

## LEGISLATIVE BILL 820

Approved by the Governor April 8, 1972

Introduced by J. James Waldron, 42nd District; Terry Carpenter, 48th District

AN ACT relating to husband and wife; to provide procedures for the dissolution of marriage, legal separation, and annulment; and to repeal sections 42-301 to 42-340, Reissue Revised Statutes of Nebraska, 1943, and amendments thereto.

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

Section 1. As used in this act, unless the context otherwise requires:

(1) Dissolution of marriage shall mean the termination of a marriage by decree of a court of competent jurisdiction upon a finding that the marriage is irretrievably broken. After the effective date of this act, the term dissolution of marriage shall be considered synonymous with divorce, and whenever the term divorce appears in the statutes it shall mean dissolution of marriage pursuant to this act; and

(2) Legal separation shall mean a decree of a court of competent jurisdiction providing that two persons who have been legally married shall thereafter live separate and apart and providing for any necessary adjustment of property, support, and custody rights between the parties, but not dissolving the marriage.

Sec. 2. All proceedings under this act shall be brought in the district court of the county in which one of the parties reside. Proceedings may be transferred to a separate juvenile court which has acquired jurisdiction pursuant to section 43-230, Reissue Revised Statutes of Nebraska, 1943.

Sec. 3. No action for dissolution of marriage may be brought unless at least one of the parties has had actual residence in this state with a bona fide intention of making this state his permanent home for at least one year prior to the filing of the petition, or unless the marriage was solemnized in this state and either party has resided in this state from the time of marriage to filing the petition. Persons serving in the armed forces of the United States who have been continuously stationed at any military base or installation in this state for

one year or, if the marriage was solemnized in this state, have resided in this state from the time of marriage to the filing of the petition shall for the purposes of this act be deemed residents of this state.

Sec. 4. If a petition for legal separation is filed before residence requirements for dissolution of marriage have been complied with, either party, upon complying with such requirements, may amend his pleadings to request a dissolution of marriage, and notice of such amendment shall be given in the same manner as for an original action under this act.

Sec. 5. In proceedings under this act, the court shall have jurisdiction to inquire into such matters, make such investigations, and render such judgments and make such orders, both temporary and final, as are appropriate concerning the status of the marriage, the custody and support of minor children, the support of either party, the settlement of the property rights of the parties, and the award of costs and attorneys' fees.

Sec. 6. A proceeding under this act shall be commenced by filing a petition in the district court. Except when service is by publication, a copy of the petition, together with a copy of a summons, shall be served upon the other party to the marriage.

Sec. 7. The form of the petition and all other pleadings required by this act shall be prescribed by the Supreme Court. The petition shall include the following:

(1) The name and address of petitioner and his attorney;

(2) The name and address, if known, of respondent;

(3) The date and place of marriage;

(4) The name and date of birth of each child whose custody or welfare may be affected by the proceedings;

(5) If the petitioner is a party to any other pending action for divorce, separation, or dissolution of marriage, a statement as to where such action is pending;

(6) A statement of the relief sought by petitioner, including adjustment of custody, property, and support rights; and

(7) An allegation that the marriage is irretrievably broken.

Sec. 8. A responsive pleading, if any, shall be filed and served upon the petitioner within thirty days of the date of service upon the respondent.

Sec. 9. No marriage shall be dissolved or legal separation decreed unless the respondent shall have (1) been personally served with process if within the state; (2) been served with personal notice duly proved and appearing of record if out of this state; (3) been served by publication as provided in section 25-519, Revised Statutes Supplement, 1971, after an order for publication has been signed and filed upon affidavit of petitioner or his attorney that respondent's whereabouts is unknown and could not be determined after reasonable and due inquiry and search for thirty days after filing the petition; or (4) entered an appearance in the case.

Sec. 10. Hearings shall be held in open court upon the oral testimony of witnesses or upon the depositions of such witnesses taken as in other actions. The court may in its discretion close the hearing and may restrict the availability of the evidence or bill of exceptions.

Sec. 11. The court may order either party to pay to the clerk a sum of money for the temporary support and maintenance of the other party and minor children if any are affected by the action, and to enable such party to prosecute or defend the action. The court may make such order after service of process and claim for temporary allowances is made in the petition or by motion by the petitioner or by the respondent in a responsive pleading; but no such order shall be entered until three clear days after notice of hearing has been served on the other party or notice waived. During the pendency of any proceeding under this act after the petition is filed, upon application of either party the court may issue ex parte orders (1) restraining any person from transferring, encumbering, hypothecating, concealing, or in any way disposing of real or personal property except in the usual course of business or for the necessities of life, and the party against whom such order is directed shall upon order of the court account for all unusual expenditures made after such order is served upon him; (2) enjoining any party from molesting or disturbing the peace of the other party; and (3) determining the temporary custody of any minor children of the marriage; Provided, ex parte orders issued pursuant to subdivision (1) of this section shall remain in force for no more than ten days or until a hearing is held thereon,

whichever is earlier. After motion, notice to the party's attorney, and hearing, the court may order either party excluded from the family dwelling of the other upon a showing that physical or emotional harm would otherwise result.

Sec. 12. The court may appoint an attorney to protect the interests of any minor children of the parties. Such attorney shall be empowered to make independent investigations and to cause witnesses to appear and testify on matters pertinent to the welfare of the children. The court shall by order fix the fee, including disbursements, for such attorney, which amount shall be taxed as costs and paid by the parties as ordered, unless the court finds the party responsible is indigent and orders the county to pay.

Sec. 13. Applications for support or alimony shall be accompanied by a statement of the applicant's financial condition and, to the best of the applicant's knowledge, a statement of the other party's financial condition. Such other party may file his statement if he so desires, and shall do so if ordered by the court. Statements shall be under oath and shall show income from salary or other sources, assets, debts and payments thereon, living expenses, and other relevant information. Required forms for financial statements may be furnished by the court.

Sec. 14. No decree shall be entered under this act unless the court finds that every reasonable effort to effect reconciliation has been made. Proceedings filed pursuant to this act shall be subject to transfer to a conciliation court pursuant to section 42-822 or section 42-823, Reissue Revised Statutes of Nebraska, 1943, in counties where such a court has been established. In counties having no conciliation court, the court hearing proceedings under this act may refer the parties to qualified marriage counselors or family service agencies, or other persons or agencies determined by the court to be qualified to provide conciliation services, if the court finds that there appears to be some reasonable possibility of a reconciliation being effected.

Sec. 15. (1) If both of the parties by petition or otherwise have stated under oath or affirmation that the marriage is irretrievably broken, or one of the parties has so stated and the other has not denied it, the court, after hearing, shall make a finding whether the marriage is irretrievably broken.

(2) If one of the parties has denied under oath or affirmation that the marriage is irretrievably broken, the court shall consider all relevant factors, including the circumstances that gave rise to the filing of the petition and the prospect of reconciliation, and shall make a finding whether the marriage is irretrievably broken.

Sec. 16. When the pleadings or evidence in any action pursuant to this act indicate that either spouse is mentally ill, a guardian ad litem shall be appointed to represent his interests. Such guardian's fee, when allowed by the court, shall be taxed as costs, and shall be paid by the county if the parties are unable to do so. When a marriage is dissolved and the evidence indicates that either spouse is mentally ill, the court may, at the time of dissolving the marriage or at any time thereafter, make such order for the support and maintenance of such mentally ill person as it may deem necessary and proper, having due regard to the property and income of the parties, and the court may require the party ordered to provide support and maintenance to file a bond or otherwise give security for such support. Such an order for support may be entered upon the application of the guardian or guardian ad litem or of any person, county, municipality, or institution charged with the support of such mentally ill person. The order for support may, if necessary, be revised from time to time on like application.

Sec. 17. No decree dissolving a marriage shall be granted in any proceeding before six months shall have elapsed after service of process or after the last day of publication of notice or after the date that a voluntary appearance is filed with the clerk or after proceedings in the conciliation court are completed, but the court may waive the waiting period if it shall determine that conciliation efforts have failed.

Sec. 18. When dissolution of a marriage or legal separation is decreed, the court may include such orders in relation to any minor children and their maintenance as shall be justified, including placing the minor children in court custody if their welfare so requires. Custody and visitation of minor children shall be determined on the basis of their best interests. Subsequent changes may be made by the court when required after notice and hearing.

Sec. 19. When dissolution of a marriage is decreed, the court may order payment of such alimony by one party to the other as may be reasonable, having regard for the circumstances of the parties, duration of

the marriage, and the ability of the supported party to engage in gainful employment without interfering with the interests of any minor children in the custody of such party. Reasonable security for payment may be required by the court. Except as to amounts accrued prior to the date of service of process on a petition to modify, orders for alimony may be modified or revoked for good cause shown, but where alimony is not allowed in the original decree dissolving a marriage, such decree may not be modified to award alimony. Except as otherwise agreed by the parties in writing or by order of the court, alimony orders shall terminate upon the death of either party or the remarriage of the recipient.

Sec. 20. (1) To promote the amicable settlement of disputes between the parties to a marriage attendant upon their separation or the dissolution of their marriage, the parties may enter into a written property settlement agreement containing provisions for the maintenance of either of them, the disposition of any property owned by either of them, and the support and custody of minor children.

(2) In a proceeding for dissolution of marriage or for legal separation, the terms of the agreement, except terms providing for the support and custody of minor children, shall be binding upon the court unless it finds, after considering the economic circumstances of the parties and any other relevant evidence produced by the parties, on their own motion or on request of the court, that the agreement is unconscionable.

(3) If the court finds the agreement unconscionable, the court may request the parties to submit a revised agreement or the court may make orders for the disposition of property, support, and maintenance.

(4) If the court finds that the agreement is not unconscionable as to support, maintenance, and property: (a) Unless the agreement provides to the contrary, its term may be set forth in the decree of dissolution or legal separation and the parties shall be ordered to perform them; or (b) if the agreement provides that its terms shall not be set forth in the decree, the decree shall identify the agreement and shall state that the court has found the terms not unconscionable, and the parties shall be ordered to perform them.

(5) Terms of the agreement set forth in the decree may be enforced by all remedies available for the enforcement of a judgment, including contempt.

(6) Alimony may be ordered in addition to a property settlement award.

(7) Except for terms concerning the custody or support of minor children, the decree may expressly preclude or limit modification of terms set forth in the decree.

Sec. 21. In every action for dissolution of marriage or legal separation, the court may require the husband to pay any sum necessary to enable the wife to maintain the action during its pendency. When dissolution of marriage or a legal separation is decreed, the court may decree costs against either party and award execution for the same, or it may direct such costs to be paid out of any property sequestered, or in the power of the court, or in the hands of a receiver.

Sec. 22. When a legal separation is decreed, the court may order payment of such support by one party to the other as may be reasonable, having regard for the circumstances of the parties and the ability of the supported party to engage in gainful employment without interfering with the interests of any minor children in the custody of such party. Orders for support may be modified or revoked for good cause shown upon notice and hearing, except as to amounts accrued prior to date of service of motion to modify, to which date modification may be retroactive.

Sec. 23. All orders or judgments for temporary or permanent support payments or alimony shall direct the payment of such sums to the clerk of the district court for the use of the persons for whom the same have been awarded. Orders and judgments for temporary or permanent support or alimony shall be filed with the clerk, and have the force and effect of judgments when entered, and the clerk shall disburse all payments received as directed by the court. Records shall be kept of all funds received and disbursed by the clerk, which records shall be open to inspection by the parties and their attorneys.

Sec. 24. Nothing in this act shall prohibit a party from initiating contempt proceedings. Costs, including a reasonable attorney's fee, may be taxed against a party found to be in contempt.

Sec. 25. (1) All judgments and orders for payment of money under this act shall be liens upon property as in other actions and may be enforced or collected by execution and the means authorized for collection of money judgments. The judgment creditor may

execute a partial or total release of the judgment, generally or on specific property. Release of judgments for child support must be approved by the court which rendered the judgment.

(2) Child support judgments shall cease to be liens on property ten years from the date (a) the youngest child becomes of age or dies, or (b) the most recent execution was issued to collect the judgment, whichever is later, and such lien shall not be reinstated.

(3) Alimony and property settlement award judgments shall cease to be a lien on property ten years from the date (a) the judgment was entered, (b) the most recent payment was made, or (c) the most recent execution was issued to collect the judgment, whichever is latest, and such lien shall not be reinstated.

(4) Whenever a judgment creditor under this act refuses to execute a release of the judgment as provided in this section, the person desiring such release may file an application for the relief desired. A copy of the application and a notice of hearing shall be served on the judgment creditor either personally or by registered or certified mail no less than ten days before the date of hearing. If the court finds that the release is not requested for the purpose of avoiding payment and that the release will not unduly reduce the security, the court may release property from the judgment lien. As a condition for such release, the court may require the posting of a bond with the clerk in an amount fixed by the court, guaranteeing payment of the judgment.

(5) The court may in any case, if it finds it necessary, order a person required to make payments under this act to post sufficient security with the clerk to insure payment. Upon failure to comply with the order the court may also appoint a receiver to take charge of the debtor's property to insure payment.

Sec. 26. A decree dissolving a marriage shall not become final or operative until six months after the decree is rendered, except for the purpose of review by appeal, and for such purpose only the decree shall be treated as a final order as soon as rendered. If an appeal is instituted within one month, such decree shall not become final until such proceedings are finally determined. If no such proceedings have been instituted, the court may, at any time within such six months, vacate or modify its decree. If such decree shall not have been vacated or modified, unless proceedings are then pending with that end in view, the original decree shall at the



expiration of six months become final without any further action of the court.

Sec. 27. Actions for annulment of a marriage shall be brought in the same manner as actions for dissolution of marriage, and shall be subject to all applicable provisions of this act pertaining to dissolution of marriage, except that the only residence requirement shall be that petitioner be an actual resident of the county in which the petition is filed.

Sec. 28. A marriage may be annulled for any of the following causes:

(1) Where the marriage between the parties is prohibited by law;

(2) Where either party is impotent at the time of marriage;

(3) Where either party had a spouse living at the time of marriage;

(4) Where either party was mentally ill or a mental retardate at the time of marriage; or

(5) Force or fraud.

Sec. 29. Annulment actions on behalf of persons under disability may be brought by a parent or adult next friend. An annulment may not be decreed if the marriage is found to be voidable and the parties freely cohabited after the ground for annulment has terminated or become known to the innocent party.

Sec. 30. When validity of a marriage is doubted, either party may file a petition and the court shall decree it annulled or affirmed according to the proof. Notice shall be given the other party as in the case of a petition for dissolutions of marriage.

Sec. 31. Children born to the parties, or to the wife, in a marriage relationship which may be dissolved or annulled pursuant to this act, shall be legitimate unless otherwise decreed by the court, and in every case the legitimacy of all children conceived before the commencement of the suit shall be presumed until the contrary is shown.

Sec. 32. When the court finds that a party entered into the contract of marriage in good faith supposing the other to be capable of contracting, and the marriage is declared a nullity, such fact shall be

entered in the decree and the court may order such innocent party compensated as in the case of dissolution of marriage, including an award for costs and attorney fees.

Sec. 33. (1) This act shall apply to all proceedings commenced on or after its effective date.

(2) This act shall apply to all pending actions and proceedings commenced prior to its effective date with respect to issues on which a judgment has not been entered. Pending actions for divorce or separation shall be deemed to have been commenced on the basis of irretrievable breakdown. Evidence adduced after the effective date of this act shall be in compliance with this act.

(3) This act shall apply to all proceedings commenced after its effective date for the modification of a judgment or order entered prior to the effective date of this act.

(4) In any action or proceeding in which an appeal was pending or a new trial was ordered prior to the effective date of this act, the law in effect at the time of the order sustaining the appeal or the new trial shall govern the appeal, the new trial, and any subsequent trial or appeal.

Sec. 34. If any section in this act or any part of any section shall be declared invalid or unconstitutional, such declaration of invalidity shall not affect the validity of the remaining portions thereof.

Sec. 35. That sections 42-301 to 42-340, Reissue Revised Statutes of Nebraska, 1943, and amendments thereto, are repealed.