

LEGISLATIVE BILL 1207

Approved by the Governor April 15, 2004

Introduced by Brashear, 4

AN ACT relating to judicial process; to amend sections 24-809.05, 25-1565, 25-21,232, 25-21,233, 42-349, 42-350, 42-352, 42-353, 42-355, 42-361, 42-364, 42-364.11, 42-365, 42-373, 42-376, 42-380, 42-501 to 42-503, 43-512.01, 43-512.03, 43-512.04, 43-512.15, 43-1411.01, 43-1412, 43-2917, and 44-3311, Reissue Revised Statutes of Nebraska, sections 24-301.02, 25-1144.01, 25-1315.02, 25-1329, 25-1916, 25-21,230, 25-21,234, 25-2301.02, 25-2740, 42-357, 42-364.13, 42-371, and 43-3318, Revised Statutes Supplement, 2002, and sections 25-21,223 and 29-2261, Revised Statutes Supplement, 2003; to change and eliminate provisions relating to district court judicial districts, posttrial motions, execution of judgments, appeal bonds, forcible entry and detainer actions, in forma pauperis proceedings, presentence reports and psychiatric examinations, domestic relations actions, filing of pleadings and pleading nomenclature for certain actions, and the Counsel for Discipline of the Nebraska Supreme Court; to provide an exemption from execution for earned income tax credit refunds; to provide immunity from liability relating to the handling of anhydrous ammonia; to harmonize provisions; to provide a duty for the Revisor of Statutes; to provide operative dates; to repeal the original sections; to outright repeal sections 42-119, 42-120, and 42-354, Reissue Revised Statutes of Nebraska; and to declare an emergency.

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

Section 1. Section 24-301.02, Revised Statutes Supplement, 2002, is amended to read:

24-301.02. The State of Nebraska shall be divided into the following twelve district court judicial districts:

District No. 1 shall contain the counties of Clay, Nuckolls, Saline, Jefferson, Gage, Thayer, Johnson, Pawnee, Nemaha, Fillmore, and Richardson;

District No. 2 shall contain the counties of Sarpy, Cass, and Otoe;

District No. 3 shall contain the county of Lancaster;

District No. 4 shall contain the county of Douglas;

District No. 5 shall contain the counties of Merrick, Platte, Colfax, Boone, Nance, Hamilton, Polk, York, Butler, Seward, and Saunders;

District No. 6 shall contain the counties of Dixon, Dakota, Cedar, Burt, Thurston, Dodge, and Washington;

District No. 7 shall contain the counties of Knox, Cuming, Antelope, Pierce, Wayne, Madison, and Stanton;

District No. 8 shall contain the counties of Cherry, Keya Paha, Brown, Rock, Blaine, Loup, Custer, Boyd, Holt, Garfield, Wheeler, Valley, Greeley, Sherman, and Howard;

District No. 9 shall contain the counties of Buffalo and Hall;

District No. 10 shall contain the counties of Adams, ~~Clay,~~ Phelps, Kearney, Harlan, Franklin, and Webster; ~~and Nuckolls;~~

District No. 11 shall contain the counties of Hooker, Thomas, Arthur, McPherson, Logan, Keith, Perkins, Lincoln, Dawson, Chase, Hayes, Frontier, Gosper, Dundy, Hitchcock, Red Willow, and Furnas; and

District No. 12 shall contain the counties of Sioux, Dawes, Box Butte, Sheridan, Scotts Bluff, Morrill, Garden, Banner, Kimball, Cheyenne, Grant, and Deuel.

In the fourth district there shall be sixteen judges of the district court. In the third district there shall be seven judges of the district court. In the twelfth district there shall be five judges of the district court. In the second, fifth, and eleventh districts there shall be four judges of the district court. In the first, sixth, and ninth districts there shall be three judges of the district court. In the seventh, eighth, and tenth districts there shall be two judges of the district court.

Sec. 2. Section 24-809.05, Reissue Revised Statutes of Nebraska, is amended to read:

24-809.05. If a final determination of a district or county court judicial vacancy is made, the Supreme Court shall, after consultation with a representative sampling of the lawyers of the judicial district, determine and announce the county where the primary office for the judgeship shall be located. In designating a primary office, the Supreme Court shall locate

judges so as to provide maximum service to all areas of the judicial district. If more than one county is acceptable as a primary office, the Supreme Court may so state and may leave the final choice of the location of the primary office to the judge. The Supreme Court may, after consultation with a representative sampling of the lawyers of the judicial district, relocate a district or county court judge within his or her judicial district. The Supreme Court may pay reasonable moving expenses of a judge when so relocated. The principal criterion used by the Supreme Court when designating a primary office and in relocating judges within a judicial district shall be the judicial workload statistics compiled by the State Court Administrator pursuant to section 24-1007.

Sec. 3. Section 25-1144.01, Revised Statutes Supplement, 2002, is amended to read:

25-1144.01. A motion for a new trial shall be filed no later than ten days after the entry of the judgment. A motion for a new trial filed after the announcement of a verdict or decision but before the entry of judgment shall be treated as filed after the entry of judgment and on the day thereof.

Sec. 4. Section 25-1315.02, Revised Statutes Supplement, 2002, is amended to read:

25-1315.02. Whenever a motion for a directed verdict made at the close of all the evidence is denied or for any reason is not granted, the court is deemed to have submitted the action to the jury subject to a later determination of the legal questions raised by the motion. No later than ten days after the entry of judgment, a party who has moved for a directed verdict may move to have the verdict and any judgment entered thereon set aside and to have judgment entered in accordance with the moving party's motion for a directed verdict. If the motion is filed after the announcement of a verdict but before the entry of judgment, it shall be treated as filed after the entry of judgment and on the day thereof. If a verdict is not returned, within ten days after the jury is discharged a party who has moved for a directed verdict may move for judgment in accordance with the moving party's motion for a directed verdict. A motion for a new trial may be joined with this motion, or a new trial may be prayed for in the alternative. If judgment was entered, the court may allow the judgment to stand or may reopen the judgment and either order a new trial or direct the entry of judgment as if the requested verdict had been directed. If no verdict was returned, the court may direct the entry of judgment as if the requested verdict had been directed or may order a new trial.

Sec. 5. Section 25-1329, Revised Statutes Supplement, 2002, is amended to read:

25-1329. A motion to alter or amend a judgment shall be filed no later than ten days after the entry of the judgment. A motion to alter or amend a judgment filed after the announcement of a verdict or decision but before the entry of judgment shall be treated as filed after the entry of judgment and on the day thereof.

Sec. 6. In bankruptcy and in the collection of a money judgment, the full amount of any federal or state earned income tax credit refund shall be exempt from attachment, garnishment, or other legal or equitable process and from all claims of creditors.

Sec. 7. Section 25-1565, Reissue Revised Statutes of Nebraska, is amended to read:

25-1565. ~~When an execution against the property of a debtor, or one of several debtors in the same judgment, is issued to the sheriff of a county where the debtor resides, or if the debtor does not reside in the state, to the sheriff of the county where the judgment was rendered, or a transcript of a judgment has been filed, and is returned unsatisfied in whole or in part action,~~ the judgment creditor is entitled to an order from the county court or the district court of the county ~~to~~ (1) in which the ~~execution was issued~~ debtor resides, (2) if the debtor does not reside in the state, where judgment was rendered, or (3) in which a transcript of judgment has been filed, requiring the debtor to appear and answer concerning his or her property before the judge of such court or a referee appointed by the judge of such court at a time and place specified in the order within the county to which the ~~execution order~~ order was issued.

Sec. 8. Section 25-1916, Revised Statutes Supplement, 2002, is amended to read:

25-1916. No appeal in any case shall operate as a supersedeas unless the appellant or appellants within thirty days after the entry of such judgment, decree, or final order execute to the adverse party a bond with one or more sureties, make a deposit of United States Government bonds with the

clerk, or in lieu thereof make a cash deposit with the clerk for the benefit of the adverse party as follows:

(1) When the judgment, decree, or final order appealed from directs the payment of money, the bond, deposit of ~~or~~ United States Government bonds, or cash deposit shall be the lesser of (a) ~~in~~ the amount of the judgment, decree, or final order and the taxable court costs in the district court, plus the estimated amount of interest that will accrue on the judgment, decree, or final order between its date and the final determination of the cause in the Court of Appeals or Supreme Court and the estimated amount of the costs of appeal, such estimated interest to accrue and estimated court costs to be determined by the trial court, ~~such supersedeas~~ (b) fifty percent of the appellant's net worth, or (c) fifty million dollars. If an appellee proves by a preponderance of the evidence that an appellant is dissipating or diverting assets outside the ordinary course of business to avoid the payment of a judgment, the court may enter any orders necessary to protect the appellee and require the appellant to provide a bond, deposit of United States Government bonds, or cash deposit up to and including the amount required under subdivision (1)(a) of this section.

Such bond, United States Government bond, or cash deposit ~~to~~ shall be conditioned that the appellant or appellants will prosecute such appeal without delay and pay all condemnation money and costs which may be found against him, her, or them on the final determination of the cause in the Court of Appeals or Supreme Court. When ~~, except that when~~ a cash deposit is made, United States Government bonds are deposited, or a bond is provided, which is written by a corporate surety company authorized to do business within the State of Nebraska, ~~which~~ and the cash deposit, United States Government bonds, or supersedeas bond is approved by the trial court in which the judgment was rendered and filed in the court, the general lien of the judgment shall be dissolved;

(2) When the judgment, decree, or final order directs the execution of a conveyance or other instrument, the bond, deposit of United States Government bonds, or cash deposit shall be in such sum, not exceeding the lesser of fifty percent of the appellant's net worth or fifty million dollars, as shall be prescribed by the district court, or judge thereof in vacation, conditioned that the appellant or appellants will prosecute such appeal without delay and will abide and perform the judgment or decree rendered or final order which shall be made by the Court of Appeals or Supreme Court in the cause;

(3) When the judgment, decree, or order directs the sale or delivery of possession of real estate, the bond, deposit of United States Government bonds, or cash deposit shall be in such sum, not exceeding the lesser of fifty percent of the appellant's net worth or fifty million dollars, as the court, or judge thereof in vacation, shall prescribe, conditioned that the appellant or appellants will prosecute such appeal without delay, will not during the pendency of such appeal commit or suffer to be committed any waste upon such real estate, and will pay all costs and all rents or damages to such real estate which may accrue during the pendency of such appeal and until the appellee is legally restored thereto; and

(4) When the judgment, decree, or final order dissolves or modifies any order of injunction which has been or hereafter may be granted, the supersedeas bond, deposit of United States Government bonds, or cash deposit shall be in such reasonable sum, not exceeding the lesser of fifty percent of the appellant's net worth or fifty million dollars, as the court or judge thereof in vacation shall prescribe, conditioned that the appellant or appellants will prosecute such appeal without delay and will pay all costs which may be found against him, her, or them on the final determination of the cause in the Court of Appeals or Supreme Court. Such ~~, and such~~ supersedeas bond, deposit of United States Government bonds, or cash deposit shall stay the doing of the act or acts sought to be restrained by the suit and continue such injunction in force until the case is heard and finally determined in the Court of Appeals or Supreme Court. The undertaking given upon the allowance of the injunction shall be and remain in effect until it is finally decided whether or not the injunction ought to have been granted.

The changes made to this section by this legislative bill shall apply to all cases pending on or filed on or after the operative date of this section.

Sec. 9. (1) Any person who owns, maintains, or installs anhydrous ammonia equipment, uses anhydrous ammonia for any lawful purpose, sells anhydrous ammonia for any lawful purposes, or transports anhydrous ammonia in a manner prescribed by law shall not be liable to any person who tampers with, or assists in tampering with, such anhydrous ammonia, or such anhydrous ammonia equipment, for personal injury, wrongful death, or any other economic

or noneconomic damages arising out of such tampering, unless such liability is a result of the willful, wanton, reckless, or intentional acts or omissions of such person.

(2) For purposes of this section:

(a) Anhydrous ammonia equipment means any equipment used in the application of anhydrous ammonia for agricultural purposes that meets all applicable safety requirements established by state and federal statutes and regulations or any container or storage facility used to store anhydrous ammonia in a manner that meets all applicable safety requirements established by state and federal statutes and regulations; and

(b) Tampering with anhydrous ammonia means intentionally, knowingly, and unlawfully gaining access or attempting to gain access to anhydrous ammonia or anhydrous ammonia equipment.

Sec. 10. Section 25-21,223, Revised Statutes Supplement, 2003, is amended to read:

25-21,223. The summons shall be issued and directed with a copy of the complaint attached to the summons, shall state the cause of the complaint, the time and place of trial of the action for possession, and the answer day for other causes of action, and shall notify the defendant that if he or she fails to appear, judgment shall be entered against him or her. The summons may be served and returned as in other cases or by any person provided in sections 25-505.01 to 25-516.01, except that the summons shall be served within three days, excluding nonjudicial days, from the date of its issuance and shall be returnable within five days, excluding nonjudicial days, from the date of its issuance. If service cannot be made with reasonable diligence under such sections, service may be made by any person by leaving a copy of the summons at the detained premises and mailing a copy by first-class mail to the defendant's last-known address. The person making the service shall file with the court an affidavit stating with particularity the manner in which he or she made the service and, if service was not made as provided in sections 25-505.01 to 25-516.01, the reasons why service under such sections was unsuccessful. Trial of the action for possession shall be held not less than ten nor more than fourteen days after the date of issuance of the summons.

Sec. 11. Section 25-21,230, Revised Statutes Supplement, 2002, is amended to read:

25-21,230. If a judgment of restitution is entered, the court shall, at the request of the plaintiff or the plaintiff's attorney, issue a writ of execution thereon which shall be in the following form as nearly as practicable:

The State of Nebraska, County, ss.
To any Constable or Sheriff of County:
Whereas, in a certain action for the forcible entry and detention, (or the forcible detention, as the case may be) of the following described premises, to wit:, lately tried before this court, wherein was plaintiff, and was defendant, judgment was entered on the day of A.D., you therefor are hereby commanded to cause the defendant to be forthwith removed from the premises, and the plaintiff to have restitution of the same; also that you levy of the goods and chattels of the defendant, and make the costs aforesaid, and all accruing costs; and of this writ make legal service and due return. Witness my hand this day of A.D., Clerk of the County (County or District) Court.

Sec. 12. Section 25-21,232, Reissue Revised Statutes of Nebraska, is amended to read:

25-21,232. Judgments obtained in county court under sections 25-21,219 to 25-21,235 shall not be a bar to any future action brought by either party.

Sec. 13. Section 25-21,233, Reissue Revised Statutes of Nebraska, is amended to read:

25-21,233. Any party against whom judgment has been entered in an action of forcible entry and detention, or forcible detention only, of real property, may appeal as provided in sections 25-2728 to 25-2738 for in a civil action.

Sec. 14. Section 25-21,234, Revised Statutes Supplement, 2002, is amended to read:

25-21,234. No appeal shall operate as a supersedeas unless the appellant, within thirty days after the entry of the judgment, deposits with the clerk of the county court in which the judgment was entered a cash bond or undertaking with at least one good and sufficient surety approved by the court conditioned in case of appeal by the plaintiff that he or she will satisfy the final judgment and costs and, in case of appeal by the defendant, that he or she will satisfy the final judgment and costs and will pay a reasonable rent

for the premises during the time he or she shall have unlawfully withheld the same.

Sec. 15. Section 25-2301.02, Revised Statutes Supplement, 2002, is amended to read:

25-2301.02. (1) An application to proceed in forma pauperis shall be granted unless there is an objection that the party filing the application+ (a) ~~Has~~ has sufficient funds to pay costs, fees, or security or (b) is asserting legal positions which are frivolous or malicious. The objection to the application shall be made within thirty days after the filing of the application or at any time if the ground for the objection is that the initial application was fraudulent. Such objection may be made by the court on its own motion or on the motion of any interested person. The motion objecting to the application shall specifically set forth the grounds of the objection. An evidentiary hearing shall be conducted on the objection unless the objection is by the court on its own motion on the grounds that the applicant is asserting legal positions which are frivolous or malicious. If no hearing is held, the court shall provide a written statement of its reasons, findings, and conclusions for denial of the applicant's application to proceed in forma pauperis which shall become a part of the record of the proceeding. If an objection is sustained, the party filing the application shall have thirty days after the ruling or issuance of the statement to proceed with an action or appeal upon payment of fees, costs, or security notwithstanding the subsequent expiration of any statute of limitations or deadline for appeal. In any event, the court shall not deny an application on the basis that the appellant's legal positions are frivolous or malicious if to do so would deny a defendant his or her constitutional right to appeal in a felony case.

(2) In the event that an application to proceed in forma pauperis is denied and an appeal is taken therefrom, the aggrieved party may make application for a transcript of the hearing on in forma pauperis eligibility. Upon such application, the court shall order the transcript to be prepared and the cost shall be paid by the county in the same manner as other claims are paid. The appellate court shall review the decision denying in forma pauperis eligibility de novo on the record based on the transcript of the hearing or the written statement of the court.

Sec. 16. Section 25-2740, Revised Statutes Supplement, 2002, is amended to read:

25-2740. (1) For purposes of this section:

(a) Domestic relations matters means proceedings under sections 28-311.09 and 28-311.10 (including harassment protection orders and valid foreign harassment protection orders), the Conciliation Court Law and sections 42-347 to 42-381 (including dissolution, separation, annulment, custody, and support), section 43-512.04 (including child support or medical support), section 42-924 (including domestic protection orders), sections 43-1401 to 43-1418 (including paternity determinations and parental support), and sections 43-1801 to 43-1803 (including grandparent visitation); and

(b) Paternity determinations means proceedings to establish the paternity of a child under sections 43-1411 to 43-1418.

(2) Except as provided in subsection (4) of this section, in domestic relations matters, a party shall file his or her petition or complaint and all other court filings with the clerk of the district court. The party shall state in the petition or complaint whether such party requests that the proceeding be heard by a county court judge or by a district court judge. If the party requests the case be heard by a county court judge, the county court judge assigned to hear cases in the county in which the matter is filed at the time of the hearing is deemed appointed by the district court and the consent of the county court judge is not required. Such proceeding is considered a district court proceeding, even if heard by a county court judge, and an order or judgment of the county court in a domestic relations matter has the force and effect of a district court judgment. The testimony in a domestic relations matter heard before a county court judge shall be preserved as provided in section 25-2732.

(3) Until January 1, 2000, upon motion of a party in a contested action brought under subsection (2) of this section, the proceeding shall be transferred from a county court judge to a district court judge.

(4) In addition to the jurisdiction provided for paternity determinations under subsection (2) of this section, a county court or separate juvenile court which already has jurisdiction over the child whose paternity is to be determined has jurisdiction over such paternity determination.

Sec. 17. Section 29-2261, Revised Statutes Supplement, 2003, is amended to read:

29-2261. (1) Unless it is impractical to do so, when an offender

has been convicted of a felony other than murder in the first degree, the court shall not impose sentence without first ordering a presentence investigation of the offender and according due consideration to a written report of such investigation. When an offender has been convicted of murder in the first degree and (a) a jury renders a verdict finding the existence of one or more aggravating circumstances as provided in section 29-2520 or (b) (i) the information contains a notice of aggravation as provided in section 29-1603 and (ii) the offender waives his or her right to a jury determination of the alleged aggravating circumstances, the court shall not commence the sentencing determination proceeding as provided in section 29-2521 without first ordering a presentence investigation of the offender and according due consideration to a written report of such investigation.

(2) A court may order a presentence investigation in any case, except in cases in which an offender has been convicted of a Class IIIA misdemeanor, a Class IV misdemeanor, a Class V misdemeanor, a traffic infraction, or any corresponding city or village ordinance.

(3) The presentence investigation and report shall include, when available, an analysis of the circumstances attending the commission of the crime, the offender's history of delinquency or criminality, physical and mental condition, family situation and background, economic status, education, occupation, and personal habits, and any other matters that the probation officer deems relevant or the court directs to be included. All local and state police agencies and Department of Correctional Services adult correctional facilities shall furnish to the probation officer copies of such criminal records, in any such case referred to the probation officer by the court of proper jurisdiction, as the probation officer shall require without cost to the court or the probation officer.

Such investigation shall also include:

(a) Any written statements submitted to the county attorney by a victim; and

(b) Any written statements submitted to the probation officer by a victim.

(4) If there are no written statements submitted to the probation officer, he or she shall certify to the court that:

(a) He or she has attempted to contact the victim; and

(b) If he or she has contacted the victim, such officer offered to accept the written statements of the victim or to reduce such victim's oral statements to writing.

For purposes of subsections (3) and (4) of this section, the term victim shall be as defined in section 29-119.

(5) Before imposing sentence, the court may order the offender to submit to psychiatric observation and examination for a period of not exceeding sixty days or such longer period as the court determines to be necessary for that purpose. The offender may be remanded for this purpose to any available clinic or mental hospital, or the court may appoint a qualified psychiatrist to make the examination. The report of the examination shall be submitted to the court.

(6) Any presentence report or psychiatric examination shall be privileged and shall not be disclosed directly or indirectly to anyone other than a judge, probation officers to whom an offender's file is duly transferred, the probation administrator or his or her designee, or others entitled by law to receive such information, including personnel and mental health professionals for the Nebraska State Patrol specifically assigned to sex offender registration and community notification for the sole purpose of using such report or examination for assessing risk and for community notification of registered sex offenders. For purposes of this subsection, mental health professional means (a) a practicing physician licensed to practice medicine in this state under the provisions of section 71-102, (b) a practicing psychologist licensed to engage in the practice of psychology in this state as provided in section 71-1,206.14, or (c) a practicing mental health professional licensed or certified in this state as provided in section 71-1,333. The court may permit inspection of the report or examination of parts thereof by the offender or his or her attorney, or other person having a proper interest therein, whenever the court finds it is in the best interest of a particular offender. The court may allow fair opportunity for an offender to provide additional information for the court's consideration.

(7) If an offender is sentenced to imprisonment, a copy of the report of any presentence investigation or psychiatric examination shall be transmitted immediately to the Department of Correctional Services. Upon request, the Board of Parole or the Office of Parole Administration may receive a copy of the report from the department.

(8) Notwithstanding subsection (6) of this section, the Nebraska

Commission on Law Enforcement and Criminal Justice under the direction and supervision of the Chief Justice of the Supreme Court shall have access to presentence investigations and reports for the sole purpose of carrying out the study required under subdivision (7) of section 81-1425. The commission shall treat such information as confidential, and nothing identifying any individual shall be released by the commission.

(9) Notwithstanding subsection (6) of this section, the Supreme Court or an agent of the Supreme Court acting under the direction and supervision of the Chief Justice shall have access to psychiatric examinations and presentence investigations and reports for research purposes. The Supreme Court and its agent shall treat such information as confidential and nothing identifying any individual shall be released.

Sec. 18. Section 42-349, Reissue Revised Statutes of Nebraska, is amended to read:

42-349. No action for dissolution of marriage may be brought unless at least one of the parties has had actual residence in this state with a bona fide intention of making this state his or her permanent home for at least one year prior to the filing of the ~~petition~~ complaint, or unless the marriage was solemnized in this state and either party has resided in this state from the time of marriage to filing the ~~petition~~ complaint. Persons serving in the armed forces of the United States who have been continuously stationed at any military base or installation in this state for one year or, if the marriage was solemnized in this state, have resided in this state from the time of marriage to the filing of the ~~petition~~ complaint shall for the purposes of sections 42-347 to 42-381 be deemed residents of this state.

Sec. 19. Section 42-350, Reissue Revised Statutes of Nebraska, is amended to read:

42-350. If a ~~petition~~ complaint for legal separation is filed before residence requirements for dissolution of marriage have been complied with, either party, upon complying with such requirements, may amend his or her pleadings to request a dissolution of marriage, and notice of such amendment shall be given in the same manner as for an original action under sections 42-347 to 42-381.

Sec. 20. Section 42-352, Reissue Revised Statutes of Nebraska, is amended to read:

42-352. A proceeding under sections 42-347 to 42-381 shall be commenced by filing a ~~petition~~ complaint in the district court. The proceeding may be heard by the county court or the district court as provided in section 25-2740. Summons shall be served upon the other party to the marriage by personal service or in the manner provided in section 25-517.02.

Sec. 21. Section 42-353, Reissue Revised Statutes of Nebraska, is amended to read:

42-353. ~~The form of the petition and all other pleadings required by sections 42-347 to 42-381 shall be prescribed by the Supreme Court. 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~~ petition complaint shall include the following:

(1) The name and address of ~~petitioner~~ the plaintiff and his or her attorney;

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

(3) The date and place of marriage;

(4) The name and date of birth of each child whose custody or welfare may be affected by the proceedings;

(5) If the ~~petitioner~~ 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) A statement of the relief sought by ~~petitioner~~ the plaintiff, including adjustment of custody, property, and support rights; and

(7) An allegation that the marriage is irretrievably broken.

Sec. 22. Section 42-355, Reissue Revised Statutes of Nebraska, is amended to read:

42-355. No marriage shall be dissolved or legal separation decreed unless the ~~respondent shall have~~ defendant has been properly served with process or entered an appearance in the case.

Sec. 23. Section 42-357, Revised Statutes Supplement, 2002, is amended to read:

42-357. The court may order either party to pay to the clerk of the district court or to the State Disbursement Unit, as provided in section 42-369, 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~~

complaint or by motion by the ~~petitioner~~ plaintiff or by the ~~respondent~~ defendant 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 42-381 after the ~~petition~~ complaint is filed, upon application of either party and if the accompanying affidavit of the party or his or her agent shows to the court that the party is entitled thereto, 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 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 the court. Any person who knowingly violates such an order after service shall be guilty of a Class II 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 therefor, the court shall schedule a hearing within seventy-two hours to determine whether the order regarding the minor children shall remain in force. Section 25-1064 shall not apply to the issuance of ex parte orders pursuant to this section. Any judge of the county court or district court may grant a temporary ex parte order in accordance with this section.

Sec. 24. Section 42-361, Reissue Revised Statutes of Nebraska, is amended to read:

42-361. (1) If both of the parties ~~by petition or otherwise have stated~~ state under oath or affirmation that the marriage is irretrievably broken, or one of the parties ~~has so stated so states and the other has not denied~~ does not deny it, the court, after hearing, shall make a finding whether the marriage is irretrievably broken.

(2) If one of the parties has denied under oath or affirmation that the marriage is irretrievably broken, the court shall consider all relevant factors, including the circumstances that gave rise to the filing of the ~~petition~~ complaint and the prospect of reconciliation, and shall make a finding whether the marriage is irretrievably broken.

Sec. 25. Section 42-364, Reissue Revised Statutes of Nebraska, is amended to read:

42-364. (1) When dissolution of a marriage or legal separation is decreed, the court may include a parenting plan developed under the Parenting Act, if a parenting plan has been so developed, and such orders in relation to any minor child and the child's maintenance as are justified, including placing the minor child in the custody of the court or third parties or terminating parental rights pursuant to this section if the best interests of the minor child require such orders. Custody and time spent with each parent shall be determined on the basis of the best interests of the minor child with the objective of maintaining the ongoing involvement of both parents in the minor child's life. ~~Subsequent changes may be made by the court after hearing on such notice as prescribed by the court.~~ A decree of dissolution of a marriage or legal separation shall include the social security number of each party.

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

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

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

(c) The general health, welfare, and social behavior of the minor

child; and

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

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

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

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

(6) In determining the amount of child support to be paid by a parent, the court shall consider the earning capacity of each parent and the guidelines provided by the Supreme Court pursuant to section 42-364.16 for the establishment of child support obligations. Upon application, hearing, and presentation of evidence of an abusive disregard of the use of child support money paid by one party to the other, the court may require the party receiving such payment to file a verified report with the court, as often as the court requires, stating the manner in which such money is used. Child support paid to the party having custody of the minor child shall be the property of such party except as provided in section 43-512.07. The clerk of the district court shall maintain a record, separate from all other judgment dockets, of all decrees and orders in which the payment of child support or spousal support has been ordered, whether ordered by a district court, county court, separate juvenile court, or county court sitting as a juvenile court. Orders for child support in cases in which a party has applied for services under Title IV-D of the federal Social Security Act, as amended, shall be reviewed as provided in sections 43-512.12 to 43-512.18.

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

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

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

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

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

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

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

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

Sec. 26. Section 42-364.11, Reissue Revised Statutes of Nebraska, is amended to read:

42-364.11. For the purposes of sections 42-364.01 to 42-364.14, unless the context otherwise requires:

(1) Earnings shall mean compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, and shall include any periodic payments pursuant to a pension or a retirement program and any payments made to an independent contractor for services performed;

(2) Disposable earnings shall mean that part of the earnings of any individual remaining after the deduction from those earnings of any amounts required by law to be withheld, excepting the amounts required to be deducted and withheld pursuant to sections ~~42-354~~, 42-357, and 42-363 to 42-365 or those provisions allowing garnishment, attachment, or execution;

(3) Employer shall mean any person, partnership, limited liability company, firm, corporation, association, political subdivision, or department of the state in possession of earnings;

(4) Employee shall mean any person who is compensated by an employer for services performed, regardless of how such compensation is denominated, and shall include independent contractors who receive compensation for services;

(5) Workweek shall mean any seven consecutive days during which a parent-employee performs work, provides services, or sells goods or services for an employer; and

(6) Pay period shall mean that regular interval of time, whether it be daily, weekly, biweekly, semimonthly, monthly, or some other regular interval, for which an employer pays earnings to a parent-employee.

Sec. 27. Section 42-364.13, Revised Statutes Supplement, 2002, is amended to read:

42-364.13. (1) Any order for support entered by the court shall specifically provide that any person ordered to pay a judgment shall be required to furnish to the clerk of the district court his or her address, telephone number, and social security number, the name of his or her employer, whether or not such person has access to employer-related health insurance coverage and, if so, the health insurance policy information, and any other information the court deems relevant until such judgment is paid in full. The person shall also be required to advise the clerk of any changes in such information between the time of entry of the decree and the payment of the judgment in full. If both parents are parties to the action, such order shall provide that each be required to furnish to the clerk of the district court all of the information required by this subsection. Failure to comply with this section shall be punishable by contempt.

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

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

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

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

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

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

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

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

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

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

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

Sec. 28. Section 42-365, Reissue Revised Statutes of Nebraska, is amended to read:

42-365. When dissolution of a marriage is decreed, the court may order payment of such alimony by one party to the other and division of property as may be reasonable, having regard for the circumstances of the parties, duration of the marriage, a history of the contributions to the marriage by each party, including contributions to the care and education of the children, and interruption of personal careers or educational opportunities, and the ability of the supported party to engage in gainful employment without interfering with the interests of any minor children in the custody of such party. Reasonable security for payment may be required by the court. ~~Unless amounts have accrued prior to the date of service of process on a petition to modify, orders for alimony may be modified or revoked for good cause shown, but when alimony is not allowed in the original decree dissolving a marriage, such decree may not be modified to award alimony. A proceeding to modify or revoke an order for alimony for good cause shall be commenced by filing a complaint to modify. Service of process and other procedure shall comply with the requirements for a dissolution action. Amounts accrued prior to the date of filing of the complaint to modify may not be modified or revoked. A decree may not be modified to award alimony if alimony was not allowed in the original decree dissolving a marriage. A decree may not be modified to award additional alimony if the entire amount of alimony allowed in the original decree had accrued before the date of filing of the complaint to modify. Except as otherwise agreed by the parties in writing or by order of the court, alimony orders shall terminate upon the death of either party or the remarriage of the recipient.~~

While the criteria for reaching a reasonable division of property and a reasonable award of alimony may overlap, the two serve different purposes and are to be considered separately. The purpose of a property division is to distribute the marital assets equitably between the parties. The purpose of alimony is to provide for the continued maintenance or support of one party by the other when the relative economic circumstances and the other criteria enumerated in this section make it appropriate.

Sec. 29. Section 42-371, Revised Statutes Supplement, 2002, is

amended to read:

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

(1) All judgments and orders for payment of money shall be liens, as in other actions, upon real property and any personal property registered with any county office and may be enforced or collected by execution and the means authorized for collection of money judgments. The judgment creditor may execute (a) a partial or total release of the judgment or (b) a document subordinating the lien of the judgment to any other lien, generally or on specific real or personal property. Release of a judgment for child support or spousal support or subordination of a lien of a judgment for child support or spousal support must be approved by the court which rendered the judgment unless all such payments are current, in which case a release or subordination document executed by the judgment creditor shall be sufficient to remove or subordinate the lien. A properly executed, notarized release or subordination document, explicitly reciting that all child support payments or spousal support payments are current, shall be prima facie evidence that such payments are in fact current. The judgment debtor may ~~petition~~ file a motion in the court which rendered the original judgment for an order releasing or subordinating the lien as to specific real or personal property. The court shall grant such order upon a showing by the judgment debtor that sufficient real or personal property or property interests will remain subject to the lien or will maintain priority over other liens sufficient to cover all support due and which may become due;

(2) Full faith and credit shall be accorded to a lien arising by operation of law against real and personal property for amounts of overdue support owed by an obligor who resides or owns property in this state when another state agency, party, or other entity seeking to enforce such lien complies with the procedural rules relating to the filing of the lien in this state. The state agency, party, or other entity seeking to enforce such lien shall send a certified copy of the support order with all modifications, the notice of lien prescribed by 42 U.S.C. 652(a)(11) and 42 U.S.C. 654(9)(E), and the appropriate fee to the clerk of the district court in the jurisdiction within this state in which the lien is sought. Upon receiving the appropriate documents and fee, the clerk of the district court shall accept the documents filed and such acceptance shall constitute entry of the foreign support order for purposes of this section only. Entry of a lien arising in another state pursuant to this section shall result in such lien being afforded the same treatment as liens arising in this state. The filing process required by this section shall not be construed as requiring an application, ~~petition~~ complaint, answer, and hearing as might be required for the filing or registration of foreign judgments under the Nebraska Uniform Enforcement of Foreign Judgments Act or the Uniform Interstate Family Support Act;

(3) Child support and spousal support judgments shall cease to be liens on real or registered personal property ten years from the date (a) the youngest child becomes of age or dies or (b) the most recent execution was issued to collect the judgment, whichever is later, and such lien shall not be reinstated;

(4) Alimony and property settlement award judgments, if not covered by subdivision (3) of this section, shall cease to be a lien on real or registered personal property ten years from the date (a) the judgment was entered, (b) the most recent payment was made, or (c) the most recent execution was issued to collect the judgment, whichever is latest, and such lien shall not be reinstated;

(5) Whenever a judgment creditor refuses to execute a release of the judgment or subordination of a lien as provided in this section, the person desiring such release or subordination may file an application for the relief desired. A copy of the application and a notice of hearing shall be served on the judgment creditor either personally or by registered or certified mail no less than ten days before the date of hearing. If the court finds that the release or subordination is not requested for the purpose of avoiding payment and that the release or subordination will not unduly reduce the security, the court may issue an order releasing real or personal property from the judgment lien or issue an order subordinating the judgment lien. As a condition for such release or subordination, the court may require the posting of a bond with the clerk in an amount fixed by the court, guaranteeing payment of the judgment;

(6) The court may in any case, upon application or its own motion, after notice and hearing, order a person required to make payments to post sufficient security, bond, or other guarantee with the clerk to insure payment of both current and any delinquent amounts. Upon failure to comply with the

order, the court may also appoint a receiver to take charge of the debtor's property to insure payment. Any bond, security, or other guarantee paid in cash may, when the court deems it appropriate, be applied either to current payments or to reduce any accumulated arrearage;

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

(8) Any lien authorized by this section against personal property registered with any county consisting of a motor vehicle or mobile home shall attach upon notation of the lien against the motor vehicle or mobile home certificate of title and shall have its priority established pursuant to the terms of section 60-110 or a subordination document executed under this section.

Sec. 30. Section 42-373, Reissue Revised Statutes of Nebraska, is amended to read:

42-373. Actions for annulment of a marriage shall be brought in the same manner as actions for dissolution of marriage and shall be subject to all applicable provisions of sections 42-347 to 42-381 pertaining to dissolution of marriage, except that the only residence requirement shall be that ~~petitioner be the plaintiff~~ is an actual resident of the county in which the petition complaint is filed.

Sec. 31. Section 42-376, Reissue Revised Statutes of Nebraska, is amended to read:

42-376. When the validity of a marriage is doubted, either party may file a ~~petition~~ complaint and the court shall decree it annulled or affirmed according to the proof. Notice shall be given the other party as in the case of a ~~petition for dissolutions~~ complaint for dissolution of marriage.

Sec. 32. Section 42-380, Reissue Revised Statutes of Nebraska, is amended to read:

42-380. (1) When a pleading is filed pursuant to section 42-353 ~~or~~ ~~42-354~~ or pursuant to an action for annulment as authorized by section 42-373, either the ~~petitioner~~ plaintiff or the ~~respondent~~ defendant may include a request to restore his or her former name. The court shall grant such request except for good cause shown. The mere fact that a parent and child may have different surnames following a dissolution of marriage or annulment shall not be sufficient to constitute good cause. The decree of dissolution or declaration of annulment shall specifically provide for the name change, giving both the old name and the name as it will be after the decree or declaration. A change of name granted pursuant to this section shall become effective on the same date that the decree of dissolution or declaration of annulment, as the case may be, is entered. The requirements of sections 25-21,270 to 25-21,273 shall not apply to this section.

(2) A decree of dissolution or declaration of annulment entered before August 25, 1989, in an action in which a request for name restoration was not included or granted shall not hinder or prevent the petitioner or respondent from effecting a common-law name change.

Sec. 33. Section 42-501, Reissue Revised Statutes of Nebraska, is amended to read:

42-501. When either husband or wife is mentally incompetent and incapable of executing a mortgage relinquishing or encumbering his or her right to the homestead or any other real property of the other, the other may ~~petition~~ file a complaint in the district court of the county of his or her residence or of the county where the real estate to be encumbered is situated setting forth the facts and praying for an order authorizing the applicant or some other person to execute a mortgage and relinquish or encumber by such mortgage the interest of the mentally incompetent person in such homestead or other real estate. The court shall not authorize the execution of any mortgage on the homestead of the parties for an amount greater than is necessary to pay or redeem the lien of an existing mortgage on such homestead.

Sec. 34. Section 42-502, Reissue Revised Statutes of Nebraska, is amended to read:

42-502. The ~~petition~~ complaint shall be verified by the ~~petitioner~~ plaintiff and filed in the office of the clerk of the district court of the

proper county. A copy thereof, with the notice of the time at which such application will be heard by the court, shall be served personally upon the mentally incompetent person in the same manner in which a summons is served at least ten days prior to the time fixed for such hearing. Upon completed service, the court shall appoint some responsible attorney thereof guardian ad litem for the person alleged to be mentally incompetent, who shall ascertain the propriety, good faith, and necessity of the prayer of the ~~petitioner~~ plaintiff and may resist the application by making any legal or equitable defense thereto. The guardian ad litem shall be allowed by the court a reasonable compensation to be paid as are the other costs.

Sec. 35. Section 42-503, Reissue Revised Statutes of Nebraska, is amended to read:

42-503. Upon the hearing of the ~~petition~~ complaint, if the court is satisfied that it is made in good faith by the ~~petitioner~~ plaintiff, that he or she or some other person selected by the court is a proper person to exercise the power and make the mortgage, and that it is necessary and proper, the court shall enter a decree authorizing the execution of a mortgage for and in the name of such mentally incompetent husband or wife by the ~~petitioner~~ plaintiff or such other person as the court may appoint.

Sec. 36. Section 43-512.01, Reissue Revised Statutes of Nebraska, is amended to read:

43-512.01. It shall be the duty of the county attorney or authorized attorney when a copy of the finding of investigation or the application for financial assistance has been filed with him or her as provided in section 43-512, or when an application has been made pursuant to section 43-512.02, to immediately take action against the nonsupporting parent or stepparent of the dependent child. It shall be the duty of the county attorney or authorized attorney to initiate a child support enforcement action. If the county attorney initiates an action, he or she shall file either a criminal complaint for nonsupport under section 28-706 or a civil ~~petition~~ complaint against the nonsupporting parent or stepparent under section 43-512.03. If the attorney who initiates a child support enforcement action is an authorized attorney, he or she shall file a civil ~~petition~~ complaint against the nonsupporting parent or stepparent pursuant to section 43-512.03.

Sec. 37. Section 43-512.03, Reissue Revised Statutes of Nebraska, is amended to read:

43-512.03. (1) The county attorney or authorized attorney shall:

(a) On request by the Department of Health and Human Services as described in subsection (2) of this section or when the investigation or application filed under section 43-512 or 43-512.02 justifies, file a ~~petition~~ complaint against a nonsupporting parent or stepparent in the district, county, or separate juvenile court praying for an order for child or medical support in cases when there is no existing child or medical support order. After notice and hearing, the court shall adjudicate child and medical support liability of the nonsupporting parent or stepparent and enter an order accordingly;

(b) Enforce child, spousal, and medical support orders by an action for income withholding pursuant to the Income Withholding for Child Support Act;

(c) In addition to income withholding, enforce child, spousal, and medical support orders by other civil actions or administrative actions, citing the defendant for contempt, or filing a criminal complaint;

(d) Establish paternity and collect child and medical support on behalf of children born out of wedlock; and

(e) Carry out sections 43-512.12 to 43-512.18.

(2) The department may periodically review cases of individuals receiving enforcement services and make referrals to the county attorney or authorized attorney.

(3) In any action brought by or intervened in by a county attorney or authorized attorney under the Income Withholding for Child Support Act, the License Suspension Act, the Uniform Interstate Family Support Act, or sections 42-347 to 42-381, 43-290, 43-512 to 43-512.10, 43-512.12 to 43-512.18, 43-1401 to 43-1418, and 43-3328 to 43-3339, such attorneys shall represent the State of Nebraska.

(4) The State of Nebraska shall be a real party in interest in any action brought by or intervened in by a county attorney or authorized attorney for the purpose of establishing paternity or securing, modifying, suspending, or terminating child or medical support or in any action brought by or intervened in by a county attorney or authorized attorney to enforce an order for child, spousal, or medical support.

(5) Nothing in this section shall be construed to interpret

representation by a county attorney or an authorized attorney as creating an attorney-client relationship between the county attorney or authorized attorney and any party or witness to the action, other than the State of Nebraska, regardless of the name in which the action is brought.

Sec. 38. Section 43-512.04, Reissue Revised Statutes of Nebraska, is amended to read:

43-512.04. (1) An action for child support or medical support may be brought separate and apart from any action for dissolution of marriage. The ~~petition~~ complaint initiating the action shall be filed with the clerk of the district court and may be heard by the county court or the district court as provided in section 25-2740. Such action for support may be filed on behalf of a child:

(a) Whose paternity has been established (i) by prior judicial order in this state, (ii) by a prior determination of paternity made by any other state as described in subsection (1) of section 43-1406, or (iii) by the marriage of his or her parents as described in section 42-377 or subsection (2) of section 43-1406; or

(b) Whose paternity is presumed as described in section 43-1409 or subsection (2) of section 43-1415.

(2) The father, not having entered into a judicially approved settlement or being in default in the performance of the same, may be made a respondent in such action. The mother of the child may also be made a respondent in such an action. Such action shall be commenced by a complaint of the mother of the child, the father of the child whose paternity has been established, the guardian or next friend of the child, the county attorney, or an authorized attorney.

(3) The ~~petition~~ complaint shall set forth the basis on which paternity was previously established or presumed, if the respondent is the father, and the fact of nonsupport and shall ask that the father, the mother, or both parents be ordered to provide for the support of the child. Summons shall issue against the father, the mother, or both parents and be served as in other civil proceedings, except that such summons may be directed to the sheriff of any county in the state and may be served in any county. The method of trial shall be the same as in actions formerly cognizable in equity, and jurisdiction to hear and determine such actions for support is hereby vested in the district court of the district or the county court of the county where the child is domiciled or found or, for cases under the Uniform Interstate Family Support Act if the child is not domiciled or found in Nebraska, where the parent of the child is domiciled.

(4) In such proceeding, if the ~~respondent~~ defendant is the presumed father as described in subdivision (1)(b) of this section, the court shall make a finding whether or not the presumption of paternity has been rebutted. The presumption of paternity created by acknowledgment as described in section 43-1409 may be rebutted as part of an equitable proceeding to establish support by genetic testing results which exclude the alleged father as being the biological father of the child. A court in such a proceeding may order genetic testing as provided in sections 43-1414 to 43-1418.

(5) If the court finds that the father, the mother, or both parents have failed adequately to support the child, the court shall issue a decree directing him, her, or them to do so, specifying the amount of such support, the manner in which it shall be furnished, and the amount, if any, of any court costs and attorney's fees to be paid by the father, the mother, or both parents. Income withholding shall be ordered pursuant to the Income Withholding for Child Support Act. The court may require the furnishing of bond to insure the performance of the decree in the same manner as is provided for in section 42-358.05 or 43-1405. Failure on the part of the ~~respondent~~ defendant to perform the terms of such decree shall constitute contempt of court and may be dealt with in the same manner as other contempts. The court may also order medical support and the payment of expenses as described in section 43-1407.

Sec. 39. Section 43-512.15, Reissue Revised Statutes of Nebraska, is amended to read:

43-512.15. (1) The county attorney or authorized attorney, upon referral from the Department of Health and Human Services, shall file ~~an application for modification of a complaint to modify~~ a child support order unless the attorney determines in the exercise of independent professional judgment that:

(a) The variation from the Supreme Court child support guidelines pursuant to section 42-364.16 is based on material misrepresentation of fact concerning any financial information submitted to the attorney;

(b) The variation from the guidelines is due to a voluntary reduction in net monthly income; or

(c) When the amount of the order is considered with all the other undisputed facts in the case, no variation from the criteria set forth in subdivisions (1) and (2) of section 43-512.12 exists.

(2) The ~~application for modification of proceedings to modify a child support order shall proceed in the original action establishing the support order~~ comply with section 42-364, and the county attorney or authorized attorney shall represent the state in the proceedings.

(3) After ~~an application for modification of a complaint to modify a child support order is filed~~, any party may choose to be represented personally by private counsel. Any party who retains private counsel shall so notify the county attorney or authorized attorney in writing.

Sec. 40. Section 43-1411.01, Reissue Revised Statutes of Nebraska, is amended to read:

43-1411.01. An action for paternity or parental support under sections 43-1401 to 43-1418 may be initiated by filing a ~~petition~~ complaint with the clerk of the district court as provided in section 25-2740. Such proceeding may be heard by the county court or the district court as provided in section 25-2740. A paternity determination under sections 43-1411 to 43-1418 may also be decided in a county court or separate juvenile court if the county court or separate juvenile court already has jurisdiction over the child whose paternity is to be determined.

Sec. 41. Section 43-1412, Reissue Revised Statutes of Nebraska, is amended to read:

43-1412. (1) The method of trial shall be the same as that in other civil proceedings, except that the trial shall be by the court without a jury unless a jury is requested (a) by the alleged father, in a proceeding instituted by the mother or the guardian or next friend, or (b) by the mother, in a proceeding instituted by the alleged father. It being contrary to public policy that such proceedings should be open to the general public, no one but the parties, their counsel, and others having a legitimate interest in the controversy shall be admitted to the courtroom during the trial of the case. The alleged father and the mother shall be competent to testify. The uncorroborated testimony (i) of the mother, in a proceeding instituted by the mother or the guardian or next friend, or (ii) of the alleged father, in a proceeding instituted by the alleged father, shall not alone be sufficient to support a verdict or finding that the alleged father is actually the father. Refusal by the alleged father to comply with an order of the court for genetic testing shall be deemed corroboration of the allegation of paternity. A signed and notarized acknowledgment of paternity or a certified copy or certified reproduction thereof shall be admissible in evidence in any proceeding to establish paternity without the need for foundation testimony or other proof of authenticity or accuracy.

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

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

(3) If a judgment is entered under this section declaring the alleged father to be the father of the child, the court shall retain jurisdiction of the cause and enter such order of support, including the amount, if any, of any court costs and attorney's fees which the court in its discretion deems appropriate to be paid by the father, as may be proper under the procedure and in the manner specified in section 43-512.04. If it is not determined in the proceeding that the alleged father is actually the father of the child, the court shall, if it finds that the action was frivolous, award court costs and attorney's fees incurred by the alleged father, with such costs and fees to be paid by the plaintiff.

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

Sec. 42. Section 43-2917, Reissue Revised Statutes of Nebraska, is amended to read:

43-2917. When the parenting plan is agreed to by both parties, it shall be submitted to the parties' legal counsels who shall submit it for inclusion in the decree under section ~~42-120 or~~ 42-364. The court may, after a hearing and based on the best interests of the minor child, approve the plan, modify and approve the plan as modified, or reject the plan and order the parties to develop a new plan.

Sec. 43. Section 43-3318, Revised Statutes Supplement, 2002, is amended to read:

43-3318. (1) The director, county attorney, authorized attorney, or court of competent jurisdiction may certify in writing to the Department of Motor Vehicles, relevant licensing authorities, and, if the license holder is

a member of the Nebraska State Bar Association, the ~~Nebraska State Bar Association's~~ Counsel for Discipline of the Nebraska Supreme Court, that a license holder is a license holder described in subsection (1) of section 43-3314 if:

(a) The license holder does not timely request either administrative review or judicial review upon issuance of a notice under subsection (2) of section 43-3314, is still a license holder described in subsection (1) of section 43-3314 thirty-one days after issuance of the notice, and does not obtain a written confirmation of compliance from the Department of Health and Human Services, county attorney, or authorized attorney pursuant to section 43-3320 within thirty-one days after issuance of the notice;

(b) The Department of Health and Human Services issues a decision after a hearing that finds the license holder is a license holder described in subsection (1) of section 43-3314, the license holder is still a license holder described in such subsection thirty-one days after issuance of that decision, and the license holder does not seek judicial review of the decision within the ten-day appeal period provided in section 43-3317; or

(c) The court of competent jurisdiction enters a judgment on a petition for judicial review, initiated under either section 43-3315 or 43-3317, that finds the license holder is a license holder described in subsection (1) of section 43-3314.

(2) The court of competent jurisdiction, after providing appropriate notice, may certify a license holder to the Department of Motor Vehicles and relevant licensing authorities if a license holder has failed to comply with subpoenas or warrants relating to paternity or child support proceedings.

(3) If the director, county attorney, authorized attorney, or court of competent jurisdiction determines to certify a license holder to the appropriate licensing authority, then the director, county attorney, authorized attorney, or court of competent jurisdiction shall certify a license holder in the following order and in compliance with the following restrictions:

(a) To the Department of Motor Vehicles to suspend the license holder's operator's license, except the Department of Motor Vehicles shall not suspend the license holder's commercial driver's license or restricted commercial driver's license. If a license holder possesses a commercial driver's license or restricted commercial driver's license, the director, county attorney, authorized attorney, or court of competent jurisdiction shall certify such license holder pursuant to subdivision (b) of this subsection. If the license holder fails to come into compliance with the support order as provided in section 43-3314 or with subpoenas and warrants relating to paternity or child support proceedings within ten working days after the date on which the license holder's operator's license suspension becomes effective, then the director, county attorney, authorized attorney, or court of competent jurisdiction may certify the license holder pursuant to subdivision (b) of this subsection without further notice;

(b) To the relevant licensing authority to suspend the license holder's recreational license once the Game and Parks Commission has operative the electronic or other automated retrieval system necessary to suspend recreational licenses. If the license holder does not have a recreational license and until the Game and Parks Commission has operative the electronic or other automated retrieval system necessary to suspend recreational licenses, the director, county attorney, authorized attorney, or court of competent jurisdiction may certify the license holder pursuant to subdivision (c) of this subsection. If the license holder fails to come into compliance with the support order as provided in section 43-3314 or with subpoenas and warrants relating to paternity or child support proceedings within ten working days after the date on which the license holder's recreational license suspension becomes effective, the director, county attorney, authorized attorney, or court of competent jurisdiction may certify the license holder pursuant to subdivision (c) of this subsection without further notice; and

(c) To the relevant licensing authority to suspend the license holder's professional license, occupational license, commercial driver's license, or restricted commercial driver's license.

(4) If the director, county attorney, authorized attorney, or court of competent jurisdiction certifies the license holder to the Department of Motor Vehicles, the Department of Motor Vehicles shall suspend the operator's license of the license holder ten working days after the date of certification. The Department of Motor Vehicles shall without undue delay notify the license holder by certified mail that the license holder's operator's license will be suspended and the date the suspension becomes effective. No person shall be issued an operator's license by the State of Nebraska if at the time of application for a license the person's operator's

license is suspended under this section. Any person whose operator's license has been suspended shall return his or her license to the Department of Motor Vehicles within five working days after receiving the notice of the suspension. If any person fails to return the license, the Department of Motor Vehicles shall direct any peace officer to secure possession of the operator's license and to return it to the Department of Motor Vehicles. The peace officer who is directed to secure possession of the license shall make every reasonable effort to secure the license and return it to the Department of Motor Vehicles or shall show good cause why the license cannot be returned. An appeal of the suspension of an operator's license under this section shall be pursuant to section 60-4,105. A license holder whose operator's license has been suspended under this section may apply for an employment driving permit as provided by sections 60-4,129 and 60-4,130, except that the license holder is not required to fulfill the driver improvement or driver education and training course requirements of subsection (2) of section 60-4,130.

(5) Except as provided in subsection (6) of this section as it pertains to a license holder who is a member of the Nebraska State Bar Association, if the director, county attorney, authorized attorney, or court of competent jurisdiction certifies the license holder to a relevant licensing authority, the relevant licensing authority, notwithstanding any other provision of law, shall suspend the license holder's professional, occupational, or recreational license and the license holder's right to renew the professional, occupational, or recreational license ten working days after the date of certification. The relevant licensing authority shall without undue delay notify the license holder by certified mail that the license holder's professional, occupational, or recreational license will be suspended and the date the suspension becomes effective.

(6) If the director, county attorney, authorized attorney, or court of competent jurisdiction certifies a license holder who is a member of the Nebraska State Bar Association to the Counsel for Discipline of the Nebraska ~~State Bar Association~~ Supreme Court, the Nebraska Supreme Court may suspend the license holder's license to practice law. It is the intent of the Legislature to encourage all license holders to comply with their child support obligations. Therefor, the Legislature hereby requests that the Nebraska Supreme Court adopt amendments to the rules regulating ~~the Nebraska State Bar Association~~ attorneys, if necessary, which provide for the discipline of an attorney who is delinquent in the payment of or fails to pay his or her child support obligation.

(7) The Department of Health and Human Services, or court of competent jurisdiction when appropriate, shall send by certified mail to the license holder at the license holder's last-known address a copy of any certification filed with the Department of Motor Vehicles or a relevant licensing authority and a notice which states that the license holder's operator's license will be suspended ten working days after the date of certification and that the suspension of a professional, occupational, or recreational license pursuant to subsection (5) of this section becomes effective ten working days after the date of certification.

Sec. 44. Section 44-3311, Reissue Revised Statutes of Nebraska, is amended to read:

44-3311. The director shall report to the Counsel for Discipline of the Nebraska Supreme Court ~~State Bar Association~~, ~~or to any person designated by the Supreme Court to receive attorney grievances from the public~~, any information of possible instances of overcharging for legal services, incompetence, or violations of the code of professional responsibility by lawyers who provide services in connection with a legal expense insurance policy.

Sec. 45. The Revisor of Statutes shall assign section 6 of this act to Chapter 25, article 15.

Sec. 46. Sections 1 and 47 of this act become operative on July 1, 2004. The other sections of this act become operative on their effective date.

Sec. 47. Original section 24-301.02, Revised Statutes Supplement, 2002, is repealed.

Sec. 48. Original sections 24-809.05, 25-1565, 25-21,232, 25-21,233, 42-349, 42-350, 42-352, 42-353, 42-355, 42-361, 42-364, 42-364.11, 42-365, 42-373, 42-376, 42-380, 42-501 to 42-503, 43-512.01, 43-512.03, 43-512.04, 43-512.15, 43-1411.01, 43-1412, 43-2917, and 44-3311, Reissue Revised Statutes of Nebraska, sections 25-1144.01, 25-1315.02, 25-1329, 25-1916, 25-21,230, 25-21,234, 25-2301.02, 25-2740, 42-357, 42-364.13, 42-371, and 43-3318, Revised Statutes Supplement, 2002, and sections 25-21,223 and 29-2261, Revised Statutes Supplement, 2003, are repealed.

Sec. 49. The following sections are outright repealed: Sections

LB 1207

LB 1207

42-119, 42-120, and 42-354, Reissue Revised Statutes of Nebraska.

Sec. 50. Since an emergency exists, this act takes effect when passed and approved according to law.