read first time January 12, 2011

Committee: Judiciary

A BILL

1 FOR AN ACT relating to adoption; to amend sections 43-107, 43-109,  
2 43-146.01, 43-146.02, 43-146.05, 43-146.06, and  
3 43-146.07, Reissue Revised Statutes of Nebraska; to  
4 require a fetal alcohol spectrum disorders evaluation or  
5 statement prior to adoption of a child who is a ward of  
6 the state as prescribed; to harmonize provisions; and to  
7 repeal the original sections.  
8 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) Upon the filing of a petition for adoption of a child  
23 who is under ten years of age and is a ward of the state, the judge  
24 shall require that (a) the child be evaluated for fetal alcohol  
25 spectrum disorders, including fetal alcohol syndrome and fetal

1 alcohol effects, if the child shows indications of such disorders or  
2 (b) a physician's statement be provided on the child that states that  
3 the child does not show indications of such disorders. The evaluation  
4 or statement shall be made part of the court record. After the entry  
5 of a decree of adoption, the court shall retain a copy and forward  
6 the original evaluation or statement to the department. This  
7 subsection shall only apply when the relinquishment or consent for an  
8 adoption is given on or after the effective date of this act.

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

11           43-109 (1) If, upon the hearing, the court finds that  
12 such adoption is for the best interests of such minor child or such  
13 adult child, a decree of adoption shall be entered. No decree of  
14 adoption shall be entered unless (a) it appears that the child has  
15 resided with the person or persons petitioning for such adoption for  
16 at least six months next preceding the entering of the decree of  
17 adoption, except that such residency requirement shall not apply in  
18 an adoption of an adult child, (b) the medical histories required by  
19 subsection (2) of section 43-107 and the fetal alcohol spectrum  
20 disorders evaluation or statement if required by subsection (3) of  
21 section 43-107 have been made a part of the court record, and (c) the  
22 court record includes an affidavit or affidavits signed by the  
23 relinquishing biological parent, or parents if both are available, in  
24 which it is affirmed that, pursuant to section 43-106.02, prior to  
25 the relinquishment of the child for adoption, the relinquishing

1 parent was, or parents if both are available were, (i) presented a  
2 copy or copies of the nonconsent form provided for in section  
3 43-146.06 and (ii) given an explanation of the effects of filing or  
4 not filing the nonconsent form. Subdivisions (b) and (c) of this  
5 subsection shall only apply when the relinquishment or consent for an  
6 adoption is given on or after September 1, 1988.

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

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

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

13 43-146.01 (1) Sections 43-106.02, 43-121, 43-123.01, and  
14 43-146.02 to 43-146.16 shall provide the procedures for gaining  
15 access to information concerning an adopted person when a  
16 relinquishment or consent for an adoption is given on or after  
17 September 1, 1988.

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

21 (3) Except as otherwise provided in ~~subsection (2)~~  
22 subsections (2) and (3) of section 43-107, subdivisions (1)(b) and  
23 (1)(c) of section 43-109, and subsection (4) of this section:  
24 Sections 43-101 to 43-118, 43-143 to 43-146, 43-146.17, 71-626,  
25 71-626.01, and 71-627.02 shall apply to all adoptions.

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

4                   Sec. 4. Section 43-146.02, Reissue Revised Statutes of  
5 Nebraska, is amended to read:

6                   43-146.02 A child placement agency, the department, or a  
7 private agency handling the adoption, as the case may be, shall  
8 maintain and shall provide to the adopting parents upon placement of  
9 the person with such parents and to the adopted person, upon his or  
10 her request, the available medical history and any fetal alcohol  
11 spectrum disorders evaluation or statement as provided in section  
12 43-107 of the person placed for adoption and of the biological  
13 parents. The medical history, evaluation, or statement shall not  
14 include the names of the biological parents of the adopted person or  
15 any other identifying information.

16                  Sec. 5. Section 43-146.05, Reissue Revised Statutes of  
17 Nebraska, is amended to read:

18                  43-146.05 (1) Upon receipt of a request for information  
19 made under section 43-146.04, the department shall check the records  
20 of the adopted person to determine whether an unrevoked nonconsent  
21 form is on file from a biological parent pursuant to section  
22 43-146.06.

23                  (2) If no nonconsent form has been filed pursuant to  
24 section 43-146.06, the following information shall be released to the  
25 adopted person:

1                   (a) The name and address of the court which issued the  
2 adoption decree;

3                   (b) The name and address of the child placement agency,  
4 if any, involved in the adoption;

5                   (c) The fact that an agency or the department may assist  
6 the adopted person in searching for relatives as provided in sections  
7 43-146.10 to 43-146.14;

8                   (d) A copy of the person's original birth certificate;  
9 and

10                  (e) A copy of the person's medical history and any  
11 medical records on file.

12                  (3) If an unrevoked nonconsent form has been filed  
13 pursuant to section 43-146.06, no information may be released to the  
14 adopted person except, upon request of the adopted person, a copy of  
15 the person's medical history and any fetal alcohol spectrum disorders  
16 evaluation or statement as provided in section 43-107. ~~if requested.~~  
17 The medical history, evaluation, or statement shall not include the  
18 names of the biological parents or relatives of the adopted person or  
19 any other identifying information.

20                  Sec. 6. Section 43-146.06, Reissue Revised Statutes of  
21 Nebraska, is amended to read:

22                  43-146.06 A biological parent may at any time file a  
23 notice of nonconsent with the department stating that at no time  
24 prior to his or her death may any information on the adopted person's  
25 original birth certificate or any other identifying information,

1    except medical histories and any fetal alcohol spectrum disorders  
2    evaluation or statement as provided in section 43-107, be released to  
3    such adopted person. Failure by a biological parent to sign the  
4    notice of nonconsent shall be deemed a notice of consent by such  
5    parent to release the adopted person's original birth certificate to  
6    such adopted person.

7                    Sec. 7. Section 43-146.07, Reissue Revised Statutes of  
8    Nebraska, is amended to read:

9                    43-146.07 The nonconsent form provided for in section  
10   43-146.06 shall be designed by the department and shall contain the  
11   following information:

12                   (1) The name of the person completing the form and, if  
13   different, the name of such person at the time of birth of the  
14   adopted person;

15                   (2) The relationship of the person to the adopted person;

16                   (3) The date of birth of the adopted person;

17                   (4) The sex of the adopted person;

18                   (5) The place of birth of the adopted person;

19                   (6) A statement that no information contained in the  
20   original birth certificate or any other identifying information,  
21   except medical histories and any fetal alcohol spectrum disorders  
22   evaluation or statement as provided in section 43-107, shall be  
23   released prior to the death of the parent signing the form;

24                   (7) A statement that the person signing understands the  
25   effect and consequences of filing or not filing a nonconsent form;

1 and

2 (8) A notice in the following form:

3 IMPORTANT NOTICE

4 You do not have to sign this form. If you do sign it, you  
5 are entitled to a copy of it. Your signature on this form means that  
6 the Department of Health and Human Services will not disclose any  
7 information contained in the original birth certificate of the  
8 adopted person or ~~any~~ other identifying information, except medical  
9 histories and any fetal alcohol spectrum disorders evaluation or  
10 statement, to any person prior to your death without a court order.  
11 If you later decide that you do not object to the release of such  
12 information, you may file a form stating that purpose.

13 Sec. 8. Original sections 43-107, 43-109, 43-146.01,  
14 43-146.02, 43-146.05, 43-146.06, and 43-146.07, Reissue Revised  
15 Statutes of Nebraska, are repealed.