

## LEGISLATIVE BILL 371

Approved by the Governor May 23, 1983

Introduced by Schmit, 23; Haberman, 44; Kilgarin, 7;  
Hoagland, 6; Marsh, 29; Morehead, 30;  
Wesely, 26; Wiitala, 31; Labedz, 5;  
Higgins, 9; DeCamp, 40

AN ACT relating to support and protection of certain parties; to amend sections 42-357, 42-364.01, 42-364.02, 42-364.06, 42-364.10, 42-364.11, and 42-369, Reissue Revised Statutes of Nebraska, 1943, sections 42-358.02, 43-512, and 43-512.01 to 43-512.03, Revised Statutes Supplement, 1982, and section 43-512.05, Revised Statutes Supplement, 1982, as amended by section 1, Legislative Bill 417, Eighty-eighth Legislature, First Session, 1983; to authorize ex parte orders as prescribed; to modify provisions relating to temporary and permanent child support; to define and redefine terms; to authorize attorneys to enforce support orders as prescribed; to provide severability; and to repeal the original sections.

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

Section 1. That section 42-357, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

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

transferring, encumbering, hypothecating, concealing, or in any way disposing of real or personal property except in the usual course of business or for the necessities of life, and the party against whom such order is directed shall upon order of the court account for all unusual expenditures made after such order is served upon him; or her, (2) enjoining any party from molesting or disturbing the peace of the other party; or any minor children affected by the action, and (3) determining the temporary custody of any minor children of the marriage, except that no restraining order enjoining any party from molesting or disturbing the peace of any minor child shall issue unless, at the same time, the court determines that the party requesting such order shall have temporary custody of such minor child. Ex parte; Provided, 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 family dwelling of the other upon a showing that physical or emotional harm would otherwise result. In the event a restraining order enjoining any party from molesting or disturbing the peace of any minor children is issued, upon application and affidavit setting out the reason therefore, the court shall schedule a hearing within seventy-two hours to determine whether the order regarding the minor children shall remain in force.

Sec. 2. That section 42-358.02, Revised Statutes Supplement, 1982, be amended to read as follows:

42-358.02. All delinquent permanent child support payments shall draw interest at the rate specified in section 45-104.01, as such rate may from time to time be adjusted by the Legislature, from the date they become delinquent, and the interest shall be collected the same as the support payments upon which the interest accrues. Such interest shall be compounded annually on the outstanding delinquent amount plus accrued and unpaid interest thereon.

Sec. 3. In any proceeding when a court has ordered a parent to pay, temporarily or permanently, any amount to the clerk of the district court for the support of a minor child and in the same proceeding has ordered visitation with any minor child on behalf of such parent the court shall enforce its visitation orders as follows:

(1) Upon the filing of a motion which is accompanied by an affidavit stating that either parent has unreasonably withheld or interfered with the exercise of the court order after notice to the parent and hearing, the court shall enter such orders as are

reasonably necessary to enforce rights of either parent including the modification of previous court orders relating to visitation. The court may use contempt powers to enforce its court orders relating to visitation. The court may require either parent to file a bond or otherwise give security to insure his or her compliance with court order provisions.

(2) Costs, including reasonable attorney's fees, may be taxed against a party found to be in contempt pursuant to this section.

Sec. 4. That section 42-364.01, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

42-364.01. In any proceeding when a district court, county court, or separate juvenile court has ordered, temporarily or permanently, a parent, referred to as parent-employee in sections 42-364.01 to 42-364.12, to pay any amount for the support of a minor child, that court may shall, following application, hearing, and findings, as required by sections 42-364.02 to 42-364.12, order the employer of such parent:

(1) To withhold, from the parent-employee's nonexempt, disposable earnings presently due and to be due in the future, such amounts as shall reduce and satisfy the parent-employee's previous arrearage in child support payments arising from the parent-employee's failure to comply fully with an order previously entered to pay child support, the parent-employee's obligation to pay child support as ordered by the court as such obligation accrues in the future, and, when necessary, the attorney's fee awarded in such proceeding;

(2) To pay to the parent-employee, on his or her regularly-scheduled pay day such earnings then due which are not ordered withheld;

(3) To deduct from the sums so withheld an amount set by the court, but not to exceed five dollars in any calendar month, as compensation for the employer's reasonable cost incurred in complying with such order;

(4) To remit at least once each calendar month such sums withheld, less the deduction as allowed by the court pursuant to subdivision (3) of this section, to the clerk of the court entering such order;

(5) To refrain from dismissing, demoting, disciplining, and in any way penalizing the parent-employee on account of the proceeding to collect child support, on account of any order or orders entered by the court in such proceeding, and on account of employer compliance with such order or orders; and

(6) To notify in writing the clerk of the court entering such order of the termination of the employment of such parent-employee, the last-known

address of the parent-employee, and the name and address of the parent-employee's new employer, if known, and to provide such written notification within thirty days after the termination of employment.

Sec. 5. That section 42-364.02, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

42-364.02. Any person having a direct interest in the welfare of the a minor child may file an application, with the court that has previously ordered a parent to pay any amount for the support of a the minor child, requesting the court to hold a hearing on such application and to enter an order as allowed by the provisions of section 42-364.01. Such persons Persons having a direct interest in the welfare of a child shall include a parent or legal guardian of the child, a person having custody of the child pursuant to an order of a court of competent jurisdiction, a county attorney, or a deputy or assistant county attorney, and an employee of a county welfare office. No court, even if it has custody of a minor child, may initiate such an application.

Sec. 6. That section 42-364.06, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

42-364.06. The court may enter an order as allowed by section 42-364.01 at the hearing on the application for such order, if it finds that it has jurisdiction of the employer and the earnings of the parent-employee, that the parent-employee is an employee as defined in section 42-364.11 of the employer, and that the parent-employee has not complied in full with the previous order of the court requiring such parent-employee to pay for the support of a minor child. Nothing shall prohibit the court from continuing the order to withhold and transmit after the parent-employee has become current on the court-ordered obligation to pay child support. In fixing the amount to be withheld by the employer from the parent-employee's nonexempt, disposable earnings, the court shall determine that amount of earnings which, if paid over a reasonable period, would satisfy in full the child support arrearage existing as of the time of the hearing and would satisfy each child support obligation to come due in the future as such came due and would satisfy over a reasonable period of time the attorney's fee awarded, if any, pursuant to section 42-364.07. The court may set flat amounts to be withheld, or, if the parent-employee's pay varies substantially from pay period to pay period, it may set a percentage of the nonexempt, disposable earnings to be withheld.

Sec. 7. That section 42-364.10, Reissue Revised Statutes of Nebraska, 1943, be amended to read

as follows:

42-364.10. An order to withhold and transmit earnings shall dissolve without any court action thirty days after the parent-employee ceases employment with the employer. An order to withhold and transmit earnings ~~shall~~ may be revoked by the court upon application when the parent-employee is not in arrears of any court-ordered child support as of the date of the application. An order to withhold and transmit earnings may be modified or revoked by the court upon application and for good cause shown. All applications to revoke or modify shall be served upon the employer and all persons having an interest in the order to withhold and transmit earnings, by United States certified mail, return receipt requested, addressed to the last-known addresses of such persons.

Sec. 8. That section 42-364.11, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

42-364.11. For the purposes of sections 42-364.01 to 42-364.12 and sections 9 and 10 of this act, 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 includes 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, 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) ~~(4)~~ Work week shall mean any seven consecutive days during which the a parent-employee performs work, provides services, or sells goods or services for the an employer; and

~~(5)~~ (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 the an employer pays earnings to the a parent-employee.

Sec. 9. (1) A decree dissolving a marriage shall specifically provide that any person ordered to pay a judgment as part of the dissolution proceedings shall be required to furnish to the clerk of the district court in which the proceeding was held his or her address, telephone number, and social security number, the name of his or her employer, and any other information the court shall deem relevant until such judgment shall be 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. Failure to comply with the provisions of this section shall be punishable by contempt.

(2) If the decree contains an order or judgment for child support, it shall include the following statements:

In the event (respondent or petitioner) fails to pay any such child support payment, as such failure is certified to the court each month by the district court clerk in cases where court-ordered child support is more than thirty days in arrears, he or she shall appear before this 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) fails to pay and appear as so ordered, a warrant shall be issued for his or her arrest.

Sec. 10. Nothing in sections 42-364.01 to 42-364.12 or section 9 of this act shall be construed as prohibiting a parent-employee from consenting to an order to withhold and transmit earnings as part of a property settlement agreement incorporated into a decree dissolving a marriage or by agreement in a proceeding in the district court, county court, or separate juvenile court in which the payment of child support is an issue. If the parent-employee has consented to such an order, the court shall not be required to hold a separate hearing or make findings as provided in sections 42-364.01 to 42-364.12. The clerk of the court shall notify the employer, if any, of the parent-employee of any such order by first class mail and file a record of such mailing in the court.

Sec. 11. That section 42-369, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

42-369. (1) All orders or judgments for temporary or permanent support payments, or alimony, or modification of the same shall direct the payment of such sums to be made commencing on the first day of each month to the clerk of the district court for the use of the persons for whom the same have been awarded. The court may order such payment to be in cash or guaranteed funds.

(2) If the person against whom an order or judgment for child support is entered or the custodial parent or guardian has health insurance available to him or her through an employer or organization which may extend to cover any children affected by the order or decree, the court shall require the option to be exercised by either party for additional coverage which favors the best interests of the child or children affected by the order or judgment, unless the parties have otherwise stipulated in writing or to the court.

(3) Such an order or decree for support may include the providing of necessary shelter, food, clothing, care, medical attention, expenses of confinement, education expenses, funeral expenses, and any other expense the court may deem reasonable and necessary.

(4) Orders and judgments for temporary or permanent support or alimony shall be filed with the clerk, and have the force and effect of judgments when entered, and the clerk shall disburse all payments received as directed by the court. Records shall be kept of all funds received and disbursed by the clerk, which records shall be open to inspection by the parties and their attorneys.

Sec. 12. That section 43-512, Revised Statutes Supplement, 1982, be amended to read as follows:

43-512. (1) Any dependent child, as defined in section 43-504, or any relative of such dependent child may file with the Department of Public Welfare a written application for financial assistance for such child on forms furnished by the department.

(2) The Department of Public Welfare, through its agents and employees, shall thereupon make such investigation as it deems necessary or as may be required by the county attorney. If the investigation or the application for financial assistance discloses that such child has a parent or stepparent who is able to contribute to the support of such child and has failed to do so, a copy of the finding of such investigation and a copy of the application shall immediately be filed with the county attorney or any attorney employed by the county, subject to the approval of the county board, or the Director of Public Welfare and authorized to investigate and prosecute child support cases in accordance with section 42-358 or sections 43-512.01 to 43-512.10.

(3) The Department of Public Welfare shall make a finding as to whether the application referred to in subsection (1) of this section shall be allowed or denied. If it is found that said application should be allowed, the department shall further find the amount of monthly assistance which should be paid with reference

to such dependent child. Except as may be otherwise provided, payments shall be made by state warrant, and the amount of payments shall not exceed two hundred ninety-three dollars per month where there is but one dependent child and one eligible caretaker relative in any home, plus an additional seventy-one dollars per month on behalf of each additional eligible person. No payments shall be made for amounts totaling less than ten dollars per month, except in the recovery of overpayments.

(4) The amount which shall be paid as assistance with respect to a dependent child shall be based in each case upon the conditions disclosed by the investigation made by the department. An appeal shall lie from the finding made in each case to the Director of Public Welfare. Such appeal may be taken by any taxpayer or by any relative of such child. Proceedings for and upon appeal shall be conducted in the same manner as provided for in section 68-1016.

(5) For the purpose of preventing dependency, the Director of Public Welfare is authorized to promulgate rules and regulations providing for services to former and potential recipients of aid to dependent children and medical assistance benefits. The director is further authorized to promulgate rules and regulations establishing programs and cooperating with programs of work incentive, work experience, job training, and education. The provisions of this section with regard to determination of need, amount of payment, maximum payment, and method of payment shall not be applicable to families or children included in such programs.

Sec. 13. That section 43-512.01, Revised Statutes Supplement, 1982, be amended to read as follows:

43-512.01. It shall be the duty of the county attorney or authorized attorney, as provided in section 43-512, 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 file complaint against the nonsupporting parent or stepparent of the dependent child under section 28-706, if the attorney is the county attorney or a deputy county attorney, or file a civil petition against the nonsupporting parent or stepparent under the provisions of section 43-512.03, if the attorney is an attorney other than the county attorney or deputy county attorney, whenever the recovery of child support appears to be practicable.

Sec. 14. That section 43-512.02, Revised Statutes Supplement, 1982, be amended to read as follows:



43-512.02. (1) Any child, or any relative of such a child, may file with the county attorney, authorized attorney, as provided in section 43-512, county welfare office, or other county office designated by the Department of Public Welfare an application for the same child support collection or paternity determination services as are provided to dependent children and their relatives under sections 43-512 to 43-512.10 by the Department of Public Welfare, the county attorney, and the clerk of the district court.

(2) If an office other than the office of the county attorney is authorized by the Department of Public Welfare to accept such applications, and if the application discloses that such child has a parent or stepparent who is able to contribute to the support of such child and has failed to do so, a copy of the application shall immediately be filed with the county attorney or an attorney appointed by the district court to initiate enforcement proceedings.

Sec. 15. That section 43-512.03, Revised Statutes Supplement, 1982, be amended to read as follows:

43-512.03. The county attorney or authorized attorney, as provided in section 43-512, shall:

(1) On request by the Department of Public Welfare, 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 court praying for an order for child support in cases when there is no existing child support order. After notice and hearing, the court shall adjudicate child support liability of the nonsupporting parent or stepparent and enter an order accordingly;

(2) Enforce child support orders by civil action, citing the defendant for contempt, or filing a criminal complaint; and

(3) Establish paternity and collect child support on behalf of children born out of wedlock.

Sec. 16. That section 43-512.05, Revised Statutes Supplement, 1982, as amended by section 1, Legislative Bill 417, Eighty-eighth Legislature, First Session, be amended to read as follows:

43-512.05. (1) The clerks of the district courts shall furnish the Department of Public Welfare information necessary to properly account for the child support payments transmitted to the department. The clerk of each district court shall negotiate and enter into a written agreement with the department in order to receive reimbursement for the costs incurred in carrying out sections 43-512 to 43-512.10.

(2) The Director of Public Welfare and the governing board of the county, county attorney, or authorized attorney may enter into a written agreement

regarding the determination of paternity and child support enforcement for the purpose of implementing sections 43-512 to 43-512.10. Paternity shall be established when it can be determined that the collection of child support is feasible.

(3) The department shall adopt and promulgate rules and regulations regarding the rate and manner of reimbursement for costs incurred in carrying out sections 43-512 to 43-512.10, taking into account relevant federal law, available federal funds, and any appropriations made by the Legislature. Any reimbursement funds shall be added to the budgets of those county officials who have performed the services as called for in the cooperative agreements and carried over from year to year as required by law.

Sec. 17. If any section in this act or any part of any section shall be declared invalid or unconstitutional, such declaration shall not affect the validity or constitutionality of the remaining portions thereof.

Sec. 18. That original sections 42-357, 42-364.01, 42-364.02, 42-364.06, 42-364.10, 42-364.11, and 42-369, Reissue Revised Statutes of Nebraska, 1943, and sections 42-358.02, 43-512, and 43-512.01 to 43-512.03, Revised Statutes Supplement, 1982, and section 43-512.05, Revised Statutes Supplement, 1982, as amended by section 1, Legislative Bill 417, Eighty-eighth Legislature, First Session, 1983, are repealed.