

LEGISLATURE OF NEBRASKA

NINETY-NINTH LEGISLATURE

SECOND SESSION

**LEGISLATIVE BILL 1196**

Introduced by Flood, 19

Read first time January 18, 2006

Committee: Judiciary

A BILL

1 FOR AN ACT relating to personal information; to amend sections  
2 42-358.08, 42-364, 42-364.13, 42-724, 42-737, 42-1103,  
3 43-1412, 43-1730, and 43-3334, Reissue Revised Statutes  
4 of Nebraska; to delete references to social security  
5 numbers; to harmonize provisions; and to repeal the  
6 original sections.  
7 Be it enacted by the people of the State of Nebraska,

1           Section 1. Section 42-358.08, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3           42-358.08 Notwithstanding any other provision of law  
4 regarding the confidentiality of records and when not prohibited  
5 by the federal Privacy Act of 1974, Public Law 93-579, as amended,  
6 each department and agency of state, county, and city government  
7 and each employer or other payor as defined in section 43-1709  
8 shall, upon request, furnish to any court-appointed individuals,  
9 the county attorney, any authorized attorney, or the Department  
10 of Health and Human Services an absent parent's address, ~~social~~  
11 ~~security number~~, amount of income, health insurance information,  
12 and employer's name and address for the exclusive purpose of  
13 establishing and collecting child or spousal support. Information  
14 so obtained shall be used for no other purpose. This section may be  
15 enforced by filing a court action.

16           Sec. 2. Section 42-364, Reissue Revised Statutes of  
17 Nebraska, is amended to read:

18           42-364 (1) When dissolution of a marriage or legal  
19 separation is decreed, the court may include a parenting plan  
20 developed under the Parenting Act, if a parenting plan has been so  
21 developed, and such orders in relation to any minor child and the  
22 child's maintenance as are justified, including placing the minor  
23 child in the custody of the court or third parties or terminating  
24 parental rights pursuant to this section if the best interests of  
25 the minor child require such orders. Custody and time spent with

1 each parent shall be determined on the basis of the best interests  
2 of the minor child with the objective of maintaining the ongoing  
3 involvement of both parents in the minor child's life. A decree  
4 of dissolution of a marriage or legal separation shall include the  
5 social security number of each party.

6 (2) In determining custody arrangements and the time to  
7 be spent with each parent, the court shall consider the best  
8 interests of the minor child which shall include, but not be  
9 limited to:

10 (a) The relationship of the minor child to each parent  
11 prior to the commencement of the action or any subsequent hearing;

12 (b) The desires and wishes of the minor child if of an  
13 age of comprehension regardless of chronological age, when such  
14 desires and wishes are based on sound reasoning;

15 (c) The general health, welfare, and social behavior of  
16 the minor child; and

17 (d) Credible evidence of abuse inflicted on any family  
18 or household member. For purposes of this subdivision, abuse and  
19 family or household member shall have the meanings prescribed in  
20 section 42-903.

21 (3) In determining custody arrangements and the time to  
22 be spent with each parent, the court shall not give preference to  
23 either parent based on the sex of the parent and no presumption  
24 shall exist that either parent is more fit or suitable than the  
25 other.

1                   (4) Regardless of the custody determination of the court,  
2           (a) each parent shall continue to have full and equal access to the  
3           education and medical records of his or her child unless the court  
4           orders to the contrary and (b) either parent may make emergency  
5           decisions affecting the health or safety of his or her child while  
6           the child is in the physical custody of such parent pursuant to a  
7           visitation order entered by the court.

8                   (5) After a hearing in open court, the court may place  
9           the custody of a minor child with both parents on a shared or joint  
10          custody basis when both parents agree to such an arrangement. In  
11          that event, each parent shall have equal rights to make decisions  
12          in the best interests of the minor child in his or her custody. The  
13          court may place a minor child in joint custody after conducting a  
14          hearing in open court and specifically finding that joint custody  
15          is in the best interests of the minor child regardless of any  
16          parental agreement or consent.

17                  (6) In determining the amount of child support to be  
18          paid by a parent, the court shall consider the earning capacity  
19          of each parent and the guidelines provided by the Supreme Court  
20          pursuant to section 42-364.16 for the establishment of child  
21          support obligations. Upon application, hearing, and presentation  
22          of evidence of an abusive disregard of the use of child support  
23          money paid by one party to the other, the court may require the  
24          party receiving such payment to file a verified report with the  
25          court, as often as the court requires, stating the manner in

1 which such money is used. Child support paid to the party having  
2 custody of the minor child shall be the property of such party  
3 except as provided in section 43-512.07. The clerk of the district  
4 court shall maintain a record, separate from all other judgment  
5 dockets, of all decrees and orders in which the payment of child  
6 support or spousal support has been ordered, whether ordered by a  
7 district court, county court, separate juvenile court, or county  
8 court sitting as a juvenile court. Orders for child support in  
9 cases in which a party has applied for services under Title IV-D of  
10 the federal Social Security Act, as amended, shall be reviewed as  
11 provided in sections 43-512.12 to 43-512.18.

12 (7) Whenever termination of parental rights is placed  
13 in issue by the pleadings or evidence, the court shall transfer  
14 jurisdiction to a juvenile court established pursuant to the  
15 Nebraska Juvenile Code unless a showing is made that the county  
16 court or district court is a more appropriate forum. In making  
17 such determination, the court may consider such factors as cost  
18 to the parties, undue delay, congestion of dockets, and relative  
19 resources available for investigative and supervisory assistance.  
20 A determination that the county court or district court is a more  
21 appropriate forum shall not be a final order for the purpose of  
22 enabling an appeal. If no such transfer is made, the court shall  
23 appoint an attorney as guardian ad litem to protect the interests  
24 of any minor child. The court may terminate the parental rights  
25 of one or both parents after notice and hearing when the court

1 finds such action to be in the best interests of the minor child  
2 and it appears by the evidence that one or more of the following  
3 conditions exist:

4 (a) The minor child has been abandoned by one or both  
5 parents;

6 (b) One parent has or both parents have substantially and  
7 continuously or repeatedly neglected the minor child and refused to  
8 give such minor child necessary parental care and protection;

9 (c) One parent is or both parents are unfit by reason of  
10 debauchery, habitual use of intoxicating liquor or narcotic drugs,  
11 illegal possession or sale of illegal substances, or repeated lewd  
12 and lascivious behavior, which conduct is found by the court to be  
13 seriously detrimental to the health, morals, or well-being of the  
14 minor child; or

15 (d) One parent is or both parents are unable to discharge  
16 parental responsibilities because of mental illness or mental  
17 deficiency and there are reasonable grounds to believe that such  
18 condition will continue for a prolonged indeterminate period.

19 (8) Whenever termination of parental rights is placed in  
20 issue, the court shall inform a parent who does not have legal  
21 counsel of the parent's right to retain counsel and of the parent's  
22 right to retain legal counsel at county expense if such parent is  
23 unable to afford legal counsel. If such parent is unable to afford  
24 legal counsel and requests the court to appoint legal counsel, the  
25 court shall immediately appoint an attorney to represent the parent

1 in the termination proceedings. The court shall order the county to  
2 pay the attorney's fees and all reasonable expenses incurred by the  
3 attorney in protecting the rights of the parent. At such hearing,  
4 the guardian ad litem shall take all action necessary to protect  
5 the interests of the minor child. The court shall fix the fees and  
6 expenses of the guardian ad litem and tax the same as costs but may  
7 order the county to pay on finding the responsible party indigent  
8 and unable to pay.

9 (9) Modification proceedings relating to support,  
10 custody, visitation, or removal of children from the jurisdiction  
11 of the court shall be commenced by filing a complaint to modify.  
12 Modification of a parenting plan is governed by the Parenting Act.  
13 Proceedings to modify a parenting plan shall be commenced by filing  
14 a complaint to modify. Service of process and other procedure shall  
15 comply with the requirements for a dissolution action.

16 Sec. 3. Section 42-364.13, Reissue Revised Statutes of  
17 Nebraska, is amended to read:

18 42-364.13 (1) Any order for support entered by the  
19 court shall specifically provide that any person ordered to pay a  
20 judgment shall be required to furnish to the clerk of the district  
21 court his or her address, telephone number, and ~~social security~~  
22 ~~number~~, the name of his or her employer, whether or not such  
23 person has access to employer-related health insurance coverage  
24 and, if so, the health insurance policy information, and any other  
25 information the court deems relevant until such judgment is paid

1 in full. The person shall also be required to advise the clerk of  
2 any changes in such information between the time of entry of the  
3 decree and the payment of the judgment in full. If both parents  
4 are parties to the action, such order shall provide that each be  
5 required to furnish to the clerk of the district court all of the  
6 information required by this subsection. Failure to comply with  
7 this section shall be punishable by contempt.

8 (2) All support orders entered by the court shall include  
9 the birthdate and ~~social security number~~ of any child for whom the  
10 order requires the provision of support.

11 (3) Until the Title IV-D Division has operative the  
12 statewide automated data processing and retrieval system necessary  
13 for centralized collection and disbursement of support order  
14 payments:

15 (a) If any case contains an order or judgment for child,  
16 medical, or spousal support, the order shall include the following  
17 statements:

18 In the event that the (plaintiff or defendant) fails to  
19 pay any child, medical, or spousal support payment, as such failure  
20 is certified each month by the district court clerk in cases in  
21 which court-ordered support is delinquent in an amount equal to  
22 the support due and payable for a one-month period of time, he  
23 or she shall be subject to income withholding and may be required  
24 to appear in court on a date to be determined by the court and  
25 show cause why such payment was not made. In the event that the

1 (plaintiff or defendant) fails to pay and appear as ordered, a  
2 warrant shall be issued for his or her arrest.

3 (b) If the court orders income withholding regardless  
4 of whether or not payments are in arrears pursuant to section  
5 43-1718.01 or 43-1718.02, the statement in this subsection may be  
6 altered to read as follows:

7 In the event that the (plaintiff or defendant) fails to  
8 pay any child, medical, or spousal support payment, as such failure  
9 is certified each month by the district court clerk in cases in  
10 which court-ordered support is delinquent in an amount equal to the  
11 support due and payable for a one-month period of time, he or she  
12 may be required to appear in court on a date to be determined by  
13 the court and show cause why such payment was not made. In the  
14 event that the (plaintiff or defendant) fails to pay and appear as  
15 ordered, a warrant shall be issued for his or her arrest.

16 (4) When the Title IV-D Division has operative the  
17 statewide automated data processing and retrieval system necessary  
18 for centralized collection and disbursement of support order  
19 payments:

20 (a) If any case contains an order or judgment for child,  
21 medical, or spousal support, the order shall include the following  
22 statements:

23 In the event that the (plaintiff or defendant) fails to  
24 pay any child, medical, or spousal support payment, as such failure  
25 is certified each month by the State Disbursement Unit in cases

1 in which court-ordered support is delinquent in an amount equal  
2 to the support due and payable for a one-month period of time, he  
3 or she shall be subject to income withholding and may be required  
4 to appear in court on a date to be determined by the court and  
5 show cause why such payment was not made. In the event that the  
6 (plaintiff or defendant) fails to pay and appear as ordered, a  
7 warrant shall be issued for his or her arrest.

8 (b) If the court orders income withholding regardless  
9 of whether or not payments are in arrears pursuant to section  
10 43-1718.01 or 43-1718.02, the statement in this subsection may be  
11 altered to read as follows:

12 In the event that the (plaintiff or defendant) fails to  
13 pay any child, medical, or spousal support payment, as such failure  
14 is certified each month by the State Disbursement Unit in cases  
15 in which court-ordered support is delinquent in an amount equal to  
16 the support due and payable for a one-month period of time, he or  
17 she may be required to appear in court on a date to be determined  
18 by the court and show cause why such payment was not made. In the  
19 event that the (plaintiff or defendant) fails to pay and appear as  
20 ordered, a warrant shall be issued for his or her arrest.

21 Sec. 4. Section 42-724, Reissue Revised Statutes of  
22 Nebraska, is amended to read:

23 42-724 (a) In a proceeding under the Uniform Interstate  
24 Family Support Act, a petitioner seeking to establish a support  
25 order, to determine parentage, or to register and modify a support

1 order of another state shall file a petition. Unless otherwise  
2 ordered under section 42-725, the petition or accompanying  
3 documents must provide, so far as known, the name, and residential  
4 address, ~~and social security numbers~~ of the obligor and the obligee  
5 or the parent and alleged parent, and the name, sex, residential  
6 address, ~~social security number~~, and date of birth of each child  
7 for whose benefit support is sought or whose parentage is to be  
8 determined. Unless filed at the time of registration, the petition  
9 shall be accompanied by a copy of any support order known to  
10 have been issued by another tribunal. The accompanying documents  
11 may include any other information that may assist in locating or  
12 identifying the respondent.

13 (b) The petition shall specify the relief sought. The  
14 petition and accompanying documents shall conform substantially  
15 with the requirements imposed by the forms mandated by federal law  
16 for use in cases filed by a support enforcement agency.

17 Sec. 5. Section 42-737, Reissue Revised Statutes of  
18 Nebraska, is amended to read:

19 42-737 (a) A support order or an income withholding order  
20 of another state may be registered in this state by sending the  
21 following documents and information to the appropriate tribunal in  
22 this state:

23 (1) a letter of transmittal to the tribunal requesting  
24 registration and enforcement;

25 (2) two copies, including one certified copy, of the

1 order to be registered, including any modification of the order;

2 (3) a sworn statement by the person requesting  
3 registration or a certified statement by the custodian of the  
4 records showing the amount of any arrearage;

5 (4) the name of the obligor and, if known:

6 (i) the obligor's address; ~~and social security number;~~

7 (ii) the name and address of the obligor's employer or  
8 other payor and any other source of income of the obligor; and  
9 (iii) a description and the location of property of the  
10 obligor in this state not exempt from execution; and

11 (5) except as otherwise provided in section 42-725, the  
12 name and address of the obligee and, if applicable, the person to  
13 whom support payments are to be remitted.

14 (b) On receipt of a request for registration, the  
15 registering tribunal shall cause the order to be filed as a  
16 foreign judgment, together with one copy of the documents and  
17 information, regardless of their form.

18 (c) A petition or comparable pleading seeking a remedy  
19 that must be affirmatively sought under other law of this state may  
20 be filed at the same time as the request for registration or later.  
21 The pleading shall specify the grounds for the remedy sought.

22 (d) If two or more orders are in effect, the person  
23 requesting registration shall:

24 (1) furnish to the tribunal a certified copy of every  
25 support order asserted to be in effect in addition to the documents

1 specified in this section;

2 (2) specify the order alleged to be the controlling  
3 order, if any; and

4 (3) specify the amount of consolidated arrears, if any.

5 (e) A request for a determination of which is the  
6 controlling order may be filed separately or with a request for  
7 registration and enforcement or for registration and modification.

8 The person requesting registration shall give notice of the request  
9 to each party whose rights may be affected by the determination.

10 Sec. 6. Section 42-1103, Reissue Revised Statutes of  
11 Nebraska, is amended to read:

12 42-1103 A domestic relations order is a qualified  
13 domestic relations order only if such order:

14 (1) Clearly specifies the following:

15 (a) The name, ~~social security number,~~ and last-known  
16 mailing address, if any, of the member;

17 (b) The name, ~~social security number,~~ and last-known  
18 mailing address, if any, of the alternate payee covered by the  
19 order;

20 (c) The statewide public retirement system or systems to  
21 which the order applies;

22 (d) The number of payments or period to which such order  
23 applies; and

24 (e) The amount or percentage of the member's benefits  
25 to be paid by each statewide public retirement system to each

1 alternate payee or the manner in which such amount or percentage is  
2 determined;

3 (2) Does not require a statewide public retirement system  
4 to provide any type or form of benefit, or any option, not  
5 otherwise provided under the plan;

6 (3) Does not require a statewide public retirement system  
7 to provide increased benefits determined on the basis of actuarial  
8 value;

9 (4) Does not require a statewide public retirement system  
10 to pay to an alternate payee benefits which are required to be  
11 paid to another alternate payee under another order previously  
12 determined to be a qualified domestic relations order; and

13 (5) Does not require the payment of benefits to an  
14 alternate payee before the earliest retirement date of a member.

15 Sec. 7. Section 43-1412, Reissue Revised Statutes of  
16 Nebraska, is amended to read:

17 43-1412 (1) The method of trial shall be the same as that  
18 in other civil proceedings, except that the trial shall be by the  
19 court without a jury unless a jury is requested (a) by the alleged  
20 father, in a proceeding instituted by the mother or the guardian or  
21 next friend, or (b) by the mother, in a proceeding instituted by  
22 the alleged father. It being contrary to public policy that such  
23 proceedings should be open to the general public, no one but the  
24 parties, their counsel, and others having a legitimate interest in  
25 the controversy shall be admitted to the courtroom during the trial

1 of the case. The alleged father and the mother shall be competent  
2 to testify. The uncorroborated testimony (i) of the mother, in  
3 a proceeding instituted by the mother or the guardian or next  
4 friend, or (ii) of the alleged father, in a proceeding instituted  
5 by the alleged father, shall not alone be sufficient to support a  
6 verdict or finding that the alleged father is actually the father.  
7 Refusal by the alleged father to comply with an order of the  
8 court for genetic testing shall be deemed corroboration of the  
9 allegation of paternity. A signed and notarized acknowledgment of  
10 paternity or a certified copy or certified reproduction thereof  
11 shall be admissible in evidence in any proceeding to establish  
12 paternity without the need for foundation testimony or other proof  
13 of authenticity or accuracy.

14           If it is determined in this proceeding that the alleged  
15 father is actually the father of the child, a judgment shall be  
16 entered declaring the alleged father to be the father of the child.

17           (2) A default judgment shall be entered upon a showing of  
18 service and failure of the defendant to answer or otherwise appear.

19           (3) If a judgment is entered under this section declaring  
20 the alleged father to be the father of the child, the court shall  
21 retain jurisdiction of the cause and enter such order of support,  
22 including the amount, if any, of any court costs and attorney's  
23 fees which the court in its discretion deems appropriate to be  
24 paid by the father, as may be proper under the procedure and in  
25 the manner specified in section 43-512.04. If it is not determined

1 in the proceeding that the alleged father is actually the father  
2 of the child, the court shall, if it finds that the action  
3 was frivolous, award court costs and attorney's fees incurred by  
4 the alleged father, with such costs and fees to be paid by the  
5 plaintiff.

6 ~~(4) All judgments under this section declaring the~~  
7 ~~alleged father to be the father of the child shall include~~  
8 ~~the father's social security number.~~

9 Sec. 8. Section 43-1730, Reissue Revised Statutes of  
10 Nebraska, is amended to read:

11 43-1730 The following documentation shall be required for  
12 the entry of a foreign support order:

13 (1) A certified copy of the foreign support order with  
14 all modifications;

15 (2) A certified copy of an income withholding order or  
16 notice, if any, still in effect;

17 (3) A copy of the portion of the income withholding  
18 statute of the jurisdiction which issued the support order which  
19 states the requirements for obtaining an income withholding order  
20 or notice under the law of such jurisdiction;

21 (4) A sworn statement of the obligee or certified  
22 statement of the requesting agency of the arrearages of child,  
23 spousal, or medical support payments and the assignment of the  
24 support rights, if any;

25 (5) A statement of the name, and address, and social

1 ~~security number~~ of the obligor, if known;

2 (6) A statement of the name and address of the obligor's  
3 employer or other payor or of any other source of income of the  
4 obligor derived in this state from which income withholding is  
5 sought; and

6 (7) A statement of the name and address of the agency  
7 or person to whom support payments collected by income withholding  
8 shall be transmitted.

9 Sec. 9. Section 43-3334, Reissue Revised Statutes of  
10 Nebraska, is amended to read:

11 43-3334 (1) The director may send a payor an order to  
12 withhold and deliver specifically identified property of any kind  
13 due, owing, or belonging to an obligor if (a) the director has  
14 reason to and does believe that there is in the possession of the  
15 payor property which is due, owing, or belonging to an obligor, (b)  
16 payment on a support order is in arrears, (c) the director sent  
17 a notice of arrearage to the obligor pursuant to section 43-3333  
18 at least thirty days prior to sending the notice to withhold and  
19 deliver, and (d) no hearing was requested or after a hearing the  
20 department determined that an arrearage did exist or that there was  
21 no mistake of fact.

22 (2) The order to withhold and deliver shall state that  
23 notice has been mailed to the obligor in accordance with the  
24 requirements of subdivision (1)(c) of this section and that the  
25 obligor has not requested a hearing or, after a hearing, the

1 department has determined that an arrearage exists or that there  
2 was no mistake of fact, the amount in arrears, ~~the social security~~  
3 ~~number of the obligor~~, the court or agency to which the property  
4 is to be delivered, instructions for transmitting the property, and  
5 information regarding the requirements found in subsection (3) of  
6 this section. The order shall include written questions regarding  
7 the property of every description, including whether or not any  
8 other person has an ownership interest in the property, and the  
9 credits of the obligor which are in the possession or under the  
10 control of the payor at the time the order is received.

11 (3) Upon receipt of an order to withhold and deliver, a  
12 payor shall:

13 (a) Hold property that is subject to the order and that  
14 is in the possession or under the control of the payor at the time  
15 the order to withhold and deliver was received, to the extent of  
16 the amount of the arrearage stated in the order until the payor  
17 receives further notice from the director;

18 (b) Answer all of the questions asked of the payor in  
19 the order, supply the name and address of any person that has an  
20 ownership interest in the property sought to be reached, and return  
21 such information to the director within five business days after  
22 receiving the order; and

23 (c) Upon further notice from the director, deliver any  
24 property which may be subject to the order to the court or  
25 agency designated in the order or release such property or portion

1    thereof.

2                   (4) An order to withhold and deliver shall have the same  
3    priority as a garnishment for the support of a person pursuant to  
4    subsection (4) of section 25-1056.

5                   (5) If the payor is a financial institution, such  
6    financial institution may deduct and retain a processing fee  
7    from any amounts turned over to the department under this section.  
8    The processing fee shall not exceed ten dollars for each account  
9    turned over to the department.

10                   Sec. 10. Original sections 42-358.08, 42-364, 42-364.13,  
11    42-724, 42-737, 42-1103, 43-1412, 43-1730, and 43-3334, Reissue  
12    Revised Statutes of Nebraska, are repealed.