

LEGISLATIVE BILL 899

Approved by the Governor April 10, 2012

Introduced by Lathrop, 12.

FOR AN ACT relating to legal procedure; to amend sections 42-353 and 43-2935, Reissue Revised Statutes of Nebraska; to provide procedures for entering a legal separation decree; to change requirements for hearings regarding parenting plans; to provide a duty for the Revisor of Statutes; and to repeal the original sections.

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

Section 1. Section 42-353, Reissue Revised Statutes of Nebraska, is amended to read:

42-353 The pleadings required by sections 42-347 to 42-381 shall be governed by the rules of pleading in civil actions promulgated under section 25-801.01. The complaint shall include the following:

(1) The name and address of the plaintiff and his or her attorney, except that a plaintiff who is living in an undisclosed location because of safety concerns is only required to disclose the county and state of his or her residence and, in such case, shall provide an alternative address for the mailing of notice;

(2) The name and address, if known, of the defendant;

(3) The date and place of marriage;

(4) The name and year of birth of each child whose custody or welfare may be affected by the proceedings and whether (a) a parenting plan as provided in the Parenting Act has been developed and (b) child custody, parenting time, visitation, or other access or child support is a contested issue;

(5) If the plaintiff is a party to any other pending action for divorce, separation, or dissolution of marriage, a statement as to where such action is pending;

(6) Reference to any existing restraining orders, protection orders, or criminal no-contact orders regarding any party to the proceedings;

(7) A statement of the relief sought by the plaintiff, including adjustment of custody, property, and support rights; and

(8) An allegation that the marriage is irretrievably broken if the complaint is for dissolution of marriage or an allegation that the two persons who have been legally married shall thereafter live separate and apart if the complaint is for a legal separation.

Sec. 2. In a legal separation proceeding:

(1) If both of the parties state under oath or affirmation that they shall thereafter live separate and apart, or one of the parties so states and the other does not deny it, the court, after hearing, shall make a finding whether the legal separation should be granted and if so may enter a decree of legal separation;

(2) If one of the parties has denied under oath or affirmation that they will thereafter live separate and apart, the court shall, after hearing, consider all relevant factors, including the circumstances that gave rise to the filing of the complaint and the prospect of reconciliation, and shall make a finding whether the legal separation should be granted and if so may enter a decree of legal separation; or

(3) Sixty days or more after perfection of service of process, the court may enter a decree of legal separation without a hearing if:

(a) Both parties waive the requirement of the hearing and the court has sufficient basis to make a finding that it has subject matter jurisdiction over the legal separation proceeding and personal jurisdiction over both parties; and

(b) Both parties have certified in writing that they shall thereafter live separate and apart, both parties have certified that they have made every reasonable effort to effect reconciliation, all documents required by the court and by statute have been filed, and the parties have entered into a written agreement, signed by both parties under oath, resolving all issues presented by the pleadings in their legal separation proceeding.

Sec. 3. Section 43-2935, Reissue Revised Statutes of Nebraska, is amended to read:

43-2935 (1) After a hearing on the record, the court shall determine whether the submitted parenting plan meets all of the requirements of the Parenting Act and is in the best interests of the child. If the parenting plan lacks any of the elements required by the act or is not in the child's best interests, the court shall modify and approve the parenting plan as modified,

reject the parenting plan and order the parties to develop a new parenting plan, or reject the parenting plan and create a parenting plan that meets all the required elements and is in the best interests of the child. The court may include in the parenting plan:

~~(1)~~ (a) A provision for resolution of disputes that arise under the parenting plan, including provisions for suspension of parenting time, visitation, and other access when new findings of child abuse or neglect, domestic intimate partner abuse, criminal activity affecting the best interests of a child, or the violation of a protection order, restraining order, or criminal no-contact order occur, until a modified custody order or parenting plan with provisions for safety or a transition plan, or both, is in place; and

~~(2)~~ (b) Consequences for failure to follow parenting plan provisions.

(2) A hearing is not required under this section if both parties have waived the requirement for a hearing under section 42-361 or section 2 of this act.

Sec. 4. The Revisor of Statutes shall assign section 2 of this act within sections 42-347 to 42-381, and all references to such sections shall be deemed to include section 2 of this act.

Sec. 5. Original sections 42-353 and 43-2935, Reissue Revised Statutes of Nebraska, are repealed.