

LEGISLATIVE BILL 18

Approved by the Governor February 28, 1997

Introduced by Landis, 46

AN ACT relating to child support; to amend sections 42-358.02, 42-364.06, and 43-1718.01, Reissue Revised Statutes of Nebraska, and section 43-1718, Revised Statutes Supplement, 1996; to change delinquency, withholding of earnings, and assignment of income provisions; and to repeal the original sections.

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

Section 1. Section 42-358.02, Reissue Revised Statutes of Nebraska, is amended to read:

42-358.02. (1) All delinquent child support payments shall draw interest at the rate specified in section 45-103 in effect on the date of the most recent order or decree. Such interest shall be computed as simple interest.

(2) All child support payments shall become delinquent the day after they are due and owing, except that no obligor whose child support payments are automatically withheld from his or her paycheck shall be regarded or reported as being delinquent or in arrears if (a) any delinquency or arrearage is solely caused by a disparity between the schedule of the obligor's regular pay dates and the scheduled date the child support is due, (b) the total amount of child support to be withheld from the paychecks of the obligor and the amount ordered by the support order are the same on an annual basis, and (c) the automatic deductions for child support are continuous and occurring. Interest shall not accrue until thirty days after such payments are delinquent.

(3) The court shall order the determination of the amount of interest due, and such interest shall be payable in the same manner as the support payments upon which the interest accrues subject to subsection (2) of this section or unless it is waived by agreement of the parties. The clerk of the district court shall compute interest and identify delinquencies pursuant to this section and shall report such information to the court and to the county attorney or authorized attorney.

(4) The clerk of the district court shall credit child support payments first to the payment currently due, second toward any delinquency owing, and third toward the interest on the delinquency.

(5) Interest which may have accrued prior to September 6, 1991, shall not be affected or altered by changes to this section which take effect on such date. All delinquent child support payments and all decrees entered prior to such date shall draw interest at the effective rate as prescribed by this section commencing as of such date.

Sec. 2. Section 42-364.06, Reissue Revised Statutes of Nebraska, is amended to read:

42-364.06. The court shall 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. Noncompliance with a child support order shall not be found if the child support payments are automatically withheld from the paycheck if (1) any delinquency or arrearage is solely caused by a disparity between the schedule of the regular pay dates and the scheduled date the child support is due, (2) the total amount of child support to be withheld from the paychecks and the amount ordered by the support order are the same on an annual basis, and (3) the automatic deductions for child support are continuous and occurring. 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 shall 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. 3. Section 43-1718, Revised Statutes Supplement, 1996, is amended to read:

43-1718. A support order shall constitute and shall operate as an assignment, to the clerk of the district court designated to receive the payment, of that portion of an obligor's income as will be sufficient to pay the amount ordered for child, spousal, or medical support and shall be binding on any existing or future employer or other payor of the obligor. The assignment shall take effect as provided in section 43-1718.01 or 43-1718.02 or on the date on which the payments are delinquent in an amount equal to the support due and payable for a one-month period of time, whichever is earlier. No obligor whose child support payments are automatically withheld from his or her paycheck shall be regarded or reported as being delinquent or in arrears if (1) any delinquency or arrearage is solely caused by a disparity between the schedule of the obligor's regular pay dates and the scheduled date the child support is due, (2) the total amount of child support to be withheld from the paychecks of the obligor and the amount ordered by the support order are the same on an annual basis, and (3) the automatic deductions for child support are continuous and occurring.

An assignment shall have priority as against any attachment, execution, or other assignment unless otherwise specifically ordered by a court of competent jurisdiction.

The clerk of the district court in each county shall be responsible for administering income withholding. The clerk of the district court in administering income withholding shall keep accurate records to document, track, and monitor support payments.

Sec. 4. Section 43-1718.01, Reissue Revised Statutes of Nebraska, is amended to read:

43-1718.01. (1) In any case in which services are provided under Title IV-D of the federal Social Security Act, as amended, and a support order has been issued or modified on or after September 6, 1991, the obligor's income shall be subject to income withholding regardless of whether or not payments pursuant to such order are in arrears, and the court shall require such income withholding in its order unless:

(a) One of the parties demonstrates and the court finds that there is good cause not to require immediate income withholding; or

(b) A written agreement between the parties, including the state if there is an assignment of support pursuant to section 43-512.07, providing an alternative arrangement is incorporated into the support order.

(2) In any case in which services are provided under Title IV-D of the federal Social Security Act, as amended, the income of an obligor not subject to withholding pursuant to subsection (1) of this section shall become subject to income withholding:

(a) On the date on which the payments are delinquent in an amount equal to the support due and payable for a one-month period of time; or

(b) Regardless of whether payments are in arrears, on the earliest of (i) the date as of which the obligor requests that income withholding begin, (ii) the date as of which the obligee requests that income withholding begin if the department determines that such request should be approved, or (iii) any earlier date after September 6, 1991, which the department selects.

The obligor shall receive notice of income withholding and his or her right to a hearing pursuant to section 43-1720 when his or her income is withheld pursuant to subdivision (b)(ii) or (b)(iii) of this subsection.

(3) No obligor whose child support payments are automatically withheld from his or her paycheck shall be regarded or reported as being delinquent or in arrears if (a) any delinquency or arrearage is solely caused by a disparity between the schedule of the obligor's regular pay dates and the scheduled date the child support is due, (b) the total amount of child support to be withheld from the paychecks of the obligor and the amount ordered by the support order are the same on an annual basis, and (c) the automatic deductions for child support are continuous and occurring.

(4) The department shall adopt and promulgate rules and regulations necessary to carry out this section.

Sec. 5. Original sections 42-358.02, 42-364.06, and 43-1718.01, Reissue Revised Statutes of Nebraska, and section 43-1718, Revised Statutes Supplement, 1996, are repealed.