

LEGISLATIVE BILL 224

Approved by the Governor March 7, 1975

Introduced by Anderson, 37

AN ACT to amend sections 43-102 and 43-104, Reissue Revised Statutes of Nebraska, 1943, relating to adoption; to provide procedures for claiming paternity; to provide for judicial hearings; and to repeal the original sections. Be it enacted by the people of the State of Nebraska,

Section 1. That section 43-102, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

43-102. Any person or persons, desiring to adopt a minor child, 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, together with the consent or consents required by section 43-104, and the certificates required by sections 3 to 7 of this act.

Sec. 2. That section 43-104, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

43-104. 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, (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, and (3) both parents, if living; the surviving parent of a child born in lawful wedlock; or, subject to the provisions of sections 3 to 7 of this act, the mother of a child born out of wedlock; except that consent shall not be required of any parent who shall (a) have relinquished the child for adoption by a written instrument; (b) have abandoned the child for at least six months next preceding the filing of the adoption petition; (c) have been deprived of his parental rights to such child by the order of any court of competent jurisdiction, or prior to July 13, 1967 have been deprived of the custody of such child by an order of any juvenile court of competent jurisdiction by reason of such child having been declared a dependent or neglected child, within the provisions of sections 43-201 to

43-227; or (d) be incapable of consenting. When an order or decree of adoption has been entered by any court in any foreign country, a copy of such order or decree, duly certified and translated into English by a representative of the United States Department of State officially stationed in such country or, in the absence of any such representative, so certified and translated by the United States Department of State, may be filed with the petition for adoption and shall operate in lieu of the consent otherwise required by this section.

Sec. 3. (1) Relinquishment or consent for the purpose of adoption given only by a mother of a child born out of wedlock pursuant to section 42-104 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 person claiming to be the father of the child has filed with the Department of Public Welfare on forms provided by the department, within five days after the birth of such child, a notice of intent to claim paternity.

(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. 4. Within three days after the filing of a notice to claim paternity, the Director of Public Welfare 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, 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 13-101 to 13-116, and shall estop the claimant from denying his paternity of such child thereafter and shall contain language that he acknowledges liability for contribution to the support and education of the child after its birth and for contribution to the pregnancy-related medical expenses of the mother.

Sec. 5. If a notice of paternity is not filed within five days, 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 Public Welfare shall supply, a certificate that no notice of intent to claim paternity has been filed with the department 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. 6. If a notice of intent to claim paternity is filed within five days after the birth of such child, either the claimant-father, the mother, or her agent specifically designated in writing may file a petition in the county court in the county where such child is a resident for an adjudication of the claim of paternity. 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.

Sec. 7. (1) If the claimant seeks to oppose any proposed relinquishment of a child by the mother and requests custody of the child, the court shall inquire into the fitness of the claimant, his ability to properly care for the child, and whether the best interests of the child will be served by granting custody to the claimant. Only upon the appointment of a guardian ad litem for the child, and a finding that the claimant is a fit person, is able to properly care for the child, and that the child's best interests will be served by granting custody to the claimant, shall custody be granted to the claimant.

(2) Upon relinquishment by the mother to a child placement agency licensed by the State of Nebraska, or upon a finding that the child's best interests would not be served by granting custody to the claimant, together with the recommendation by the guardian ad litem, and a finding that termination of the rights of the mother and the father is in the best interests of the child, the court shall terminate the rights of the mother and father and confer such rights upon the licensed child placement agency to whom the relinquishment has been given.

Sec. 8. That original sections 43-102 and 43-104, Reissue Revised Statutes of Nebraska, 1943, are repealed.