

LEGISLATIVE BILL 845

Approved by the Governor April 12, 1984

Introduced by Judiciary Committee, Beutler, 28,
Chairperson; Jacobson, 33; R. Johnson,
34; Chronister, 18; Pirsch, 10

AN ACT relating to proceedings; to amend section 42-360, Reissue Revised Statutes of Nebraska, 1943, sections 25-1012.02, 43-285, and 43-294, Revised Statutes Supplement, 1982, and sections 25-502.01, 25-505.01, 25-821, 25-1011, 42-352, 42-358.02, 42-364.04, 42-364.06, 42-364.13, 43-512.01, and 43-512.02, Revised Statutes Supplement, 1983; to state intent; to define terms; to provide powers and duties; to provide for genetic testing in paternity actions as prescribed; to authorize a setoff against income tax refunds as prescribed; to change provisions relating to civil procedure; to change provisions relating to delinquent support payments; to change provisions relating to court orders for support as prescribed; to change a provision relating to reconciliation; to change a provision relating to a dissolution decree; to provide for standing; to change a provision relating to the duty of certain attorneys to take action; to provide for fees; to eliminate a penalty; to eliminate provisions relating to certain paternity complaint procedures as prescribed; and to repeal the original sections, and also sections 13-113, 13-114, and 13-116, Reissue Revised Statutes of Nebraska, 1943.

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

Section 1. In any proceeding to establish paternity, the court may, on its own motion, or shall, on a timely request of a party, after notice and hearing, require the child, mother, and alleged father to submit to genetic testing to be performed on blood or any other appropriate tissue. If genetic testing is required, the court shall direct that inherited characteristics, including, but not limited to, blood types, be determined by appropriate testing procedures and shall appoint an expert in genetic testing and qualified as an examiner of genetic markers to analyze and interpret the results and to report to the court. The court shall determine the number of experts required.

For purposes of sections 1 to 5 of this act, an expert in genetic testing shall mean a person who has

formal doctoral training or postdoctoral training in human genetics.

Sec. 2. The results of the tests, including the statistical probability of paternity, shall be admissible evidence and shall be weighed along with other evidence of paternity. Such evidence may be introduced by verified written report unless there is a timely request for personal testimony of the expert at least thirty days prior to trial.

Sec. 3. The chain of custody of blood or tissue specimens shall be competent evidence and admissible by stipulation or by a verified written report unless a timely request for testimony is made at least thirty days prior to trial.

Sec. 4. If the result of genetic testing or the expert's analysis of inherited characteristics is disputed, the court, upon reasonable request of a party, shall order that additional testing be done by the same laboratory or an independent laboratory at the expense of the party requesting additional testing.

Sec. 5. In cases where the court orders genetic testing at the request of a party, the requesting party shall initially pay such expense. In cases where the court orders genetic testing in the absence of a request of any party, the assessment of the cost of such testing shall be determined by the court. Whenever the disputing party prevails, the costs shall be borne by the other party.

Sec. 6. It is the intent of the Legislature to establish and maintain a procedure to set off against a debtor's income tax refund any debt which is assigned to the Department of Social Services or which any individual not eligible as a public assistance recipient is attempting to collect, which has accrued through written contract, subrogation, or court judgment and is in the form of a liquidated amount due and owing for the care, support, or maintenance of a child.

Sec. 7. For purposes of sections 6 to 19 of this act, unless the context otherwise requires:

(1) Debt shall mean any liquidated amount due and owing any claimant which has accrued through assignment, contract, subrogation, court judgment, or operation of law, regardless of whether there is an outstanding judgment for such amount, and which is for the care, support, or maintenance of a child;

(2) Debtor shall mean any individual owing money to or having a delinquent account with any claimant which has not been satisfied by court order, set aside by court order, or discharged in bankruptcy;

(3) Claimant shall mean (a) the Department of Social Services with respect to collection of a debt owed by a parent in a case involving a recipient of aid to dependent children in which rights to child support payments have been assigned to this state or (b) an

individual who is not eligible as a public assistance recipient and to whom a child support debt is owed; and

(4) Refund shall mean any Nebraska state income tax refund which the Department of Revenue determines to be due an individual taxpayer. In the case of a joint income tax return, it is presumed that each partner to the marriage submitting such return contributed one half of the earnings upon which the refund is based. The presumption may be contested by the state, the delinquent taxpayer, and the innocent spouse by virtue of the hearing process prescribed in section 15 of this act.

Sec. 8. The Department of Revenue, the Department of Administrative Services, and the Department of Social Services shall develop and implement a collection system to carry out the intent of section 6 of this act.

Sec. 9. The collection remedy authorized by sections 6 to 19 of this act is in addition to and not in substitution for any other remedy available by law.

Sec. 10. The Department of Social Services shall adopt and promulgate rules and regulations necessary to carry out the purposes of sections 6 to 19 of this act.

Sec. 11. Prior to December 1 of each year, the Department of Social Services shall send notification to the debtor of the assertion of the department's rights, or of the rights of an individual not eligible as a public assistance recipient, to all or a portion of the debtor's income tax refund. The notice shall contain the procedures available to the debtor for protesting the offset, the debtor's opportunity to give written notice of intent to contest the validity of the claim before the Department of Social Services within thirty days of the date of mailing the notice, and the defenses the debtor may raise. The debt shall be certified by the Department of Social Services through a preoffset review.

Sec. 12. By December 1 of each year, the Department of Social Services may submit any certified debt of twenty-five dollars or more to the Department of Revenue, except when the validity of the debt is legitimately in dispute.

Any submission shall be effective only to initiate setoff for a claim against a refund that would be made for the calendar year subsequent to the year in which such submission is made.

Sec. 13. If a debtor identified by the Department of Social Services pursuant to section 11 of this act is determined by the Department of Revenue to be entitled to a refund of twenty-five dollars or more, the Department of Social Services shall be notified that a refund is pending.

Sec. 14. (1) Upon receipt of notification pursuant to section 13 of this act that a debtor is entitled to a refund, the Department of Social Services

shall, within twenty days, send written notification to the debtor of an assertion of its rights, or of the rights of an individual not eligible as a public assistance recipient, to all or a portion of the debtor's refund.

(2) The written notification shall clearly set forth the basis for the claim to the refund, the intention to apply the refund against the debt to a claimant, the debtor's opportunity to give written notice of intent to contest the validity of the claim before the Department of Social Services within thirty days of the date of the mailing of the notice, the mailing address to which the application for a hearing must be sent, and notice that failure to apply for a hearing in writing within the thirty-day period will be deemed a waiver of the opportunity to contest the claim, causing a setoff by default.

In the case of a joint tax return, the notice shall also state the name of the taxpayer named in the return if any, against whom no debt is claimed. There shall be no affirmative duty placed upon the nonowing spouse of an intercepted tax return to initiate an action to receive payment of the noninterceptable amount.

Sec. 15. A written application, pursuant to sections 11 and 14 of this act, by a debtor for a hearing shall be effective upon mailing the application, postage prepaid and properly addressed, to the Department of Social Services.

If the Department of Social Services receives a written application contesting a claim, it shall grant a hearing to the taxpayer to determine whether the claim is valid. If the amount asserted as due and owing is not correct, an adjustment to the claimed amount shall be made. No issues shall be reconsidered at the hearing which have been previously litigated.

Sec. 16. Any appeal of an action taken at or as a result of a hearing held pursuant to section 15 of this act shall be in accordance with Chapter 84, article 9.

Sec. 17. Upon final determination of the amount and validity of the debt due and owing, by means of the hearing provided for in section 15 of this act, or by the taxpayer's default through failure to request a hearing pursuant to section 14 of this act, the Department of Social Services shall certify the debt to the Department of Administrative Services within twenty days from the date of the final determination. The final determination shall not delay the refund beyond the period prescribed in section 77-2794.

Upon receipt of the certified debt amount from the Department of Social Services, the Department of Administrative Services shall deduct an amount equal to the certified debt from the refund due the debtor, up to the amount of the refund, and shall transfer such amount, by noncash voucher, to the Department of Social Services.

In nonpublic assistance cases, the Department of Social Services shall transmit the funds collected to the clerk of the district court for dispersal to the payee. The Department of Administrative Services shall refund any remaining balance to the debtor as if the setoff had not occurred.

Sec. 18. When the Department of Social Services receives all or a portion of a certified debt pursuant to section 17 of this act, the department shall notify the debtor of the completion of the setoff. Such notice shall include the final amount of the refund to which the debtor was entitled prior to the setoff, the amount of the certified debt, and the amount of the refund in excess of the debt, if any.

Sec. 19. The Department of Social Services shall reimburse the Department of Revenue and the Department of Administrative Services for all reasonable and necessary costs incurred by the Department of Revenue and the Department of Administrative Services in setting off debts pursuant to sections 6 to 19 of this act.

Sec. 20. That section 25-502.01, Revised Statutes Supplement, 1983, be amended to read as follows:

25-502.01. The plaintiff shall file with the clerk of the court a praecipe for summons stating the name and address of each party to be served and the manner of service for each party. Upon written request of the plaintiff, separate or additional summonses shall be issued.

Sec. 21. That section 25-505.01, Revised Statutes Supplement, 1983, be amended to read as follows:

25-505.01. (1) Unless otherwise limited by statute or by the court, a plaintiff may elect to have service made by any of the following methods:

(a) ~~(1)~~ Personal service which shall be made by leaving the summons with the individual to be served;

(b) ~~(2)~~ Residence service which shall be made by leaving the summons at the usual place of residence of the individual to be served, with some person of suitable age and discretion residing therein; or

(c) ~~(3)~~ Certified mail service which shall be made by ~~(a)~~ (i) within ten days of issuance, sending the summons to the defendant by certified mail with a return receipt requested showing to whom and where delivered and the date of delivery, and ~~(b)~~ (ii) filing with the court proof of service with the signed receipt attached.

(2) Failure to make service by the method elected by the plaintiff does not affect the validity of the service.

Sec. 22. That section 25-821, Revised Statutes Supplement, 1983, be amended to read as follows:

25-821. The answer or demurrer of the defendant shall be filed within thirty days after service of the summons and petition or completion of service by

publication. The reply or demurrer of the plaintiff shall be filed within fifteen days after the filing of the answer.

Sec. 23. That section 25-1011, Revised Statutes Supplement, 1983, be amended to read as follows:

25-1011. The A eopy of the summons and order of garnishment and the interrogatories in duplicate shall be served upon the garnishee in the manner provided for service of a summons in a civil action, except that certified mail service may not be used.

Sec. 24. That section 25-1012.02, Revised Statutes Supplement, 1982, be amended to read as follows:

25-1012.02. Such proceedings may be brought against the State of Nebraska or any county, township, municipal corporation, municipally owned corporation, or school district, as garnishee defendant, and process served upon the officer, or a representative of such officer, whose duty it is to pay or issue warrants for the payment of the officer or employee whose earnings are sought to be held shall be served in the manner provided for service of a summons in a civil action, except that certified mail service may not be used. It shall be the duty of the garnishee defendant such officer or his or her representative to answer any garnishment summons served upon him or her under the provisions of this section and section 25-1012.01 in the same manner as is now provided by law for the answer of corporations, and such defendant officer shall abide the order of the court issuing the garnishment, with regard to paying into court any amount ordered, not in excess of the amount earned by the officer or employee garnished, to the date of the answer. Such defendant The officer whose duty it is to pay or issue warrants for the payment of officers and employees shall not be required to appear and answer such summons in person, but he or she may appear in person to answer such summons or he or she may file his or her answer in writing, or he or she may submit a written answer by United States mail to the clerk of the court issuing the summons. Such answer in garnishment shall in addition to any other matters stated therein state the amount of money due the officer or employee whose earnings are sought to be held to the answer day as shown in such summons, but shall not include the amount of any check or warrant which has been drawn and signed at the time of the service of garnishment summons.

Sec. 25. That section 42-352, Revised Statutes Supplement, 1983, be amended to read as follows:

42-352. A proceeding under sections 42-347 to 42-379 shall be commenced by filing a petition in the district court. Summons shall be served upon the other party to the marriage by personal service or in the manner provided in section 25-517.02. A proceeding under sections 42-347 to 42-379 shall be commenced by filing a

petition in the district court. 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. 26. That section 42-358.02, Revised Statutes Supplement, 1983, be amended to read as follows:

42-358.02. (1) 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. Such interest shall be computed as simple interest.

(2) All child support payments shall become delinquent the day after they are due and owing. 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. It shall be the duty of the clerk of the district court to compute interest and identify delinquencies pursuant to this section and to report such information to the court. ~~7 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. 27. That section 42-360, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

42-360. No decree shall be entered under sections 42-347 to 42-379 unless the court finds that every reasonable effort to effect reconciliation has been made. Proceedings filed pursuant to sections 42-347 to 42-379 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 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. 28. That section 42-364.04, Revised Statutes Supplement, 1983, be amended to read as follows:

42-364.04. Service of the documents required by the provisions of section 42-364.03 shall be made in the manner provided for service of a summons in a civil action, except that certified mail service may not be used.

Sec. 29. That section 42-364.06, Revised Statutes Supplement, 1983, be amended to read as follows:

42-364.06. The court ~~may~~ 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. 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~~ 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. 30. That section 42-364.13, Revised Statutes Supplement, 1983, be amended to read as follows:

42-364.13. (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~~ any case contains an order or judgment for child support, ~~the order~~ 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. 31. That section 43-285, Revised Statutes Supplement, 1982, be amended to read as follows:

43-285. In any case when the court shall award a juvenile to the care of the Department of Social Services, an association, or individual, in accordance with the provisions of sections 43-245 to 43-2,129, the juvenile shall, unless otherwise ordered, become a ward and be subject to the guardianship of the department, association, or individual to whose care he or she is committed, which association and Department of Social Services shall have authority by and with the assent of the court to place such a juvenile in a suitable family home or institution. Such guardianship shall not include the guardianship of any estate of the juvenile. Within thirty days after such order, and once every six months thereafter until the juvenile reaches the age of majority, the department, association, or individual shall file with the court a report stating the location of the juvenile's placement and the needs of the juvenile in order to effectuate the purposes of subdivision (1) of section 43-246. When the court awards a juvenile to the care of the department, an association, or individual, then the department, association, or individual shall have standing as a party to file any pleading or motion, to be heard by the court with regard to such filings, and to be granted any review or relief requested in such filings consistent with Chapter 43, article 2.

Sec. 32. That section 43-294, Revised Statutes Supplement, 1982, be amended to read as follows:

43-294. The custodian appointed by a juvenile court shall have charge of the person of the juvenile and the right to make decisions affecting the person of the juvenile, including medical, dental, surgical, or psychiatric treatment, except that consent to a juvenile marrying or joining the armed forces of the United States may be given by a custodian, other than the Department of Social Services, with approval of the juvenile court, or by the department, as to juveniles in its custody, without further court authority. The authority of a custodian appointed by a juvenile court shall terminate when the individual under legal custody reaches nineteen years of age, is legally adopted, or the authority is terminated by order of the juvenile court. When an adoption has been granted by a court of competent jurisdiction as to any such juvenile, such fact shall be reported immediately by such custodian to the juvenile court. If the adoption is denied the jurisdiction over the juvenile shall immediately revert to the court which authorized placement of the

juvenile for adoption. Any association or individual receiving the care or custody of any such juvenile shall be subject to visitation or inspection by the Department of Social Services, or any probation officer of such court or any person appointed by the court for such purpose, and the court may at any time require from such association or person a report or reports containing such information or statements as the judge shall deem proper or necessary to be fully advised as to the care, maintenance, and moral and physical training of the juvenile, as well as the standing and ability of such association or individual to care for such juvenile. The custodian so appointed by the court shall have standing as a party in that case to file any pleading or motion, to be heard by the court with regard to such filings, and to be granted any review or relief requested in such filings consistent with Chapter 43, article 2.

Sec. 33. That section 43-512.01, Revised Statutes Supplement, 1983, 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~~ take action against the nonsupporting parent or stepparent of the dependent child. ~~It shall be the duty of under section 28-706, if the attorney is the county attorney, or a deputy county attorney, or authorized attorney to initiate a child support enforcement action. If the county attorney or deputy county attorney initiates an action, he or she shall file either a criminal complaint for nonsupport under section 28-706 or file a civil petition against the nonsupporting parent or stepparent under the provisions of section 43-512.03. If, if the attorney is an who initiates a child support enforcement action is an authorized attorney other than the county attorney or deputy county attorney, whenever the recovery of child support appears to be practicable he or she shall file a civil petition against the nonsupporting parent or stepparent pursuant to section 43-512.03.~~

Sec. 34. That section 43-512.02, Revised Statutes Supplement, 1983, 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 Social Services 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 Social Services, 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 Social Services 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.

(3) The Department of Social Services shall determine an application fee to be charged to each individual who applies for services available in this section. The fee shall be collected by the governmental entity which is actually collecting the delinquent support payments and placed in the appropriate fund. The department shall impose an additional fee to cover the costs incurred when providing the full scope of services outlined in this section. The department shall by regulation establish a fee schedule and make such schedule based upon a sliding scale using fifteen thousand dollars gross income and one dependent as the basis for establishing the fee scale. The schedule shall be made available to all applicants for such services. The application fee and additional fee shall be recovered from the parent who owes the delinquent child support. If such owing parent cannot be located or is judged incapable of paying and the individual receiving the services meets the standards of the fee schedule for ability to pay, the individual receiving the services shall be assessed such fees.

The fee to be imposed shall be acknowledged, in writing, by the individual requesting such services. All fees collected pursuant to this section shall be remitted to the Department of Social Services for proper accounting and distribution purposes in accordance with other provisions of law.

Sec. 35. That original section 42-360, Reissue Revised Statutes of Nebraska, 1943, sections 25-1012.02, 43-285, and 43-294, Revised Statutes Supplement, 1982, and sections 25-502.01, 25-505.01, 25-821, 25-1011, 42-352, 42-358.02, 42-364.04, 42-364.06, 42-364.13, 43-512.01, and 43-512.02, Revised Statutes Supplement, 1983, and also sections 13-113, 13-114, and 13-116, Reissue Revised Statutes of Nebraska, 1943, are repealed.