

LEGISLATURE OF NEBRASKA
ONE HUNDRED SECOND LEGISLATURE
FIRST SESSION
LEGISLATIVE BILL 673
Final Reading

Introduced by Flood, 19.

Read first time January 19, 2011

Committee: Judiciary

A BILL

1 FOR AN ACT relating to family law; to amend sections 42-371, 43-2920,
2 43-2922, and 43-2929, Reissue Revised Statutes of
3 Nebraska; to change provisions relating to release of
4 judgment and subordination of support order liens; to
5 define and redefine terms; to provide intent and
6 procedures for child custody, child support, parenting
7 time, and visitation proceedings involving a military
8 parent; to harmonize provisions; and to repeal the
9 original sections.

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

1 Section 1. Section 42-371, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 42-371 Under the Uniform Interstate Family Support Act
4 and sections 42-347 to 42-381, 43-290, 43-512 to 43-512.10, and
5 43-1401 to 43-1418:

6 (1) All judgments and orders for payment of money shall
7 be liens, as in other actions, upon real property and any personal
8 property registered with any county office and may be enforced or
9 collected by execution and the means authorized for collection of
10 money judgments;

11 ~~(2)(a)~~ (2) The judgment creditor may execute a partial or
12 total release of the judgment or a document subordinating the lien of
13 the judgment to any other lien, generally or on specific real or
14 personal property. ~~(b)~~ Release of a judgment for child support or
15 spousal support or subordination of a lien of a judgment for child
16 support or spousal support may, if all such payments are current and
17 not delinquent or in arrears, be released or subordinated by a
18 release or subordination document executed by the judgment creditor,
19 and such document shall be sufficient to remove or subordinate the
20 lien. A properly executed, notarized release or subordination
21 document explicitly reciting that all child support payments or
22 spousal support payments are current is prima facie evidence that
23 such payments are in fact current. For purposes of this section, any
24 delinquency or arrearage of support payments shall be determined as
25 provided in subsection (2) of section 42-358.02;

1 ~~(c) Release of a judgment for child support or spousal~~
2 ~~support or subordination of a lien of a judgment for child support or~~
3 ~~spousal support shall be approved by the court which rendered the~~
4 ~~judgment if all such payments are not current. The judgment debtor~~
5 ~~may file a motion in the court which rendered the original judgment~~
6 ~~for an order releasing or subordinating the lien as to specific real~~
7 ~~or personal property. The court shall grant such order upon a showing~~
8 ~~by the judgment debtor that sufficient real or personal property or~~
9 ~~property interests will remain subject to the lien or will maintain~~
10 ~~priority over other liens sufficient to cover all support due and~~
11 ~~which may become due;~~

12 (3) ~~Whenever~~ If a judgment creditor refuses to execute a
13 release of the judgment or subordination of a lien as provided in
14 subdivision (2) of this section or the support payments are not
15 current, the person desiring such release or subordination may file
16 an application for the relief desired in the court which rendered the
17 original judgment. A copy of the application and a notice of hearing
18 shall be served on the judgment creditor either personally or by
19 registered or certified mail no later than ten days before the date
20 of hearing. If the court finds that the release or subordination is
21 not requested for the purpose of avoiding payment and that the
22 release or subordination will not unduly reduce the security, the
23 court may issue an order releasing real or personal property from the
24 judgment lien or issue an order subordinating the judgment lien. As a
25 condition for such release or subordination, the court may require

1 the posting of a bond with the clerk in an amount fixed by the court,
2 guaranteeing payment of the judgment. If the court orders a release
3 or subordination, the court may order a judgment creditor who,
4 without a good faith reason, refused to execute a release or
5 subordination to pay the judgment debtor's court costs and attorney's
6 fees involved with the application brought under this subdivision. A
7 showing that all support payments are current shall be evidence that
8 the judgment creditor did not have a good faith reason to refuse to
9 execute such release or subordination. For purposes of this section,
10 a current certified copy of support order payment history from the
11 Title IV-D Division of the Department of Health and Human Services
12 setting forth evidence that all support payments are current is prima
13 facie evidence that such payments are in fact current and is valid
14 for thirty days after the date of certification;

15 (4) Full faith and credit shall be accorded to a lien
16 arising by operation of law against real and personal property for
17 amounts overdue relating to a support order owed by ~~an~~ a judgment
18 debtor or obligor who resides or owns property in this state when
19 another state agency, party, or other entity seeking to enforce such
20 lien complies with the procedural rules relating to the filing of the
21 lien in this state. The state agency, party, or other entity seeking
22 to enforce such lien shall send a certified copy of the support order
23 with all modifications, the notice of lien prescribed by 42 U.S.C.
24 652(a)(11) and 42 U.S.C. 654(9)(E), and the appropriate fee to the
25 clerk of the district court in the jurisdiction within this state in

1 which the lien is sought. Upon receiving the appropriate documents
2 and fee, the clerk of the district court shall accept the documents
3 filed and such acceptance shall constitute entry of the foreign
4 support order for purposes of this section only. Entry of a lien
5 arising in another state pursuant to this section shall result in
6 such lien being afforded the same treatment as liens arising in this
7 state. The filing process required by this section shall not be
8 construed as requiring an application, complaint, answer, and hearing
9 as might be required for the filing or registration of foreign
10 judgments under the Nebraska Uniform Enforcement of Foreign Judgments
11 Act or the Uniform Interstate Family Support Act;

12 (5) Support order judgments shall cease to be liens on
13 real or registered personal property ten years from the date (a) the
14 youngest child becomes of age or dies or (b) the most recent
15 execution was issued to collect the judgment, whichever is later, and
16 such lien shall not be reinstated;

17 (6) Alimony and property settlement award judgments, if
18 not covered by subdivision (5) of this section, shall cease to be a
19 lien on real or registered personal property ten years from the date
20 (a) the judgment was entered, (b) the most recent payment was made,
21 or (c) the most recent execution was issued to collect the judgment,
22 whichever is latest, and such lien shall not be reinstated;

23 (7) The court may in any case, upon application or its
24 own motion, after notice and hearing, order a person required to make
25 payments to post sufficient security, bond, or other guarantee with

1 the clerk to insure payment of both current and any delinquent
2 amounts. Upon failure to comply with the order, the court may also
3 appoint a receiver to take charge of the debtor's property to insure
4 payment. Any bond, security, or other guarantee paid in cash may,
5 when the court deems it appropriate, be applied either to current
6 payments or to reduce any accumulated arrearage;

7 (8)(a) The lien of a mortgage or deed of trust which
8 secures a loan, the proceeds of which are used to purchase real
9 property, and (b) any lien given priority pursuant to a subordination
10 document under this section shall attach prior to any lien authorized
11 by this section. Any mortgage or deed of trust which secures the
12 refinancing, renewal, or extension of a real property purchase money
13 mortgage or deed of trust shall have the same lien priority with
14 respect to any lien authorized by this section as the original real
15 property purchase money mortgage or deed of trust to the extent that
16 the amount of the loan refinanced, renewed, or extended does not
17 exceed the amount used to pay the principal and interest on the
18 existing real property purchase money mortgage or deed of trust, plus
19 the costs of the refinancing, renewal, or extension; and

20 (9) Any lien authorized by this section against personal
21 property registered with any county consisting of a motor vehicle or
22 mobile home shall attach upon notation of the lien against the motor
23 vehicle or mobile home certificate of title and shall have its
24 priority established pursuant to the terms of section 60-164 or a
25 subordination document executed under this section.

1 Sec. 2. Section 43-2920, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 43-2920 Sections 43-2920 to 43-2943 and section 4 of this
4 act shall be known and may be cited as the Parenting Act.

5 Sec. 3. Section 43-2922, Reissue Revised Statutes of
6 Nebraska, is amended to read:

7 43-2922 For purposes of the Parenting Act:

8 (1) Appropriate means reflective of the developmental
9 abilities of the child taking into account any cultural traditions
10 that are within the boundaries of state and federal law;

11 (2) Approved mediation center means a mediation center
12 approved by the Office of Dispute Resolution;

13 (3) Best interests of the child means the determination
14 made taking into account the requirements stated in section 43-2923
15 and section 4 of this act;

16 (4) Child means a minor under nineteen years of age;

17 (5) Child abuse or neglect has the same meaning as in
18 section 28-710;

19 (6) Court conciliation program means a court-based
20 conciliation program under the Conciliation Court Law;

21 (7) Custody includes legal custody and physical custody;

22 (8) Domestic intimate partner abuse means an act of abuse
23 as defined in section 42-903 and a pattern or history of abuse
24 evidenced by one or more of the following acts: Physical or sexual
25 assault, threats of physical assault or sexual assault, stalking,

1 harassment, mental cruelty, emotional abuse, intimidation, isolation,
2 economic abuse, or coercion against any current or past intimate
3 partner, or an abuser using a child to establish or maintain power
4 and control over any current or past intimate partner, and, when they
5 contribute to the coercion or intimidation of an intimate partner,
6 acts of child abuse or neglect or threats of such acts, cruel
7 mistreatment or cruel neglect of an animal as defined in section
8 28-1008, or threats of such acts, and other acts of abuse, assault,
9 or harassment, or threats of such acts against other family or
10 household members. A finding by a child protection agency shall not
11 be considered res judicata or collateral estoppel regarding an act of
12 child abuse or neglect or a threat of such act, and shall not be
13 considered by the court unless each parent is afforded the
14 opportunity to challenge any such determination;

15 (9) Economic abuse means causing or attempting to cause
16 an individual to be financially dependent by maintaining total
17 control over the individual's financial resources, including, but not
18 limited to, withholding access to money or credit cards, forbidding
19 attendance at school or employment, stealing from or defrauding of
20 money or assets, exploiting the victim's resources for personal gain
21 of the abuser, or withholding physical resources such as food,
22 clothing, necessary medications, or shelter;

23 (10) Emotional abuse means a pattern of acts, threats of
24 acts, or coercive tactics, including, but not limited to, threatening
25 or intimidating to gain compliance, destruction of the victim's

1 personal property or threats to do so, violence to an animal or
2 object in the presence of the victim as a way to instill fear,
3 yelling, screaming, name-calling, shaming, mocking, or criticizing
4 the victim, possessiveness, or isolation from friends and family.

5 Emotional abuse can be verbal or nonverbal;

6 (11) Joint legal custody means mutual authority and
7 responsibility of the parents for making mutual fundamental decisions
8 regarding the child's welfare, including choices regarding education
9 and health;

10 (12) Joint physical custody means mutual authority and
11 responsibility of the parents regarding the child's place of
12 residence and the exertion of continuous blocks of parenting time by
13 both parents over the child for significant periods of time;

14 (13) Legal custody means the authority and responsibility
15 for making fundamental decisions regarding the child's welfare,
16 including choices regarding education and health;

17 (14) Mediation means a method of nonjudicial intervention
18 in which a trained, neutral third-party mediator, who has no
19 decisionmaking authority, provides a structured process in which
20 individuals and families in conflict work through parenting and other
21 related family issues with the goal of achieving a voluntary,
22 mutually agreeable parenting plan or related resolution;

23 (15) Mediator means a mediator meeting the qualifications
24 of section 43-2938 and acting in accordance with the Parenting Act;

25 (16) Military parent means a parent who is a member of

1 the Army, Navy, Air Force, Marine Corps, Coast Guard, or Reserves of
2 the United States or the National Guard;

3 ~~(16)~~-(17) Office of Dispute Resolution means the office
4 established under section 25-2904;

5 ~~(17)~~-(18) Parenting functions means those aspects of the
6 relationship in which a parent or person in the parenting role makes
7 fundamental decisions and performs fundamental functions necessary
8 for the care and development of a child. Parenting functions include,
9 but are not limited to:

10 (a) Maintaining a safe, stable, consistent, and nurturing
11 relationship with the child;

12 (b) Attending to the ongoing developmental needs of the
13 child, including feeding, clothing, physical care and grooming,
14 health and medical needs, emotional stability, supervision, and
15 appropriate conflict resolution skills and engaging in other
16 activities appropriate to the healthy development of the child within
17 the social and economic circumstances of the family;

18 (c) Attending to adequate education for the child,
19 including remedial or other special education essential to the best
20 interests of the child;

21 (d) Assisting the child in maintaining a safe, positive,
22 and appropriate relationship with each parent and other family
23 members, including establishing and maintaining the authority and
24 responsibilities of each party with respect to the child and honoring
25 the parenting plan duties and responsibilities;

1 (e) Minimizing the child's exposure to harmful parental
2 conflict;

3 (f) Assisting the child in developing skills to maintain
4 safe, positive, and appropriate interpersonal relationships; and

5 (g) Exercising appropriate support for social, academic,
6 athletic, or other special interests and abilities of the child
7 within the social and economic circumstances of the family;

8 ~~(18)~~(19) Parenting plan means a plan for parenting the
9 child that takes into account parenting functions;

10 ~~(19)~~(20) Parenting time, visitation, or other access
11 means communication or time spent between the child and parent or
12 stepparent, the child and a court-appointed guardian, or the child
13 and another family member or members including stepbrothers or
14 stepsisters;

15 ~~(20)~~(21) Physical custody means authority and
16 responsibility regarding the child's place of residence and the
17 exertion of continuous parenting time for significant periods of
18 time;

19 ~~(21)~~(22) Provisions for safety means a plan developed to
20 reduce risks of harm to children and adults who are victims of child
21 abuse or neglect, domestic intimate partner abuse, or unresolved
22 parental conflict;

23 ~~(22)~~(23) Remediation process means the method
24 established in the parenting plan which maintains the best interests
25 of the child and provides a means to identify, discuss, and attempt

1 to resolve future circumstantial changes or conflicts regarding the
2 parenting functions and which minimizes repeated litigation and
3 utilizes judicial intervention as a last resort;

4 ~~(23)~~ (24) Specialized alternative dispute resolution
5 means a method of nonjudicial intervention in high conflict or
6 domestic intimate partner abuse cases in which an approved
7 specialized mediator facilitates voluntary mutual development of and
8 agreement to a structured parenting plan, provisions for safety, a
9 transition plan, or other related resolution between the parties;

10 ~~(24)~~ (25) Transition plan means a plan developed to
11 reduce exposure of the child and the adult to ongoing unresolved
12 parental conflict during parenting time, visitation, or other access
13 for the exercise of parental functions; and

14 ~~(25)~~ (26) Unresolved parental conflict means persistent
15 conflict in which parents are unable to resolve disputes about
16 parenting functions which has a potentially harmful impact on a
17 child.

18 Sec. 4. (1) The Legislature finds that for children of
19 military parents it is in the best interests of the child to maintain
20 the parent-child bond during the military parent's mobilization or
21 deployment.

22 (2) In a custody or parenting time, visitation, or other
23 access proceeding or modification involving a military parent, the
24 court shall consider and provide, if appropriate:

25 (a) Orders for communication between the military parent

1 and his or her child during any mobilization or deployment of greater
2 than thirty days. Such communication may be by electronic or other
3 available means, including webcam, Internet, or telephone; and

4 (b) Parenting time, visitation, or other access orders
5 that ensure liberal access between the military parent and the child
6 during any military leave of the military parent during a
7 mobilization or deployment of greater than thirty days.

8 (3) A military parent's military membership,
9 mobilization, deployment, absence, relocation, or failure to comply
10 with custody, parenting time, visitation, or other access orders
11 because of military duty shall not, by itself, be sufficient to
12 justify an order or modification of an order involving custody,
13 parenting time, visitation, or other access.

14 (4) If a custody, child support, or parenting time,
15 visitation, or other access proceeding, or modification thereof,
16 involves a military parent and is filed after the military parent's
17 unit has received notice of potential deployment or during the time
18 the military parent is mobilized or deployed:

19 (a) The court shall not issue a custody order or modify
20 any previous custody order that changes custody as it existed on the
21 day prior to the military parent's unit receiving notice of potential
22 deployment, except that the court may issue a temporary custody order
23 or temporary modification if there is clear and convincing evidence
24 that the custody change is in the best interests of the child;

25 (b) The court shall not issue a child support order or

1 modify any previous child support order that changes child support as
2 it existed on the day prior to the military parent's unit receiving
3 notice of potential deployment, except that the court may issue a
4 temporary child support order or temporary modification if there is
5 clear and convincing evidence that the order or modification is
6 required to meet the child support guidelines established pursuant to
7 section 42-364.16; and

8 (c) The court shall not issue a parenting time,
9 visitation, or other access order or modify any previous order that
10 changes parenting time, visitation, or other access as it existed on
11 the day prior to the military parent's unit receiving notice of
12 potential deployment, except that the court may enter a temporary
13 parenting time, visitation, or other access order or modify any such
14 existing order to permit liberal parenting time, visitation, or other
15 access during any military leave of the military parent.

16 (5) If a temporary order is issued under subsection (4)
17 of this section, upon the military parent returning from mobilization
18 or deployment, either parent may file a motion requesting a rehearing
19 or reinstatement of a prior order. The court shall rehear the matter
20 if the temporary order was the initial order in the proceeding and
21 shall make a new determination regarding the proceeding. The court
22 shall reinstate the original order if the temporary order was a
23 modification unless the court finds that the best interests of the
24 child or the child support guidelines established pursuant to section
25 42-364.16 require a new determination.

1 (6) Upon finding an (a) unreasonable failure of a
2 nonmilitary parent to accommodate the military leave schedule of the
3 military parent, (b) unreasonable delay by the nonmilitary parent of
4 custody, child support, parenting time, visitation, or other access
5 proceedings, (c) unreasonable failure of the military parent to
6 notify the nonmilitary parent or court of release from mobilization,
7 or (d) unreasonable failure of the military parent to provide
8 requested documentation, the court may order the offending party to
9 pay any attorney's fees of the other party incurred due to such
10 unreasonable action.

11 (7) This section does not apply to permanent change of
12 station moves by a military parent.

13 Sec. 5. Section 43-2929, Reissue Revised Statutes of
14 Nebraska, is amended to read:

15 43-2929 (1) In any proceeding in which parenting
16 functions for a child are at issue under Chapter 42, a parenting plan
17 shall be developed and shall be approved by the court. Court rule may
18 provide for the parenting plan to be developed by the parties or
19 their counsel, a court conciliation program, an approved mediation
20 center, or a private mediator. When a parenting plan has not been
21 developed and submitted to the court, the court shall create the
22 parenting plan in accordance with the Parenting Act. A parenting plan
23 shall serve the best interests of the child pursuant to sections
24 42-364 and 43-2923 and section 4 of this act and shall:

25 (a) Assist in developing a restructured family that

1 serves the best interests of the child by accomplishing the parenting
2 functions; and

3 (b) Include, but not be limited to, determinations of the
4 following:

5 (i) Legal custody and physical custody of each child;

6 (ii) Apportionment of parenting time, visitation, or
7 other access for each child, including, but not limited to, specified
8 religious and secular holidays, birthdays, Mother's Day, Father's
9 Day, school and family vacations, and other special occasions,
10 specifying dates and times for the same, or a formula or method for
11 determining such a schedule in sufficient detail that, if necessary,
12 the schedule can be enforced in subsequent proceedings by the court,
13 and set out appropriate times and numbers for telephone access;

14 (iii) Location of the child during the week, weekend, and
15 given days during the year;

16 (iv) A transition plan, including the time and places for
17 transfer of the child, method of communication or amount and type of
18 contact between the parties during transfers, and duties related to
19 transportation of the child during transfers;

20 (v) Procedures for making decisions regarding the day-to-
21 day care and control of the child consistent with the major decisions
22 made by the person or persons who have legal custody and
23 responsibility for parenting functions;

24 (vi) Provisions for a remediation process regarding
25 future modifications to such plan;

1 (vii) Arrangements to maximize the safety of all parties
2 and the child;

3 (viii) Provisions to ensure regular and continuous school
4 attendance and progress for school-age children of the parties; and

5 (ix) Provisions for safety when a preponderance of the
6 evidence establishes child abuse or neglect, domestic intimate
7 partner abuse, unresolved parental conflict, or criminal activity
8 which is directly harmful to a child.

9 (2) A parenting plan shall require that the parties
10 notify each other of a change of address, except that the address or
11 return address shall only include the county and state for a party
12 who is living or moving to an undisclosed location because of safety
13 concerns.

14 (3) When safe and appropriate for the best interests of
15 the child, the parenting plan may encourage mutual discussion of
16 major decisions regarding parenting functions including the child's
17 education, health care, and spiritual or religious upbringing.
18 However, when a prior factual determination of child abuse or
19 neglect, domestic intimate partner abuse, or unresolved parental
20 conflict has been made, then consideration shall be given to
21 inclusion of provisions for safety and a transition plan that
22 restrict communication or the amount and type of contact between the
23 parties during transfers.

24 (4) Regardless of the custody determinations in the
25 parenting plan, unless parental rights are terminated, both parents

1 shall continue to have the rights stated in section 42-381.

2 (5) In the development of a parenting plan, consideration
3 shall be given to the child's age, the child's developmental needs,
4 and the child's perspective, as well as consideration of enhancing
5 healthy relationships between the child and each party.

6 Sec. 6. Original sections 42-371, 43-2920, 43-2922, and
7 43-2929, Reissue Revised Statutes of Nebraska, are repealed.