

## LEGISLATIVE BILL 600

Approved by the Governor April 17, 1986

Introduced by Judiciary Committee, Hoagland, 6,  
Chairperson; Beutler, 28; Abboud, 12;  
Remmers, 1; Conway, 17; Chizek, 31;  
Rupp, 22

AN ACT relating to domestic relations; to amend sections 42-364.08 and 42-372, Reissue Revised Statutes of Nebraska, 1943, sections 42-371, 43-512.03, and 43-512.07, Reissue Revised Statutes of Nebraska, 1943, as amended by sections 19, 68, and 71, respectively, Legislative Bill 7, Eighty-ninth Legislature, Second Special Session, 1985, section 43-2,113, Revised Statutes Supplement, 1985, as amended by section 64, Legislative Bill 7, Eighty-ninth Legislature, Second Special Session, 1985, and sections 1, 3, 40, 41, 43, 46, and 57, Legislative Bill 7, Eighty-ninth Legislature, Second Special Session, 1985; to change provisions relating to child support referees; to change provisions relating to delinquent support, the withholding of income, and hearings, orders, and judgments relating to such delinquent support and withholding of income; to change provisions relating to final divorce decrees; to change provisions relating to aid to dependent children payments; to authorize payments to guardians as prescribed; to harmonize provisions; and to repeal the original sections.

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

Section 1. That section 1, Legislative Bill 7, Eighty-ninth Legislature, Second Special Session, 1985, be amended to read as follows:

43-1601. The Legislature finds that matters relating to visitation, paternity, and the support of children, whether directly in the form of child support, indirectly in the form of support for a spouse or former spouse, or otherwise, should be handled by the courts in an expeditious manner so that parties may obtain needed orders and other actions as quickly as possible. The Supreme Court shall by rule determine whether child support referees who are not judges are necessary in any

judicial districts in order to meet the requirements relating to case progression standards established by Public Law 98-378. A child support referee shall be appointed only when the Supreme Court finds that existing judicial resources, including available county judges, are insufficient to accommodate the case progression standards established by Public Law 98-378. If the Supreme Court determines that a child support referee who is not a judge is necessary to serve any judicial district, the district court in such district shall appoint, based upon its local court rules, an attorney in good standing to serve as referee subject to confirmation by the Supreme Court. The child support referee so appointed may be removed by either the district court or Supreme Court. If directed by the Supreme Court, a referee so appointed may serve any judicial district of the state on a temporary basis in order to comply with case progression standards established by Public Law 98-378. The Supreme Court shall by rule determine whether child support referees are necessary in counties with a population of more than sixty thousand inhabitants to meet requirements relating to case progression standards established by Public Law 98-378. If the Supreme Court determines that a child support referee is necessary in such a county, the district court in such county shall appoint no more than one attorney in good standing to serve as a referee subject to confirmation by the Supreme Court. The child support referee may be removed by either the district court or Supreme Court. In the remaining counties of the state no child support referees shall be appointed unless (1) a showing of the inability of the existing judicial resources to accommodate the case progression standards established by Public Law 98-378 is made and (2) specific statutory authorization is granted by the legislature.

In any county, judicial district where no child support referee has been appointed, the Supreme Court shall may appoint without approval of the legislature, county judges to act as child support referees. The Supreme Court may by rule prioritize classes of cases in order to assure that matters relating to child support and spousal support, paternity, and visitation shall meet the case progression standards established by Public Law 98-378.

Sec. 2. That section 3, Legislative Bill 7, Eighty-ninth Legislature, Second Special Session, 1985, be amended to read as follows:

43-1602. No person shall be eligible for the

office of child support referee unless he or she is currently admitted to practice before the Nebraska Supreme Court. Offices, support staff, equipment, furnishings, and supplies shall be provided for in the budget of the ~~clerk of the district court for of the county or counties~~ judicial district or districts in which the child support referee serves. Salaries and expenses of child support referees shall be paid by funds appropriated to the Supreme Court, but in no case shall such salary exceed seventy per cent of the salary of a judge of the county court. For any IV-D case, the The child support referee shall determine any matter pertaining to (1) the establishment, modification, enforcement, and collection of child support, (2) the enforcement and collection of spousal support if such support is part of an order which provides for child support and the child and spouse are living in the same household, and (3) visitation, and (4) paternity. A child support referee may order the issuance of process to compel the attendance of parties and witnesses, administer all necessary oaths, supervise pretrial preparation pursuant to the rules of discovery promulgated by the Supreme Court pursuant to section 25-1273.01, grant adjournments, and exercise related powers in the same manner as a county or district court judge. Testimony in matters pertaining to child support or spousal support, when included in an order for child support, and to visitation modification, and to paternity shall be preserved by tape recording or other means prescribed by the Supreme Court. Standards for such preservation shall be those prescribed by the Supreme Court.

When a review is requested as provided in section 6 of this act, the court shall order the transcription of such testimony. The transcript shall constitute the bill of exceptions in the case and shall be filed with the clerk of the district court. The cost of preparing the transcript shall be paid by the party for whom it is prepared.

Sec. 3. That section 40, Legislative Bill 7, Eighty-ninth Legislature, Second Special Session, 1985, be amended to read as follows:

43-1720. Upon receiving notice of delinquent child or spousal support payments pursuant to sections 42-358 and 42-358.02, the county attorney or authorized attorney shall send a notice by certified mail to the last-known address of the obligor stating that an assignment of his or her income by means of income withholding shall go into effect within fifteen days



from the date the notice is sent and that within the fifteen-day period, the obligor may request a hearing, in the manner specified in the notice to contest a mistake of fact. For purposes of this section, mistake of fact in the manner specified in the notice, on the issue of whether the assignment should take effect on the grounds that the assignment, including the amount to be withheld, is not valid because of a mistake of fact, shall mean (1) an error in the amount of current or overdue support, (2) an error in the identity of the obligor, or (3) an error in the amount to be withheld.

Sec. 4. That section 41, Legislative Bill 7, Eighty-ninth Legislature, Second Special Session, 1985, be amended to read as follows:

43-1721. If the delinquent obligor requests a hearing, the department shall hold a hearing, if required by section 3 of this act, within fifteen days of the date of receipt of the request in accordance with Chapter 84, article 9. The assignment shall be held in abeyance pending the outcome of the hearing. The department shall notify the obligor and the county attorney or authorized attorney of its decision within fifteen days of the date the hearing is held.

Sec. 5. That section 43, Legislative Bill 7, Eighty-ninth Legislature, Second Special Session, 1985, be amended to read as follows:

43-1723. The county attorney or authorized attorney shall notify the obligor's employer, in the manner provided for service of a summons in a civil action, within thirty days of the date the original notice was sent to the obligor or, if a hearing is held, within fifteen days of the date the department's determination is received. The notice shall specify the basis for the assignment of income and shall direct:

(1) That the employer shall withhold from the obligor's disposable income the amount certified by the county attorney or authorized attorney for the purpose of reducing and satisfying the obligor's (a) previous arrearage in child or spousal support payments arising from the obligor's failure to fully comply with a support order previously entered and (b) ongoing obligation for support payments as they become due;

(2) That the employer shall implement income withholding no later than the first pay period that occurs after fourteen days following the date the notice is served;

(3) That the employer shall pay to the obligor, on his or her regularly scheduled payday, such income then due which is not certified to be withheld

pursuant to section 42 of this act or any court order;

(4) That the employer may assess an additional administrative fee from the employee's disposable earnings not to exceed ten dollars in any calendar month as compensation for the employer's reasonable cost incurred in complying with the notice;

(5) That the employer shall remit, within ten days of the date the obligor is paid and in the manner specified in the notice, the income withheld, less the deduction allowed as an administrative expense by subdivision (4) of this section, to the clerk of the district court designated in the notice;

(6) That the employer shall notify the county attorney or authorized attorney in writing of the termination of the employment of the obligor, the last-known address of the obligor, and the name and address of the obligor's new employer, if known, and shall provide such written notification within thirty days after the termination of employment;

(7) That income withholding is binding on the employer until further notice by the county attorney or authorized attorney;

(8) That the employer may combine amounts required to be withheld from the income of two or more obligors in a single payment to each clerk designated in an income withholding notice if the portion of the single payment which is attributable to each individual obligor is separately identified; and

(9) That an employer who fails to withhold and remit income of an obligor after receiving proper notice or who discriminates, demotes, disciplines, or terminates an employee after receiving an income withholding notice shall be subject to the penalties prescribed in sections 44 and 45 of this act.

Compliance with the order by the employer shall operate as a discharge of the employer's liability to the obligor as to the portion of the obligor's income withheld.

Sec. 6. That section 46, Legislative Bill 7, Eighty-ninth Legislature, Second Special Session, 1985, be amended to read as follows:

43-1726. A notice to the employer to withhold income shall terminate without any court action or action by the county attorney or authorized attorney thirty days after the obligor ceases employment with the employer. The employer shall return a copy of the notice to withhold income to the county attorney or authorized attorney, indicate that employment has ceased, and cooperate in providing any known forwarding

information. The county attorney or authorized attorney shall notify the clerk of the appropriate district court that such employment has ceased. A notice to withhold income shall also terminate when the child or spousal support obligation terminates and all past due support has been paid, in which case the county attorney or authorized attorney shall notify the employer to cease withholding income.

Sec. 7. That section 57, Legislative Bill 7, Eighty-ninth Legislature, Second Special Session, 1985, be amended to read as follows:

43-1737. If the obligor does not request a hearing in the time provided, the income withholding notice shall take effect and the obligor's employer shall be notified pursuant to section 5 of this act. If or if a hearing is held and it is determined that the obligee has been or is entitled to income withholding under the local law of the jurisdiction which issued the foreign support order, the court shall issue an income withholding order to the obligor's employer in the same manner as the notice provided for in section 43 ~~of this act~~ 5 of this act.

Sec. 8. That section 42-364.08, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

42-364.08. Exempt from any order to withhold and transmit earnings entered pursuant to sections 42-364.01 to 42-364.12 is the portion of the disposable earnings of the parent-employee for each work week subject to such order equaling thirty times the federal minimum hourly wage prescribed by section 206(a) (1) of Title 29 of the United States Code in effect at the time earnings are payable. The amount to be withheld from the parent-employee's disposable income under any order to withhold and transmit earnings entered pursuant to sections 42-364.01 to 42-364.12 shall not in any case exceed the maximum amount permitted to be withheld under section 303(b) of the Consumer Protection Credit Act, 15 U.S.C. 1673(b)(2)(A) and (B), nor shall any amount withheld to satisfy a child or spousal support arrearage, when added to the amount withheld to pay current support and the fee provided for in subdivision (3) of section 42-364.01, exceed such maximum amount.

Sec. 9. That section 42-371, Reissue Revised Statutes of Nebraska, 1943, as amended by section 19, Legislative Bill 7, Eighty-ninth Legislature, Second Special Session, 1985, be amended to read as follows:

42-371. (1) All judgments and orders for payment of money under Under sections 42-347 to 42-379.



43-290, and 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 partial or total release of the judgment, generally or on specific real or personal property. Release of judgments for child support or spousal support must be approved by the court which rendered the judgment. The judgment debtor may petition the court which rendered the original judgment for an order releasing 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 shall remain subject to the lien 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 ~~subsection (3)~~ 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 ~~under sections 42-347 to 42-379~~ refuses to execute a release of the judgment as provided in this section, the person desiring such release 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 is not requested for the purpose of avoiding payment and that the release will not unduly reduce the security, the court may release real or personal property from the judgment lien. As a condition for such release, the court may require the posting of a bond with the clerk in an amount fixed by the court, guaranteeing payment of the judgment; and -

(5) The court may in any case, upon

application or its own motion, after notice and hearing, order a person required to make payments under sections 42-347 to 42-379 and 43-512 to 43-512-10 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.

Sec. 10. That section 42-372, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

42-372. (1) A decree dissolving a marriage shall become final and operative, except for the purpose of review by appeal, without any further action of the court on (a) the date of death of one of the parties to the dissolution or (b) six months after the decree is rendered, whichever occurs first. If the decree becomes final and operative upon the date of death of one of the parties to the dissolution, the decree shall be treated as if it became final and operative the date it was rendered.

(2) For the purpose of review by appeal, the decree shall be treated as a final order as soon as it is rendered. If an appeal is instituted within one month of the date the decree is rendered, such decree shall not become final until such proceedings are finally determined. If no such proceedings have been instituted within such one-month period, the court may, at any time within such six months, vacate or modify its decree. A decree dissolving a marriage shall not become final or operative until six months after the decree is rendered, except for the purpose of review by appeal; and for such purpose only the decree shall be treated as a final order as soon as rendered. If an appeal is instituted within one month, such decree shall not become final until such proceedings are finally determined. If no such proceedings have been instituted, the court may, at any time within such six months, vacate or modify its decree. If such decree shall not have been vacated or modified, unless proceedings are then pending with that end in view, the original decree shall at the expiration of six months become final without any further action of the court.

Sec. 11. That section 43-2,113, Revised Statutes Supplement, 1985, as amended by section 64,



Legislative Bill 7, Eighty-ninth Legislature, Second Special Session, 1985, be amended to read as follows:

43-2,113. 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 thereof and the officers and employees appointed by such judge or by the probation administrator pursuant to subsection (3) of section 29-2253. Such separate juvenile court, the judge thereof, and the 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 sections 83-223 and 83-1101 to 83-1139, and such other jurisdiction, powers, and duties as may hereafter be specifically provided by law. 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 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 district court and may with the consent of the juvenile judge be transferred to the docket of the separate juvenile court or county court. All orders issued by such court which provide for child support or spousal support, as defined in section 42-347, shall be governed by the provisions of sections 42-347 to 42-379 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 district court. There shall be no fee charged for the filing of such certified copies.

Sec. 12. That section 43-512.03, Reissue Revised Statutes of Nebraska, 1943, as amended by section 68, Legislative Bill 7, Eighty-ninth Legislature, Second Special Session, 1985, 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 Social Services, 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 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. 13. That section 43-512.07, Reissue Revised Statutes of Nebraska, 1943, as amended by section 71, Legislative Bill 7, Eighty-ninth Legislature, Second Special Session, 1985, be amended to read as follows:

43-512.07. The application for and acceptance of an aid to dependent children payment by a parent, ~~or~~ other relative, or a custodian shall constitute an assignment of the right to child and spousal support payments and arrearages, from the inception of the court order, to the Department of Social Services up to the amount of aid to dependent children paid to the recipient. Child and spousal support payments made pursuant to a court order shall be paid to the Department of Social Services upon notice by the department to the clerk of the district court that the child is a recipient of public assistance. Upon receipt of notice from the department of such assignment of support payments, each clerk of the district court shall transmit the payments received to the department in accordance with the cooperative agreement provided for in section 43-512.05 without the requirement of a subsequent order by the court. The clerk of the district court shall continue to transmit the payments for as long as the aid to dependent children payment continues. Any court-ordered child or spousal support remaining unpaid during the period of the assignment to the department shall constitute a debt and a continuing assignment at the termination of aid to dependent children payments, collectible by the department as reimbursement for aid to dependent children payments. The continuing assignment shall only apply to support payments made during a calendar period which exceed the specific amount of support ordered for that period. When aid to dependent children payments have ceased and upon notice by the department, the clerk of the district court shall continue to transmit to the department any support payments received on arrearages in excess of the amount of support ordered for that specific calendar period, until notified by the department that the debt has been paid in full.

Sec. 14. The Department of Social Services may make payments as needed on behalf of a child who has been a ward of the department after the appointment of a guardian for the child. Such payments to the guardian may include maintenance costs, medical and surgical expenses, and other costs incidental to the care of the child. All such payments shall terminate on or before the child's nineteenth birthday. The child under guardianship shall be a child for whom the guardianship would not be possible without the financial aid provided under this section.

The Director of Social Services shall adopt and promulgate rules and regulations for the administration of this section.

Sec. 15. That original sections 42-364.08 and 42-372, Reissue Revised Statutes of Nebraska, 1943, sections 42-371, 43-512.03, and 43-512.07, Reissue Revised Statutes of Nebraska, 1943, as amended by sections 19, 68, and 71, respectively, Legislative Bill 7, Eighty-ninth Legislature, Second Special Session, 1985, section 43-2,113, Revised Statutes Supplement, 1985, as amended by section 64, Legislative Bill 7, Eighty-ninth Legislature, Second Special Session, 1985, and sections 1, 3, 40, 41, 43, 46, and 57, Legislative Bill 7, Eighty-ninth Legislature, Second Special Session, 1985, are repealed.