

LEGISLATIVE BILL 212

Approved by the Governor May 19, 1975

Introduced by Schmit, 23

AN ACT to amend section 42-371, Reissue Revised Statutes of Nebraska, 1943, and section 42-358, Revised Statutes Supplement, 1974, relating to husband and wife; to provide for enforcement of child support decrees as prescribed; to provide for the release of liens; to provide duties; to provide for removal from office; and to repeal the original sections.

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

Section 1. That section 42-358, Revised Statutes Supplement, 1974, be amended to read as follows:

42-358. 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. Following entry of any decree, the court having jurisdiction over the minor children of the parties may at any time appoint an attorney, as friend of the court, to initiate contempt proceedings for failure of any party to comply with an order of the court directing such party to pay temporary or permanent child support. The clerks of the district courts shall maintain delinquency records in each case docketed in which child support is fixed by order of the court. Each month the clerk shall certify all delinquent cases of more than thirty days' duration to the judge presiding over domestic relations cases. In each case certified, if no action is pending for the collection of delinquent support payments, the court shall appoint an attorney to commence contempt of court proceedings. The contempt proceeding shall be instituted within ten days following appointment and the case shall be diligently prosecuted to completion. 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 or, when there has been an appointment for prosecution of contempt proceedings, by the party found to be in contempt, unless the court finds the party responsible is indigent and orders the county to pay.

Sec. 2. That section 42-371, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

42-371. (1) All judgments and orders for payment of money under sections 42-347 to 42-379 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. The judgment debtor may petition the court which rendered the original judgment for an order releasing the lien as to specific property. The court shall grant the relief prayed for in the petition upon a showing by the judgment debtor that sufficient property shall remain subject to the lien to cover all child support due and that which may become due.

(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 sections 42-347 to 42-379 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 sections 42-347 to 42-379 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. 3. Records of delinquencies in permanent child support payments shall be kept by the clerks of the district courts covering a recording period of nineteen years. Such recording period during the first year that this act is effective shall commence with support decrees dated January 1, 1957.

Sec. 4. All delinquent permanent child support payments shall draw interest at the rate of nine per cent per annum from the date they become delinquent, and the interest shall be collected the same as the support payments upon which the interest accrues.

Sec. 5. Any person found guilty of contempt of court for failure to pay permanent child support payments and imprisoned therefor shall be committed to a court-supervised work release program. Ninety per cent of earnings realized from such program shall be applied to payment of delinquencies in support payments minus appropriate deductions for the cost of work release.

Sec. 6. Remarriage of the person entitled to collect under a permanent child support decree shall not work to cut off delinquent payments due under such decree.

Sec. 7. The court may require the posting of a bond at the time that a permanent child support decree is issued to insure performance of the decree.

Sec. 8. A lien upon the property of one who is delinquent in permanent child support payments may be instituted and enforced according to the terms of section 42-371.

Sec. 9. Any clerk of the district court who fails to perform his duties under the provisions of section 42-358 or of this act shall be removed from office after conviction for such offense.

Sec. 10. That original section 42-371, Reissue Revised Statutes of Nebraska, 1943, and section 42-358, Revised Statutes Supplement, 1974, are repealed.