

LEGISLATURE OF NEBRASKA  
ONE HUNDRED SECOND LEGISLATURE  
SECOND SESSION  
**LEGISLATIVE BILL 899**

Final Reading

Introduced by Lathrop, 12.

Read first time January 09, 2012

Committee: Judiciary

A BILL

1 FOR AN ACT relating to legal procedure; to amend sections 42-353 and  
2 43-2935, Reissue Revised Statutes of Nebraska; to provide  
3 procedures for entering a legal separation decree; to  
4 change requirements for hearings regarding parenting  
5 plans; to provide a duty for the Revisor of Statutes; and  
6 to repeal the original sections.  
7 Be it enacted by the people of the State of Nebraska,

1                   Section 1. Section 42-353, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3                   42-353 The pleadings required by sections 42-347 to  
4 42-381 shall be governed by the rules of pleading in civil actions  
5 promulgated under section 25-801.01. The complaint shall include the  
6 following:

7                   (1) The name and address of the plaintiff and his or her  
8 attorney, except that a plaintiff who is living in an undisclosed  
9 location because of safety concerns is only required to disclose the  
10 county and state of his or her residence and, in such case, shall  
11 provide an alternative address for the mailing of notice;

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

13                   (3) The date and place of marriage;

14                   (4) The name and year of birth of each child whose  
15 custody or welfare may be affected by the proceedings and whether (a)  
16 a parenting plan as provided in the Parenting Act has been developed  
17 and (b) child custody, parenting time, visitation, or other access or  
18 child support is a contested issue;

19                   (5) If the plaintiff is a party to any other pending  
20 action for divorce, separation, or dissolution of marriage, a  
21 statement as to where such action is pending;

22                   (6) Reference to any existing restraining orders,  
23 protection orders, or criminal no-contact orders regarding any party  
24 to the proceedings;

25                   (7) A statement of the relief sought by the plaintiff,

1 including adjustment of custody, property, and support rights; and

2 (8) An allegation that the marriage is irretrievably  
3 broken if the complaint is for dissolution of marriage or an  
4 allegation that the two persons who have been legally married shall  
5 thereafter live separate and apart if the complaint is for a legal  
6 separation.

7 Sec. 2. In a legal separation proceeding:

8 (1) If both of the parties state under oath or  
9 affirmation that they shall thereafter live separate and apart, or  
10 one of the parties so states and the other does not deny it, the  
11 court, after hearing, shall make a finding whether the legal  
12 separation should be granted and if so may enter a decree of legal  
13 separation;

14 (2) If one of the parties has denied under oath or  
15 affirmation that they will thereafter live separate and apart, the  
16 court shall, after hearing, consider all relevant factors, including  
17 the circumstances that gave rise to the filing of the complaint and  
18 the prospect of reconciliation, and shall make a finding whether the  
19 legal separation should be granted and if so may enter a decree of  
20 legal separation; or

21 (3) Sixty days or more after perfection of service of  
22 process, the court may enter a decree of legal separation without a  
23 hearing if:

24 (a) Both parties waive the requirement of the hearing and  
25 the court has sufficient basis to make a finding that it has subject

1 matter jurisdiction over the legal separation proceeding and personal  
2 jurisdiction over both parties; and

3 (b) Both parties have certified in writing that they  
4 shall thereafter live separate and apart, both parties have certified  
5 that they have made every reasonable effort to effect reconciliation,  
6 all documents required by the court and by statute have been filed,  
7 and the parties have entered into a written agreement, signed by both  
8 parties under oath, resolving all issues presented by the pleadings  
9 in their legal separation proceeding.

10 Sec. 3. Section 43-2935, Reissue Revised Statutes of  
11 Nebraska, is amended to read:

12 43-2935 (1) After a hearing on the record, the court  
13 shall determine whether the submitted parenting plan meets all of the  
14 requirements of the Parenting Act and is in the best interests of the  
15 child. If the parenting plan lacks any of the elements required by  
16 the act or is not in the child's best interests, the court shall  
17 modify and approve the parenting plan as modified, reject the  
18 parenting plan and order the parties to develop a new parenting plan,  
19 or reject the parenting plan and create a parenting plan that meets  
20 all the required elements and is in the best interests of the child.  
21 The court may include in the parenting plan:

22 ~~(1)~~ (a) A provision for resolution of disputes that arise  
23 under the parenting plan, including provisions for suspension of  
24 parenting time, visitation, and other access when new findings of  
25 child abuse or neglect, domestic intimate partner abuse, criminal

1 activity affecting the best interests of a child, or the violation of  
2 a protection order, restraining order, or criminal no-contact order  
3 occur, until a modified custody order or parenting plan with  
4 provisions for safety or a transition plan, or both, is in place; and

5 ~~(2)-(b)~~ Consequences for failure to follow parenting plan  
6 provisions.

7 (2) A hearing is not required under this section if both  
8 parties have waived the requirement for a hearing under section  
9 42-361 or section 2 of this act.

10 Sec. 4. The Revisor of Statutes shall assign section 2 of  
11 this act within sections 42-347 to 42-381, and all references to such  
12 sections shall be deemed to include section 2 of this act.

13 Sec. 5. Original sections 42-353 and 43-2935, Reissue  
14 Revised Statutes of Nebraska, are repealed.