

## LEGISLATIVE BILL 229

Approved by the Governor June 9, 1997

Introduced by Wickersham, 49

AN ACT relating to courts; to amend sections 24-1201, 24-1204, 24-1206, 42-349, 42-350, 42-353, 42-360, 42-362, 42-370, 42-373, 42-377, 42-803 to 42-810, 42-813, 42-924, and 71-615, Reissue Revised Statutes of Nebraska, sections 24-517, 25-2739, 42-347, 42-348, 42-351, 42-352, 42-357, 42-358.08, 42-371, 42-812, 42-821, 42-822, 43-2,113, 43-512.03, 43-512.04, and 43-1803, Revised Statutes Supplement, 1996, and Laws 1996, LB 1296, section 29; to change provisions relating to determination of judicial vacancies; to change filing and jurisdiction provisions in domestic relations matters; to harmonize provisions; to provide a duty for the Revisor of Statutes; to eliminate an obsolete provision and correct internal references; to provide operative dates; to repeal the original sections; and to outright repeal section 42-379, Reissue Revised Statutes of Nebraska.

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

Section 1. Section 24-517, Revised Statutes Supplement, 1996, is amended to read:

24-517. Each county court shall have the following jurisdiction:

(1) Exclusive original jurisdiction of all matters relating to decedents' estates, including the probate of wills and the construction thereof, except as provided in section 30-2486;

(2) Exclusive original jurisdiction of all matters relating to guardianship or conservatorship of any person, including (a) original jurisdiction to consent to and authorize a voluntary selection, partition, and setoff of a ward's interest in real estate owned in common with others and to exercise any right of the ward in connection therewith which the ward could exercise if competent and (b) original jurisdiction to license the sale of such real estate for cash or on such terms of credit as shall seem best calculated to produce the highest price subject only to the requirements set forth in section 30-3201;

(3) Concurrent jurisdiction with the district court to involuntarily partition a ward's interest in real estate owned in common with others;

(4) Concurrent original jurisdiction with the district court in all civil actions of any type when the amount in controversy does not exceed fifteen thousand dollars. When the pleadings or discovery proceedings in a civil action indicate an amount in controversy may exceed fifteen thousand dollars, the county court shall certify the proceedings to the district court as provided in section 25-2706;

(5) Concurrent original jurisdiction with the district court in any criminal matter classified as a misdemeanor or for any infraction;

(6) Concurrent original jurisdiction with the district court in domestic relations matters as defined in section 2 of this act;

(7) Exclusive original jurisdiction in any action based on violation of a city or village ordinance;

(8) Exclusive original jurisdiction in all juvenile matters, except in counties which have established separate juvenile courts;

(9) Exclusive original jurisdiction in all matters of adoption; and

(10) All other jurisdiction heretofore provided and not specifically repealed by Laws 1972, Legislative Bill 1032, and such other jurisdiction as hereafter provided by law.

Sec. 2. (1) For purposes of this section, domestic relations matters means all proceedings under 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 and parental support), and sections 43-1801 to 43-1803 (including grandparent visitation).

(2) In all domestic relations matters, a party shall file his or her petition and all other court filings with the clerk of the district court. The party shall state in the petition 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, the proceeding shall be transferred from a county court judge to a district court judge.

Sec. 3. Section 24-1201, Reissue Revised Statutes of Nebraska, is amended to read:

24-1201. There is hereby created the Judicial Resources Commission consisting of: (1) Four judges, including one district court judge, one county court judge, one separate juvenile court judge, and one Justice or judge of the Supreme Court, all of whom shall be appointed by the Supreme Court; (2) one member of the Nebraska State Bar Association from each of the six judicial districts prescribed in Article V, section 5, of the Constitution of Nebraska who shall have practiced law in this state for at least ten years and who shall be appointed by the Executive Council of the Nebraska State Bar Association; and (3) one citizen from each of the six judicial districts prescribed in Article V, section 5, of the Constitution of Nebraska appointed by the Governor and one additional citizen who shall be appointed at large, none of whom shall be (a) a justice or judge of the Supreme Court or a judge of any other court, active or retired, (b) a member of the Nebraska State Bar Association, or (c) an immediate family member of any person listed in subdivisions (a) and (b) of this subdivision. The Justice or judge of the Supreme Court serving on the commission shall also serve as chairperson of the commission. A majority of the members of the commission shall constitute a quorum for the transaction of business. The commission shall act by a vote of the majority of its members.

Sec. 4. Section 24-1204, Reissue Revised Statutes of Nebraska, is amended to read:

24-1204. In the event of the death, retirement, resignation, or removal of a district, county, or separate juvenile judge or the failure of a district, county, or separate juvenile judge to be retained in office or upon the request of a majority of the members of the Judicial Resources Commission,

(1) If the most recent judicial workload statistics compiled pursuant to section 24-1007 demonstrate that the affected judicial district has a judicial workload average equal to or above the median of judicial workload averages for the state as a whole, a judicial vacancy shall exist in the affected judicial district. The chairperson of the Judicial Resources Commission shall then declare that a judicial vacancy exists, the Supreme Court, in the case of a county or district court, shall determine the site of the primary office location, and the Clerk of the Supreme Court shall proceed with notification of the judicial nominating commission relating to such vacancy pursuant to section 24-810; or

(2) If the most recent judicial workload statistics compiled pursuant to section 24-1007 demonstrate that the affected judicial district has a judicial workload average below the median of judicial workload averages for the state as a whole, the Judicial Resources Commission shall, after holding a public hearing, determine whether a judicial vacancy exists in the affected district or any other judicial district or whether a new judgeship or change in number of judicial districts or boundaries is appropriate. If the commission determines a vacancy exists in a district or county court district, the commission may also make a recommendation to the Supreme Court of the site for a primary office location. The public hearing may include videoconferencing.

Sec. 5. Section 24-1206, Reissue Revised Statutes of Nebraska, is amended to read:

24-1206. The Judicial Resources Commission's determination of whether a judicial vacancy exists or a new judgeship, a reduction in judgeships, a change in number of judicial districts or boundaries, or the reallocation of a judgeship from a district, county, or separate juvenile court in one judicial district to a district, county, or separate juvenile court in another judicial district is appropriate pursuant to section 24-1204 or 24-1205 shall be based upon (1) its analysis of judicial workload statistics compiled pursuant to section 24-1007, (2) whether litigants in the judicial district have adequate access to the courts, (3) the population of the judicial district, (4) other judicial duties and travel time involved within the judicial district, and (5) other factors determined by the Supreme Court to be necessary to assure efficiency and maximum service. The State

Court Administrator shall provide adequate administrative support and information as requested by the commission.

After making a determination, the commission shall report the results to the Legislature and recommend any legislative changes which are needed. If no changes in existing law are needed and none are recommended by the commission, no legislative action shall be necessary to fill any judicial vacancy determined to exist. The Legislature shall not create a new judgeship unless the commission recommends the creation of a new judgeship in its report. If legislative action is required but none is taken in the next legislative session following the report in the first legislative session commencing after receipt of the report by the Legislature, the commission shall hold another hearing on the matter and shall determine whether a judicial vacancy exists or again recommend legislative changes to the Legislature in its report.

Sec. 6. Section 25-2739, Revised Statutes Supplement, 1996, is amended to read:

25-2739. A judgment rendered or final order made by a county court in a domestic relations matter as defined in section 2 of this act may be reversed, vacated, or modified by the Court of Appeals in the same manner as judgments and final orders of the district court under sections 25-1911 to 25-1929.

Sec. 7. Section 42-347, Revised Statutes Supplement, 1996, is amended to read:

42-347. For purposes of sections 42-347 to 42-380 42-381, unless the context otherwise requires:

(1) Authorized attorney shall mean an attorney (a) employed by the county subject to the approval of the county board, (b) employed by the Department of Health and Human Services Finance and Support, or (c) appointed by the court, who is authorized to investigate and prosecute child and spousal support cases. An authorized attorney shall represent the state as provided in section 43-512.03;

(2) Dissolution of marriage shall mean the termination of a marriage by decree of a court of competent jurisdiction upon a finding that the marriage is irretrievably broken. The term dissolution of marriage shall be considered synonymous with divorce, and whenever the term divorce appears in the statutes it shall mean dissolution of marriage pursuant to sections 42-347 to 42-379 42-381;

(3) Legal separation shall mean a decree of a court of competent jurisdiction providing that two persons who have been legally married shall thereafter live separate and apart and providing for any necessary adjustment of property, support, and custody rights between the parties but not dissolving the marriage; and

(4) Spousal support, when used in the context of income withholding or any provisions of law which might lead to income withholding, shall mean alimony or maintenance support for a spouse or former spouse when ordered as a part of an order, decree, or judgment which provides for child support and the child and spouse or former spouse are living in the same household.

Sec. 8. Section 42-348, Revised Statutes Supplement, 1996, is amended to read:

42-348. All proceedings under sections 42-347 to 42-381 42-379 shall be brought in the county court or district court of the county in which one of the parties resides. Proceedings may be transferred to a separate juvenile court or county court sitting as a juvenile court which has acquired jurisdiction pursuant to section 43-2,113. Proceedings shall be transferred to the district court from the county court upon motion of a party if the action is contested. Certified copies of orders filed with the clerk of the court pursuant to such section shall be treated in the same manner as similar orders issued by the court.

Sec. 9. 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, 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. 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 shall for the purposes of sections 42-347 to 42-379 42-381 be deemed residents of this state.

Sec. 10. Section 42-350, Reissue Revised Statutes of Nebraska, is

amended to read:

42-350. If a petition 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 ~~42-379~~ 42-381.

Sec. 11. Section 42-351, Revised Statutes Supplement, 1996, is amended to read:

42-351. (1) In proceedings under sections 42-347 to ~~42-379~~ 42-381, 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 attorney's fees.

(2) When final orders relating to proceedings governed by sections 42-347 to ~~42-379~~ 42-381 are on appeal and such appeal is pending, the 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. 12. Section 42-352, Revised Statutes Supplement, 1996, is amended to read:

42-352. A proceeding under sections 42-347 to ~~42-379~~ 42-381 shall be commenced by filing a petition in the county court or district court. The proceeding may be heard by the county court or the district court as provided in section 2 of this act. 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. 13. 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 ~~42-379~~ 42-381 shall be prescribed by the Supreme Court. The petition shall include the following:

- (1) The name and address of petitioner and his or her attorney;
- (2) The name and address, if known, of respondent;
- (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 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, including adjustment of custody, property, and support rights; and
- (7) An allegation that the marriage is irretrievably broken.

Sec. 14. Section 42-357, Revised Statutes Supplement, 1996, is amended to read:

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~~ 42-381 after the petition 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 district court when the action is pending in the district court, any judge of the county court or district court may grant a temporary ex parte order in accordance with this section, and except that in the absence from the county of the judge of the county court when the action is pending in the county court, any judge of the district court may grant a temporary ex parte order in accordance with this section.~~

Sec. 15. Section 42-358.08, Revised Statutes Supplement, 1996, is amended to read:

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

Sec. 16. Section 42-360, Reissue Revised Statutes of Nebraska, is amended to read:

42-360. No decree shall be entered under sections 42-347 to 42-379 ~~42-381~~ unless the court finds that every reasonable effort to effect reconciliation has been made. Proceedings filed pursuant to sections 42-347 to 42-379 ~~42-381~~ shall be subject to transfer to a conciliation court pursuant to section 42-822 or 42-823, in counties where such a court has been established. In counties having no conciliation court, the court hearing proceedings under sections 42-347 to 42-379 ~~42-381~~ may refer the parties to qualified marriage counselors or family service agencies, or other persons or agencies determined by the court to be qualified to provide conciliation services, if the court finds that there appears to be some reasonable possibility of a reconciliation being effected. In no case shall the court order marriage counseling upon the request of only one of the parties to the dissolution or his or her attorney. If both parties agree to attend counseling but do not agree on an assignment of the costs of such counseling, the court, after receiving an application for such costs and upon a showing that the parties cannot agree on an assignment of such costs, shall assign such costs in a temporary or permanent order.

Sec. 17. Section 42-362, Reissue Revised Statutes of Nebraska, is amended to read:

42-362. When the pleadings or evidence in any action pursuant to sections 42-347 to 42-379 ~~42-381~~ indicate that either spouse is mentally ill, a guardian ad litem shall be appointed to represent his or her interests. Such guardian's fee, when allowed by the court, shall be taxed as costs, and shall be paid by the county if the parties are unable to do so. When a marriage is dissolved and the evidence indicates that either spouse is mentally ill, the court may, at the time of dissolving the marriage or at any time thereafter, make such order for the support and maintenance of such mentally ill person as it may deem necessary and proper, having due regard to the property and income of the parties, and the court may require the party ordered to provide support and maintenance to file a bond or otherwise give security for such support. Such an order for support may be entered upon the application of the guardian or guardian ad litem or of any person, county, municipality, or institution charged with the support of such mentally ill person. The order for support may, if necessary, be revised from time to time on like application.

Sec. 18. Section 42-370, Reissue Revised Statutes of Nebraska, is

amended to read:

42-370. Nothing in sections 42-347 to 42-379 ~~42-381~~ shall prohibit a party from initiating contempt proceedings. Costs, including a reasonable attorney's fee, may be taxed against a party found to be in contempt.

Sec. 19. Section 42-371, Revised Statutes Supplement, 1996, is amended to read:

42-371. Under the Uniform Interstate Family Support Act and sections 42-347 to 42-379 ~~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 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) 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;

(3) Alimony and property settlement award judgments, if not covered by subdivision (2) 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;

(4) 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;

(5) 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;

(6)(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

(7) 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. 20. 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 42-379 ~~42-381~~ pertaining to dissolution of marriage, except that the only residence requirement shall be that petitioner be an actual resident of the county in which the petition is filed.

Sec. 21. Section 42-377, Reissue Revised Statutes of Nebraska, is amended to read:

42-377. Children born to the parties, or to the wife, in a marriage relationship which may be dissolved or annulled pursuant to sections 42-347 to 42-379; ~~42-381~~ shall be legitimate unless otherwise decreed by the court, and in every case the legitimacy of all children conceived before the commencement of the suit shall be presumed until the contrary is shown.

Sec. 22. Section 42-803, Reissue Revised Statutes of Nebraska, is amended to read:

42-803. The provisions of ~~sections 42-801 to 42-823~~ the Conciliation Court Law shall be applicable only in counties in which the county court and the district court determines that the social conditions in the county and the number of domestic relations cases in the courts render the procedures provided in ~~sections 42-801 to 42-823~~ such law necessary to the full and proper consideration of such cases and the effectuation of the purposes of ~~sections 42-801 to 42-823~~ such law. Such determination shall be made annually in the month of December, by the judge of the district court in counties having only one such judge, and by a majority of district judges in counties having more than one such judge, except that such determination may be made within thirty days after November 18, 1965.

Sec. 23. Section 42-804, Reissue Revised Statutes of Nebraska, is amended to read:

42-804. Each county court and district court shall exercise the jurisdiction conferred by ~~sections 42-801 to 42-823~~, the Conciliation Court Law and while sitting in the exercise of such jurisdiction shall be known and referred to as the conciliation court. All petitions and filings shall be made with the clerk of the district court and may be heard by the county court or the district court as provided in section 2 of this act.

Sec. 24. Section 42-805, Reissue Revised Statutes of Nebraska, is amended to read:

42-805. In counties having more than one judge of the district court, the judges at their annual meeting shall designate at least one judge of the county court or district court to hear all cases under ~~sections 42-801 to 42-823~~ the Conciliation Court Law. Such assignment may be exclusive or in conjunction with any other assignment. The judge or judges so designated shall hold as many sessions of the conciliation court as are necessary for the prompt disposition of the business before the court.

Sec. 25. Section 42-806, Reissue Revised Statutes of Nebraska, is amended to read:

42-806. The judge of the conciliation court may transfer any case before the conciliation court pursuant to ~~sections 42-801 to 42-823~~ the Conciliation Court Law to the presiding judge of the county court or to the presiding judge of the district court, as appropriate, for assignment for trial or other proceedings by another judge of the court, whenever in the opinion of the judge of the conciliation court such transfer is necessary to expedite the business of the conciliation court or to insure the prompt consideration of the case. When any case is so transferred, the judge to whom it is transferred shall act as the judge of the conciliation court in the matter.

Sec. 26. Section 42-807, Reissue Revised Statutes of Nebraska, is amended to read:

42-807. The presiding judge of the district court may appoint a judge of the district court other than the judge of the conciliation court to act as judge of the conciliation court during any period when the judge of the conciliation court is on vacation, absent, or for any reason unable to perform his or her duties. Any judge so appointed shall have all of the powers and

authority of a judge of the conciliation court in cases under sections 42-801 to 42-823 the Conciliation Court Law.

Sec. 27. Section 42-808, Reissue Revised Statutes of Nebraska, is amended to read:

42-808. (1) In each county with a population of two hundred fifty thousand inhabitants or more, the county court and district court may appoint one counselor of conciliation and one secretary to assist the conciliation court in disposing of its business and carrying out its functions.

(2) The counselor of conciliation so appointed shall have the power to:

(a) Hold conciliation conferences with parties to and hearings in proceedings under the Conciliation Court Law and make recommendations concerning such proceedings to the judge of the conciliation court;

(b) Provide such supervision in connection with the exercise of his or her jurisdiction as the judge of the conciliation court may direct;

(c) Cause such reports to be made, such statistics to be compiled, and such records to be kept as the judge of the conciliation court may direct;

(d) Hold such hearings in all conciliation court cases as may be required by the judge of the conciliation court and make such investigations as may be required by the court to carry out the intent of the Conciliation Court Law;

(e) Make investigations provided for by sections 42-351 and 42-358 as may be directed by the judge of the conciliation court; and

(f) Hold informal hearings under section 42-367 and make recommendations to the court for entry of orders thereunder as may be directed by the judge of the conciliation court.

(3) The judge of the conciliation court may also appoint, with the consent of the board of county commissioners, such associate counselors of conciliation and other office assistants as may be necessary to assist the conciliation court in disposing of its business. Such associate counselors shall carry out their duties under the supervision of the judge of the conciliation court and shall have all the powers of the counselor of conciliation. Office assistants shall work under the supervision and direction of the counselor of conciliation.

(4) Salaries of persons appointed under this section shall be fixed by the board of county commissioners. All persons appointed under this section may be dismissed for any reason by a majority vote of the judges of the county court and the district court of the county.

(5) The board of county commissioners shall furnish adequate office space, equipment, and supplies for the use of the personnel of the conciliation court.

Sec. 28. Section 42-809, Reissue Revised Statutes of Nebraska, is amended to read:

42-809. (1) In each county having a population of less than two hundred fifty thousand inhabitants, the county court and district court may appoint, with the consent and approval of the board of county commissioners, the following persons to assist the conciliation court in disposing of its business and carrying out its functions:

(a) One counselor of conciliation who shall have the powers provided in subsection (2) of section 42-808; and

(b) Such associate counselors and office assistants as may be required to properly handle the work of the court.

(2) The salaries of persons appointed under the provisions of this section shall be fixed by the board of county commissioners of the county. All persons appointed under the provisions of this section may be dismissed for any reason by a majority vote of the judges of the district court of the county.

(3) The board of county commissioners shall furnish adequate office space, equipment, and supplies for the use of the personnel of the conciliation court.

(4) The county court and district court or the board of county commissioners may, at any time, abolish any or all positions created pursuant to the provisions of this section.

Sec. 29. Section 42-810, Reissue Revised Statutes of Nebraska, is amended to read:

42-810. (1) All district court hearings or conferences in proceedings under the provisions of sections 42-801 to 42-823 the Conciliation Court Law shall be held in private and the court shall exclude all persons except the officers of the court, the parties, their counsel, and witnesses. Conferences may be held with each party and his or her counsel separately and in the discretion of the judge or counselor conducting the conference or hearing, counsel for one party may be excluded when the adverse party is



present. All communications, verbal or written, from parties to the judge or counselor in a proceeding under the provisions of sections 42-801 to 42-823 such law shall be deemed made to such officer in official confidence.

(2) The files of the conciliation court shall be closed. The petition, supporting affidavit, reconciliation agreement, and any court order made in the matter may be opened to inspection by any party or his or her counsel upon the written authority of the judge of the conciliation court.

Sec. 30. Section 42-812, Revised Statutes Supplement, 1996, is amended to read:

42-812. Prior to the filing of any action for divorce, annulment, or separate maintenance, either spouse or both spouses may file a petition with the clerk of the county court or district court of the county of the residence of either spouse wherein a conciliation court has been established, invoking the jurisdiction of the conciliation court for the purpose of preserving the marriage by effecting a reconciliation between the parties, or for amicable settlement of the controversy between the spouses, so as to avoid further litigation over the issue involved.

Sec. 31. Section 42-813, Reissue Revised Statutes of Nebraska, is amended to read:

42-813. The petition shall be captioned substantially as follows:

In the (County or District) Court of ..... County,  
 Nebraska  
 Upon the petition of )  
 ..... )  
 (Petitioner) )  
 )  
 And concerning )  
 ..... and )  
 ..... Respondents )  
 To the Conciliation Court:

Petition for  
Conciliation (Under  
the Conciliation  
Court Law)

Sec. 32. Section 42-821, Revised Statutes Supplement, 1996, is amended to read:

42-821. (1) During a period beginning upon the filing of the petition for conciliation and continuing until the earlier of (a) thirty days after the hearing of the petition for conciliation or (b) the dismissal of the petition, neither spouse shall file any action for dissolution of marriage, annulment of marriage, or separate maintenance, except that, for the purpose of protecting the minor children of the parties and the parties, the county court and district court shall have authority after proper notice to enter orders for temporary custody of minor children, temporary child support, and temporary alimony, notwithstanding any such reconciliation proceedings. An order for temporary child support or an order for temporary alimony which is a part of an order providing for temporary child support when the spouse and child reside in the same household shall be governed by the provisions of sections 42-347 to 42-379 42-381 relating to child and spousal support. Certified copies of such orders shall be filed by the clerk of the court and treated in the same manner as other such orders.

(2) If, after the expiration of the period specified in subsection (1) of this section, the controversy between the spouses has not been terminated, either spouse may institute proceedings for dissolution of marriage, annulment of marriage, or separate maintenance. The pendency of a dissolution of marriage, annulment, or separate maintenance action shall not operate as a bar to the instituting of proceedings for conciliation under the Conciliation Court Law, but if such action is pending before a petition for conciliation is filed, the court may permit proceeding with such action at any time for good cause shown.

Sec. 33. Section 42-822, Revised Statutes Supplement, 1996, is amended to read:

42-822. Whenever any action for divorce, annulment of marriage, or separate maintenance is filed in the county court or district court, and it appears to the court at any time during the pendency of the action that there is any minor child of the spouses or of either of them whose welfare may be adversely affected by the dissolution or annulment of the marriage or the disruption of the household, and that there appears to be some reasonable possibility of a reconciliation being effected, the case may be transferred to the conciliation court for proceedings for reconciliation of the spouses or amicable settlement of issues in controversy, in accordance with the Conciliation Court Law.

Sec. 34. Section 42-924, Reissue Revised Statutes of Nebraska, is amended to read:

42-924. (1) Any victim of domestic abuse or any victim who has been willfully and maliciously harassed by a person who had the intent to terrify, threaten, or intimidate the victim as prohibited by section 28-311.03 may file an application and affidavit for a protection order as provided in subsection (3) of this section, by making a showing of such conduct 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 protection order without bond enjoining the adverse party from (a) imposing any restraint upon the person or liberty of the applicant or (b) threatening, assaulting, molesting, attacking, or otherwise disturbing the peace of the applicant.

(2) Application for a protection order providing 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 as soon as possible after entry of the protection order but in no event later than fourteen days after entry of the protection 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 order issued shall specifically set forth the location of the premises and shall be personally served, and a return thereof shall be filed in district court.

(3) Applications for protection orders shall be filed with the clerk of the district court, and the proceeding may be heard by the county court or the district court as provided in section 2 of this act.

(4) An application made pursuant to subsection (1) or (2) of this section may not be withdrawn except upon order of the court. An order issued pursuant to subsection (1) or (2) of this section shall specify that it is effective for a period of one year unless otherwise modified by the court. Except as provided in section 28-311.04, any person who knowingly violates an order issued pursuant to subsection (1) or (2) of this section after service shall be guilty of a Class II misdemeanor.

(4) (5) If there is any conflict between sections 42-924 to 42-926 and any other provision of law, sections 42-924 to 42-926 shall govern.

Sec. 35. Section 43-2,113, Revised Statutes Supplement, 1996, is amended to read:

43-2,113. (1) In counties where a separate juvenile court is established, the county board of the county shall provide suitable rooms and offices for the accommodation of the judge of the separate juvenile court and the officers and employees appointed by such judge or by the probation administrator pursuant to subsection (4) of section 29-2253. Such separate juvenile court and the judge, officers, and employees of such court shall have the same and exclusive jurisdiction, powers, and duties that are prescribed in the Nebraska Juvenile Code, concurrent jurisdiction under section 83-223, and such other jurisdiction, powers, and duties as specifically provided by law.

(2) A juvenile court created in a separate juvenile court judicial district or a county court sitting as a juvenile court in all other counties shall have and exercise jurisdiction within such juvenile court judicial district or county court judicial district with the county court and district court in all matters arising under Chapter 42, article 3, when the care, support, custody, or control of minor children under the age of eighteen years is involved. Such cases shall be filed in the county court and district court and may, with the consent of the juvenile judge, be transferred to the docket of the separate juvenile court or county court.

(3) All orders issued by a separate juvenile court or a county court which provide for child support or spousal support as defined in section 42-347 shall be governed by sections 42-347 to 42-379 ~~42-381~~ and 43-290 relating to such support. Certified copies of such orders shall be filed by the clerk of the separate juvenile or county court with the clerk of the ~~county court or~~ district court who shall maintain a record as provided in subsection (6) of section 42-364. There shall be no fee charged for the filing of such certified copies.

Sec. 36. Section 43-512.03, Revised Statutes Supplement, 1996, 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 Finance and Support 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 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) If income withholding is not feasible, enforce child, spousal, and medical support orders by other civil 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 Uniform Interstate Family Support Act, or sections 42-347 to 42-379 ~~42-381~~, 43-290, 43-512 to 43-512.10, 43-512.12 to 43-512.18, and 43-1401 to 43-1418, 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. 37. Section 43-512.04, Revised Statutes Supplement, 1996, is amended to read:

43-512.04. (1) An action for child support or medical support may be brought ~~in the county court or district court~~ separate and apart from any action for dissolution of marriage. The petition 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 2 of this act. 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 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 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 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. 38. An action under sections 43-1401 to 43-1418 shall be initiated by filing a petition with the clerk of the district court. The proceeding may be heard by the county court or the district court as provided in section 2 of this act.

Sec. 39. Section 43-1803, Revised Statutes Supplement, 1996, is amended to read:

43-1803. (1) If the minor child's parent or parents are deceased or have never been married, a grandparent seeking visitation shall file a petition in the county court or district court in the county in which the minor child resides. If the marriage of the parents of a minor child has been dissolved or a petition for the dissolution of such marriage has been filed, is still pending, but no decree has been entered, a grandparent seeking visitation shall file a petition for such visitation in the county court or district court in the county in which the dissolution was had or the proceedings are taking place. The county court or the district court may hear the proceeding as provided in section 2 of this act. The form of the petition and all other pleadings required by this section shall be prescribed by the Supreme Court. The petition shall include the following:

(a) The name and address of the petitioner and his or her attorney;  
 (b) The name and address of the parent, guardian, or other party having custody of the child or children;  
 (c) The name and address of any parent not having custody of the child or children if applicable;  
 (d) The name and date of birth of each child with whom visitation is sought;

(e) The relationship of petitioner to such child or children;  
 (f) An allegation that the parties have attempted to reconcile their differences, but the differences are irreconcilable and such parties have no recourse but to seek redress from the court; and  
 (g) A statement of the relief sought.

(2) When a petition seeking visitation is filed, a copy of the petition shall be served upon the parent or parents or other party having custody of the child and upon any parent not having custody of such child by personal service or in the manner provided in section 25-517.02.

Sec. 40. Section 71-615, Reissue Revised Statutes of Nebraska, is amended to read:

71-615. On or before the fifth day of each month, the clerk of the county court and district court of each county shall make and return to the Department of Health and Human Services Finance and Support, upon suitable forms furnished by the department, a statement of each action for annulment or dissolution of marriage granted in the court of which he or she is clerk during the preceding calendar month. The information shall be furnished by the petitioner or his or her legal representative and presented to the clerk of the court with the petition. In all cases, the furnishing of the information to complete the record shall be a prerequisite to the granting of the final decree. If no annulments or dissolutions of marriage were granted in the county during the preceding month, a card furnished by the department indicating such information shall be submitted on or before the fifth day of each month to the department. Upon neglect or refusal to make such return, such clerk shall, for each neglect or refusal, forfeit and pay the sum of twenty-five dollars for the use of the county.

Sec. 41. Laws 1996, LB 1296, section 29, is amended to read:

Sec. 29. Sections 1, 3, and 29 to 31 of this act become operative on their effective date. The other sections of this act become operative on October 1, 1997 January 1, 1998.

Sec. 42. The Revisor of Statutes shall assign section 2 of this act to Chapter 25, article 27.

Sec. 43. Sections 3 to 5, 41, 43, and 45 of this act become operative on their effective date. The remaining sections of this act become

operative on January 1, 1998.

Sec. 44. Original sections 42-349, 42-350, 42-353, 42-360, 42-362, 42-370, 42-373, 42-377, 42-803 to 42-810, 42-813, 42-924, and 71-615, Reissue Revised Statutes of Nebraska, and sections 24-517, 25-2739, 42-347, 42-348, 42-351, 42-352, 42-357, 42-358.08, 42-371, 42-812, 42-821, 42-822, 43-2,113, 43-512.03, 43-512.04, and 43-1803, Revised Statutes Supplement, 1996, are repealed.

Sec. 45. Original sections 24-1201, 24-1204, and 24-1206, Reissue Revised Statutes of Nebraska, and Laws 1996, LB 1296, section 29, are repealed.

Sec. 46. The following section is outright repealed: Section 42-379, Reissue Revised Statutes of Nebraska.