

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 147

Introduced by Hadley, 37.

Read first time January 07, 2011

Committee: Judiciary

A BILL

1 FOR AN ACT relating to family law; to amend sections 42-357, 43-1244,
2 43-2920, and 43-3342.05, Reissue Revised Statutes of
3 Nebraska; to change provisions relating to orders,
4 inconvenient forums, visitation, and child support; to
5 provide a duty for a commission and the Revisor of
6 Statutes; to harmonize provisions; and to repeal the
7 original sections.

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

1 Section 1. Section 42-357, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 42-357 (1) The court may order either party to pay to the
4 clerk of the district court or to the State Disbursement Unit, as
5 provided in section 42-369, a sum of money for the temporary support
6 and maintenance of the other party and minor children if any are
7 affected by the action and to enable such party to prosecute or
8 defend the action. The court may make such order after service of
9 process and claim for temporary allowances is made in the complaint
10 or by motion by the plaintiff or by the defendant in a responsive
11 pleading; but no such order shall be entered before three days after
12 notice of hearing has been served on the other party or notice
13 waived.

14 (2) During the pendency of any proceeding under sections
15 42-347 to 42-381 after the complaint is filed, upon application of
16 either party and ~~if the~~ an accompanying affidavit of the party or his
17 or her agent ~~shows to the court~~ stating the reasons that the party is
18 entitled thereto, the ~~court may issue~~ following ex parte orders ~~(1)~~
19 may be issued:

20 (a) An order ~~restraining any person both parties~~ from
21 transferring, encumbering, hypothecating, concealing, or in any way
22 disposing of real or personal property except in the usual course of
23 business or for the necessities of life. Either party, ~~and the party~~
24 ~~against whom such order is directed~~ shall upon order of the court
25 account for all unusual expenditures made after such order is served

1 upon him or her; ~~-(2)~~

2 (b) An order enjoining any party from molesting or
3 disturbing the peace of the other party or any minor children
4 affected by the action, and ~~(3) determining the temporary custody of~~
5 any minor children of the marriage, except that no restraining order
6 enjoining any party from molesting or disturbing the peace of any
7 minor child shall issue unless, at the same time, the court
8 determines that the party requesting such order shall have temporary
9 custody of such minor child; and -

10 (c) An order determining the temporary custody of any
11 minor children of the marriage. Ex parte orders issued pursuant to
12 subdivisions (1) and (3) of this section

13 (3)(a) An order issued pursuant to subdivision (2)(a) of
14 this section shall remain in force during the pendency of the action
15 until a decree of dissolution is filed of record or the case is
16 dismissed, whichever is earlier, or until a hearing is held thereon.

17 (b) If an order is issued pursuant to subdivision (2)(b)
18 of this section regarding any minor children, the court shall
19 schedule a hearing within seventy-two hours to determine whether the
20 order shall remain in force.

21 (c) An order issued pursuant to subdivision (2)(c) of
22 this section shall remain in force for no more than ten days or until
23 a hearing is held thereon, whichever is earlier.

24 (4) Any judge of the county or district court or the
25 clerk of the district court may issue an order in accordance with

1 subdivision (2)(a) of this section. Any judge of the county or
2 district court may issue an order in accordance with subdivision (2)
3 (b) or (2)(c) of this section if the affidavit accompanying the
4 application shows the court that the party is entitled to such order.
5 Section 25-1064 shall not apply to the issuance of ex parte orders
6 pursuant to this section.

7 (5) After motion, notice to the party, and hearing, the
8 court may order either party excluded from the premises occupied by
9 the other upon a showing that physical or emotional harm would
10 otherwise result. Any restraining order issued excluding either party
11 from the premises occupied by the other shall specifically set forth
12 the location of the premises and shall be served upon the adverse
13 party by the sheriff in the manner prescribed for serving a summons,
14 and a return thereof shall be filed in the court. Any person who
15 knowingly violates such an order after service shall be guilty of a
16 Class II misdemeanor. ~~In the event a restraining order enjoining any~~
17 ~~party from molesting or disturbing the peace of any minor children is~~
18 ~~issued, upon application and affidavit setting out the reason~~
19 ~~therefor, the court shall schedule a hearing within seventy two hours~~
20 ~~to determine whether the order regarding the minor children shall~~
21 ~~remain in force. Section 25-1064 shall not apply to the issuance of~~
22 ~~ex parte orders pursuant to this section. Any judge of the county~~
23 ~~court or district court may grant a temporary ex parte order in~~
24 ~~accordance with this section.~~

25 Sec. 2. Section 43-1244, Reissue Revised Statutes of

1 Nebraska, is amended to read:

2 43-1244 (a) A court of this state which has jurisdiction
3 under the Uniform Child Custody Jurisdiction and Enforcement Act to
4 make a child custody determination may decline to exercise its
5 jurisdiction at any time if it determines that it is an inconvenient
6 forum under the circumstances and that a court of another state is a
7 more appropriate forum. The issue of inconvenient forum may be raised
8 upon motion of a party, the court's own motion, or the request of
9 another court.

10 (b) Before determining whether it is an inconvenient
11 forum, a court of this state shall consider whether it is appropriate
12 for a court of another state to exercise jurisdiction. For this
13 purpose, the court shall allow the parties to submit information and
14 shall consider all relevant factors, including:

15 (1) whether domestic violence has occurred and is likely
16 to continue in the future and which state could best protect the
17 parties and the child;

18 (2) the length of time the child has resided outside this
19 state;

20 (3) the distance between the court in this state and the
21 court in the state that would assume jurisdiction;

22 (4) the relative financial circumstances of the parties;

23 (5) any agreement of the parties as to which state should
24 assume jurisdiction;

25 (6) the nature and location of the evidence required to

1 resolve the pending litigation, including testimony of the child;

2 (7) the ability of the court of each state to decide the
3 issue expeditiously and the procedures necessary to present the
4 evidence; and

5 (8) the familiarity of the court of each state with the
6 facts and issues in the pending litigation.

7 (c) A determination either declining or retaining
8 jurisdiction under this section is a final appealable order.

9 ~~(e)-(d)~~ If a court of this state determines that it is an
10 inconvenient forum and that a court of another state is a more
11 appropriate forum and after final determination of any appeal, it
12 shall stay the proceedings upon condition that a child custody
13 proceeding be promptly commenced in another designated state and may
14 impose any other condition the court considers just and proper.

15 ~~(d)-(e)~~ A court of this state may decline to exercise its
16 jurisdiction under the act if a child custody determination is
17 incidental to an action for divorce or another proceeding while still
18 retaining jurisdiction over the divorce or other proceeding.

19 Sec. 3. Section 43-2920, Reissue Revised Statutes of
20 Nebraska, is amended to read:

21 43-2920 Sections 43-2920 to 43-2943 and section 4 of this
22 act shall be known and may be cited as the Parenting Act.

23 Sec. 4. (1) By January 1, 2012, the Supreme Court shall
24 provide by court rule a standard visitation schedule and advisory
25 guidelines which may be used in developing parenting plans.

1 (2) The standard visitation schedule shall include a
2 minimum graduated visitation schedule for children under five years
3 of age and a minimum graduated visitation schedule for children five
4 years of age through nineteen years of age. In addition, the standard
5 visitation schedule shall address:

6 (a) Midweek and weekend time-sharing;

7 (b) Differing geographical residences of the custodial
8 parent and the noncustodial parent of the child requesting
9 visitation;

10 (c) Holidays, including Friday and Monday holidays;

11 (d) Summer vacation break;

12 (e) Mid-term school breaks;

13 (f) Notice requirements and authorized reasons for
14 cancellations of visitation;

15 (g) Transportation and transportation costs, including
16 pick up and return of the child;

17 (h) Religious, school, and extracurricular activities;

18 (i) Grandparent and relative contact;

19 (j) The birthday of the child;

20 (k) Sibling visitation schedules;

21 (l) Special circumstances including, but not limited to,
22 emergencies; and

23 (m) Any other standards deemed necessary by the State
24 Court Administrator.

25 (3)(a) The Supreme Court shall provide by court rule

1 advisory guidelines for use by the district and county courts in
2 developing parenting plans when parties to any action concerning the
3 custody of a child are unable to mutually agree upon a visitation
4 schedule.

5 (b) The advisory guidelines shall include the following
6 considerations at a minimum. The courts shall give preference to a
7 visitation schedule:

8 (i) That is mutually agreed upon by both parents over a
9 court-imposed solution;

10 (ii) Which maximizes the continuity and stability of the
11 life of the child;

12 (iii) That gives special consideration to each parent to
13 make the child available to attend family functions, including
14 funerals, weddings, family reunions, religious holidays, important
15 ceremonies, and other significant events in the life of the child or
16 in the life of either parent which may inadvertently conflict with
17 the visitation schedule;

18 (iv) Which will not interrupt the regular school hours of
19 the child;

20 (v) That reasonably accommodates the work schedule of
21 both parents and may increase the visitation time allowed to the
22 noncustodial parent but should not diminish standardized visitation
23 schedules as adopted under subsection (2) of this section;

24 (vi) That reasonably accommodates the distance between
25 the parties and the expense of exercising visitation;

1 (vii) That permits and encourages each parent to have
2 liberal electronic contact during reasonable hours and uncensored
3 mail privileges with the child; and

4 (viii) That gives each parent an equal division of major
5 religious holidays celebrated by both parents, and gives a parent who
6 celebrates a religious holiday that the other parent does not
7 celebrate the right to be with the child on such a religious holiday.

8 (4) The Supreme Court shall periodically review and
9 update the standard visitation schedule and guidelines as deemed
10 necessary by the Chief Justice.

11 (5) The State Court Administrator shall make the standard
12 visitation schedule and advisory guidelines available to parties to
13 an action concerning the custody of a child and to the district and
14 county courts of this state.

15 Sec. 5. (1) A court may include in a child-support order
16 a postsecondary education subsidy for a child if good cause is shown.
17 In determining whether good cause exists for ordering a postsecondary
18 education subsidy, the court shall consider the age of the child, the
19 academic ability of the child relative to postsecondary education,
20 the child's financial resources, and the financial condition of each
21 parent. If the court determines that good cause is shown for ordering
22 a postsecondary education subsidy, the court shall determine the
23 amount of the subsidy as follows:

24 (a) The court shall determine the cost of postsecondary
25 education based upon the in-state cost of attending a public

1 postsecondary educational institution for a course of instruction
2 leading to an undergraduate degree and shall include the reasonable
3 costs for only necessary postsecondary educational expenses. Costs
4 shall include tuition, mandatory fees, books, and room and board;

5 (b) The court shall then determine the amount, if any,
6 which the child may reasonably be expected to contribute, considering
7 the child's financial resources, including, but not limited to, the
8 availability of financial aid whether in the form of scholarships,
9 grants, or student loans, and the ability of the child to earn income
10 while attending school; and

11 (c) The child's expected contribution shall be deducted
12 from the cost of postsecondary education and the court shall
13 apportion responsibility for the remaining cost of postsecondary
14 education to each parent. The amount paid by each parent shall not
15 exceed fifty percent of the total cost of postsecondary education but
16 may vary as to each parent.

17 (2) A postsecondary education subsidy shall be payable to
18 the child, to the educational institution, or to both but shall not
19 be payable to the custodial parent.

20 (3) A postsecondary education subsidy shall not be
21 awarded if the child has repudiated the parent by publicly disowning
22 the parent, refusing to acknowledge the parent, or by acting in a
23 similar manner.

24 (4) The child shall forward reports of grades awarded at
25 the completion of each academic session of the educational

1 institution to each parent within ten days after receipt of the
2 reports. Unless otherwise specified by the parties, a postsecondary
3 education subsidy awarded by the court shall be terminated upon the
4 child's completion of the first calendar year of course instruction
5 if the child fails to maintain a minimum cumulative grade point
6 average to continue in the educational institution as determined by
7 the educational institution.

8 (5) Orders made pursuant to this section shall mention
9 only those factors relevant to the particular case for which the
10 orders are made but, at a minimum, shall contain the names, birth
11 dates, addresses, and counties of residence of the petitioner and
12 respondent.

13 (6) For purposes of this section, postsecondary education
14 subsidy means an amount which either of the parties may be required
15 to pay under a temporary order or final judgment or decree for
16 educational expenses of a child who is between the ages of nineteen
17 and twenty-three years if the child is regularly attending a course
18 of vocational-technical training either as a part of a regular school
19 program or under special arrangements adapted to the individual
20 person's needs; is, in good faith, a full-time student in a college,
21 university, or community college; or has been accepted for admission
22 to a college, university, or community college and the next regular
23 term has not yet begun.

24 Sec. 6. Section 43-3342.05, Reissue Revised Statutes of
25 Nebraska, is amended to read:

1 43-3342.05 (1) The Child Support Advisory Commission is
2 created. Commission members shall include:

3 (a) Two district court judges whose jurisdiction includes
4 domestic relations, to be appointed by the Supreme Court;

5 (b) One member of the Nebraska State Bar Association who
6 practices primarily in the area of domestic relations;

7 (c) One county attorney who works in child support;

8 (d) One professional who works in the field of economics
9 or mathematics or another field of expertise relevant to child
10 support;

11 (e) One custodial parent who has a court order to receive
12 child support;

13 (f) One noncustodial parent who is under a support order
14 to pay child support;

15 (g) The chairperson of the Judiciary Committee of the
16 Legislature, who shall serve as the chairperson of the commission;

17 (h) The chairperson of the Health and Human Services
18 Committee of the Legislature;

19 (i) The State Treasurer or his or her designee;

20 (j) The State Court Administrator or his or her designee;

21 and

22 (k) The director of the Title IV-D Division or his or her
23 designee.

24 (2)(a) The Supreme Court shall notify the Executive Board
25 of the Legislative Council of its intent to review the child support

1 guidelines pursuant to section 42-364.16. Following such
2 notification, the chairperson of the commission shall call a meeting
3 of the commission.

4 (b) Each time the commission meets pursuant to
5 subdivision (2)(a) of this section, the Supreme Court shall make
6 appointments to fill the membership under subdivision (1)(a) of this
7 section and the chairperson of the Executive Board shall make
8 appointments to fill each membership under subdivisions (1)(b)
9 through (f) of this section. The terms of these members shall expire
10 after the commission has fulfilled its duties pursuant to subsection
11 (3) of this section.

12 (c) Members shall serve without compensation but shall be
13 reimbursed for their actual and necessary expenses incurred in the
14 performance of their duties as provided in sections 81-1174 to
15 81-1177.

16 (d) If determined to be necessary to perform the duties
17 of the commission, the commission may hire, contract, or otherwise
18 obtain the services of consultants, researchers, aides, and other
19 necessary support staff with prior approval of the chairperson of the
20 Executive Board.

21 (e) For administrative purposes, the commission shall be
22 managed and administered by the Legislative Council.

23 (3) The duties of the commission shall include, but are
24 not limited to:

25 (a) Reviewing the child support guidelines adopted by the

1 Supreme Court and recommending, if appropriate, any changes to the
2 guidelines. Whenever practicable, the commission shall base its
3 recommendations on economic data and statistics collected in the
4 State of Nebraska. In reviewing the guidelines and formulating
5 recommendations, the commission may conduct public hearings around
6 the state; ~~and~~

7 (b) Presenting reports, as deemed necessary, of its
8 activities and recommendations to the Supreme Court and the Executive
9 Board; and -

10 (c) By January 1, 2012, make a recommendation, if any, to
11 the Judiciary Committee of the Legislature with respect to any
12 changes in the child support guidelines regarding the age a child
13 should be when his or her child support ends.

14 (4) The Supreme Court shall review the commission's
15 reports. The Supreme Court may amend the child support guidelines
16 established pursuant to section 42-364.16 based upon the commission's
17 recommendations.

18 Sec. 7. The Revisor of Statutes shall assign section 5 of
19 this act to Chapter 42, article 3.

20 Sec. 8. Original sections 42-357, 43-1244, 43-2920, and
21 43-3342.05, Reissue Revised Statutes of Nebraska, are repealed.