

LEGISLATIVE BILL 276

Approved by the Governor February 7, 1984

Introduced by Hoagland, 6; Marsh, 29

AN ACT relating to domestic relations; to amend sections 42-351 and 42-924, Reissue Revised Statutes of Nebraska, 1943, and section 42-357, Revised Statutes Supplement, 1983; to change a provision relating to the district court's jurisdiction as prescribed; to change provisions relating to restraining orders; to provide penalties; and to repeal the original sections.

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

Section 1. That section 42-351, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

42-351. (1) In proceedings under sections 42-347 to 42-379, the court shall have jurisdiction to inquire into such matters, make such investigations, and render such judgments and make such orders, both temporary and final, as are appropriate concerning the status of the marriage, the custody and support of minor children, the support of either party, the settlement of the property rights of the parties, and the award of costs and attorneys' fees.

(2) When final orders relating to proceedings governed by sections 42-347 to 42-379 are on appeal to the Supreme Court and such appeal is pending, the district court that issued such orders shall retain jurisdiction to provide for such orders regarding custody, visitation, or support or other appropriate orders in aid of the appeal process.

Sec. 2. That section 42-357, Revised Statutes Supplement, 1983, be amended to read as follows:

42-357. The court may order either party to pay to the clerk a sum of money for the temporary support and maintenance of the other party and minor children if any are affected by the action, and to enable such party to prosecute or defend the action. The court may make such order after service of process and claim for temporary allowances is made in the petition or by motion by the petitioner or by the respondent in a responsive pleading; but no such order shall be entered before three days after notice of hearing has been served on the other party or notice waived. During the pendency of any proceeding under sections 42-347 to 42-379 after the petition is filed, upon application of either party, the court may issue ex parte orders (1) restraining any person from transferring, encumbering, hypothecating, concealing, or in any way

disposing of real or personal property except in the usual course of business or for the necessities of life, and the party against whom such order is directed shall upon order of the court account for all unusual expenditures made after such order is served upon him or her, (2) enjoining any party from molesting or disturbing the peace of the other party or any minor children affected by the action, and (3) determining the temporary custody of any minor children of the marriage, except that no restraining order enjoining any party from molesting or disturbing the peace of any minor child shall issue unless, at the same time, the court determines that the party requesting such order shall have temporary custody of such minor child. Ex parte orders issued pursuant to subdivision (1) of this section shall remain in force for no more than ten days or until a hearing is held thereon, whichever is earlier. After motion, notice to the party, and hearing, the court may order either party excluded from the premises occupied by family dwelling of the other upon a showing that physical or emotional harm would otherwise result. Any restraining order issued excluding either party from the premises occupied by the other shall specifically set forth the location of the premises and shall be served upon the adverse party by the sheriff in the manner prescribed for serving a summons and a return thereof shall be filed in district court. Any person who knowingly violates such an order after service shall be guilty of a Class IIIA misdemeanor. In the event a restraining order enjoining any party from molesting or disturbing the peace of any minor children is issued, upon application and affidavit setting out the reason therefore, the court shall schedule a hearing within seventy-two hours to determine whether the order regarding the minor children shall remain in force.

Sec. 3. That section 42-924, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

42-924. Any victim of domestic abuse may file an application and affidavit in support of for a temporary restraining order by making a showing of such abuse with any judge of a district court or a conciliation court. Upon the filing of such an application and affidavit in support thereof, the judge or court may issue a temporary restraining order without bond enjoining the adverse party from (1) imposing any restraint upon the person or liberty of the applicant; or (2) threatening, assaulting, molesting, attacking, or otherwise disturbing the peace of the applicant. ; or (3) entering the family dwelling or the dwelling of the applicant upon a showing that physical or emotional harm would otherwise result. Application for removal of the adverse party from the premises occupied by the victim of domestic abuse shall require notice and hearing. Such hearing shall be scheduled within seventy-two hours of the issuance of the temporary

restraining order. The court may order either party excluded from the premises occupied by the other upon a showing that physical or emotional harm would otherwise result. Any such restraining order issued shall specifically set forth the location of the premises and shall be served in the manner prescribed for serving a summons, and a return thereof shall be filed in district court. Any person who knowingly violates such an order after service shall be guilty of a Class IIIA misdemeanor.

Sec. 4. That original sections 42-351 and 42-924, Reissue Revised Statutes of Nebraska, 1943, and section 42-357, Revised Statutes Supplement, 1983, are repealed.