

LEGISLATURE OF NEBRASKA
NINETY-NINTH LEGISLATURE
FIRST SESSION
LEGISLATIVE BILL 396
FINAL READING

Introduced by Jensen, 20; Price, 26

Read first time January 12, 2005

Committee: Judiciary

A BILL

1 FOR AN ACT relating to child support; to amend sections 42-358 and
2 42-358.02, Reissue Revised Statutes of Nebraska; to
3 clarify a duty involving the reporting of delinquent
4 child support; and to repeal the original sections.
5 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 42-358, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 42-358. (1) The court may appoint an attorney to protect
4 the interests of any minor children of the parties. Such attorney
5 shall be empowered to make independent investigations and to cause
6 witnesses to appear and testify on matters pertinent to the welfare
7 of the children. The court shall by order fix the fee, including
8 disbursements, for such attorney, which amount shall be taxed as
9 costs and paid by the parties as ordered. If the court finds that
10 the party responsible is indigent, the court may order the county
11 to pay the costs.

12 (2) Following entry of any decree, the court having
13 jurisdiction over the minor children of the parties may at any time
14 appoint an attorney, as friend of the court, to initiate contempt
15 proceedings for failure of any party to comply with an order of the
16 court directing such party to pay temporary or permanent child
17 support. The county attorney or authorized attorney may be
18 appointed by the court for the purposes provided in this section,
19 in which case the county attorney or authorized attorney shall
20 represent the state.

21 (3) The clerk of each district court shall maintain
22 records of support orders. The Title IV-D Division shall maintain
23 support order payment records pursuant to section 43-3342.01 and
24 the clerk of each district court shall maintain records of payments
25 received pursuant to sections 42-369 and 43-3342.01. For support
26 orders in all cases issued before September 6, 1991, and for
27 support orders issued or modified on or after September 6, 1991, in
28 cases in which no party has applied for services under Title IV-D

1 of the federal Social Security Act, as amended, each month the
2 Title IV-D Division shall certify all cases in which the support
3 order payment is delinquent in an amount equal to the support due
4 and payable for a one-month period of time. The Title IV-D
5 Division shall provide the case information in electronic format,
6 and upon request in print format, to the judge presiding over
7 domestic relations cases and to the county attorney or authorized
8 attorney. A rebuttable presumption of contempt shall be
9 established if a prima facie showing is made that the court-ordered
10 child or spousal support is delinquent. In cases in which one of
11 the parties receives services under Title IV-D of the federal
12 Social Security Act, as amended, the Title IV-D Division shall
13 certify all such delinquent support order payments to the county
14 attorney or the authorized attorney.

15 In each case certified, if income withholding has not
16 been implemented it shall be implemented pursuant to the Income
17 Withholding for Child Support Act. If income withholding is not
18 feasible and no other action is pending for the collection of
19 support payments, the court shall appoint an attorney to commence
20 contempt of court proceedings. If the county attorney or
21 authorized attorney consents, he or she may be appointed for such
22 purpose. The contempt proceeding shall be instituted within ten
23 days following appointment, and the case shall be diligently
24 prosecuted to completion. The court shall by order fix the fee,
25 including disbursements, for such attorney, which amount shall be
26 taxed as costs and paid by the parties as ordered. Any fees
27 allowed for the services of any county attorney or authorized
28 attorney shall be paid to the Department of Health and Human

1 Services when there is an assignment of support to the department
2 pursuant to section 43-512.07 or when an application for child
3 support services is on file with a county attorney or authorized
4 attorney. If the court finds the party responsible is indigent,
5 the court may order the county to pay the costs.

6 (4) If, at the hearing, the person owing child or spousal
7 support is called for examination as an adverse party and such
8 person refuses to answer upon the ground that his or her testimony
9 may be incriminating, the court may, upon the motion of the county
10 attorney or authorized attorney, require the person to answer and
11 produce the evidence. In such a case the evidence produced shall
12 not be admissible in any criminal case against such person nor
13 shall any evidence obtained because of the knowledge gained by such
14 evidence be so admissible.

15 (5) The court may order access to all revenue information
16 maintained by the Department of Revenue or other agencies
17 concerning the income of persons liable or who pursuant to this
18 section and sections 42-358.08 and 42-821 may be found liable to
19 pay child or spousal support payments.

20 (6) Any person aggrieved by a determination of the court
21 may appeal such decision to the Court of Appeals.

22 Sec. 2. Section 42-358.02, Reissue Revised Statutes of
23 Nebraska, is amended to read:

24 42-358.02. (1) All delinquent child support payments
25 shall draw interest at the rate specified in section 45-103 in
26 effect on the date of the most recent order or decree. Such
27 interest shall be computed as simple interest.

28 (2) All child support payments shall become delinquent

1 the day after they are due and owing, except that no obligor whose
2 child support payments are automatically withheld from his or her
3 paycheck shall be regarded or reported as being delinquent or in
4 arrears if (a) any delinquency or arrearage is solely caused by a
5 disparity between the schedule of the obligor's regular pay dates
6 and the scheduled date the child support is due, (b) the total
7 amount of child support to be withheld from the paychecks of the
8 obligor and the amount ordered by the support order are the same on
9 an annual basis, and (c) the automatic deductions for child support
10 are continuous and occurring. Interest shall not accrue until
11 thirty days after such payments are delinquent.

12 (3) The court shall order the determination of the amount
13 of interest due, and such interest shall be payable in the same
14 manner as the support payments upon which the interest accrues
15 subject to subsection (2) of this section or unless it is waived by
16 agreement of the parties. The Title IV-D Division shall compute
17 interest and identify delinquencies pursuant to this section on the
18 payments received by the State Disbursement Unit pursuant to
19 section 42-369. The Title IV-D Division shall provide the case
20 information in electronic format, and upon request in print format,
21 to the judge presiding over domestic relations cases and shall
22 ~~report such information to the court~~ and to the county attorney or
23 authorized attorney.

24 (4) Support order payments shall be credited in the
25 following manner:

26 (a) First, to the payments due for the current month in
27 the following order: Child support payments, then spousal support
28 payments, and lastly medical support payments;

1 (b) Second, toward any payment arrearage owing, in the
2 following order: Child support payment arrearage, then spousal
3 support payment arrearage, and lastly medical support payment
4 arrearage; and

5 (c) Third, toward the interest on any payment arrearage,
6 in the following order: Child support payment arrearage interest,
7 then spousal support payment arrearage interest, and lastly medical
8 support payment arrearage interest.

9 (5) Interest which may have accrued prior to September 6,
10 1991, shall not be affected or altered by changes to this section
11 which take effect on such date. All delinquent child support
12 payments and all decrees entered prior to such date shall draw
13 interest at the effective rate as prescribed by this section
14 commencing as of such date.

15 Sec. 3. Original sections 42-358 and 42-358.02, Reissue
16 Revised Statutes of Nebraska, are repealed.