

Nebraska Divorce Laws

Chapter 42. Husband and Wife

Article 1. Marriage.

42-101

Marriage a civil contract.

In law, marriage is considered a civil contract, to which the consent of the parties capable of contracting is essential.

42-103

Marriages; when void.

Marriages are void (1) when either party has a husband or wife living at the time of the marriage, (2) when either party, at the time of marriage, is mentally incompetent to enter into the marriage relation, and (3) when the parties are related to each other as parent and child, grandparent and grandchild, brother and sister of half as well as whole blood, first cousins when of whole blood, uncle and niece, and aunt and nephew. This subdivision extends to children and relatives born out of wedlock as well as those born in wedlock.

Article 3. Divorce, Alimony, and Child Support

42-341

Decree of another jurisdiction; no force or effect; when.

A divorce from the bonds of matrimony obtained in another jurisdiction shall be of no force or effect in this state, if both parties to the marriage were domiciled in this state at the time the proceeding for the divorce was commenced except as provided in section 30-2353.

42-342

Residence; prima facie evidence.

Proof that a person obtaining a divorce from the bonds of matrimony in another jurisdiction was (1) domiciled in this state within twelve months prior to the commencement of the proceeding therefor, and resumed residence in this state within eighteen months after the date of his departure therefrom, or (2) at all times after his departure from this state, and until his return maintained a place of residence within this state, shall be prima facie evidence that the person was domiciled in this state when the divorce proceeding was commenced.

42-343

Sections, how construed.

Sections 42-341 to 42-344 shall be so interpreted and construed as to effectuate their general purpose to make uniform the law of those states which enact them.

42-344

Act, how cited.

Sections 42-341 to 42-344 may be cited as the Uniform Divorce Recognition Act.

42-345

Decree of divorce; prior to August 27, 1951; validity.

When any district court in this state shall have entered of record a decree of divorce prior to August 27, 1951, it shall be conclusively presumed that the decree, and all instruments and proceedings in connection therewith, are valid in all respects, notwithstanding some defect or defects as may appear on the face of the record or the absence of any record of such court,

unless an action is brought within two years from August 27, 1951, attacking the validity thereof.

42-346

Decree of divorce; validity.

When any district court in this state has entered a decree of divorce after August 27, 1951, and when any county court in this state has entered a decree of divorce on or after October 1, 1997, it shall be conclusively presumed that the decree, and all instruments and proceedings in connection therewith are valid in all respects, notwithstanding some defect or defects as may appear on the face of the record or the absence of any record of such court, unless an action is brought within two years from the entry of such decree of divorce attacking the validity thereof.

42-347

Terms, defined.

For purposes of sections 42-347 to 42-381, unless the context otherwise requires:

(1) Authorized attorney shall mean an attorney (a) employed by the county subject to the approval of the county board, (b) employed by the Department of Health and Human Services, or (c) appointed by the court, who is authorized to investigate and prosecute child and spousal support cases. An authorized attorney shall represent the state as provided in section 43-512.03;

(2) Dissolution of marriage shall mean the termination of a marriage by decree of a court of competent jurisdiction upon a finding that the marriage is irretrievably broken. The term dissolution of marriage shall be considered synonymous with divorce, and whenever the term divorce appears in the statutes it shall mean dissolution of marriage pursuant to sections 42-347 to 42-381;

(3) Legal separation shall mean a decree of a court of competent jurisdiction providing that two persons who have been legally married shall thereafter live separate and apart and providing for any necessary adjustment of property, support, and custody rights between the parties but not dissolving the marriage;

(4) Spousal support, when used in the context of income withholding or any provisions of law which might lead to income withholding, shall mean alimony or maintenance support for a spouse or former spouse when ordered as a part of an order, decree, or judgment which provides for child support and the child and spouse or former spouse are living in the same household;

(5) State Disbursement Unit has the same meaning as in section 43-3341; and

(6) Support order has the same meaning as in section 43-1717.

42-348

Proceedings; where brought; transfer of proceedings; orders; how treated.

All proceedings under sections 42-347 to 42-381 shall be brought in the district court of the county in which one of the parties resides. Proceedings may be transferred to a separate juvenile court or county court sitting as a juvenile court which has acquired jurisdiction pursuant to section 43-2,113. Certified copies of orders filed with the clerk of the court pursuant to such section shall be treated in the same manner as similar orders issued by the court.

42-349

Dissolution; action; conditions.

No action for dissolution of marriage may be brought unless at least one of the parties has had actual residence in this state with a bona fide intention of making this state his or her permanent home for at least one year prior to the filing of the complaint, or unless the marriage was solemnized in this state and either party has resided in this state from the time of marriage to filing the complaint. Persons serving in the armed forces of the United States who have been continuously stationed at any military base or installation in this state for one year or, if the marriage was solemnized in this state, have resided in this state from the time of

marriage to the filing of the complaint shall for the purposes of sections 42-347 to 42-381 be deemed residents of this state.

42-349.01

Parenting education course; when required.

Any party to a divorce action involving minor children or an action involving child custody or visitation may be required to complete a parenting education course prior to the entry by the court of a final judgment or order modifying the final judgment in such action as provided in section 43-2917.01.

42-350

Legal separation; amendment of pleadings; when.

If a complaint for legal separation is filed before residence requirements for dissolution of marriage have been complied with, either party, upon complying with such requirements, may amend his or her pleadings to request a dissolution of marriage, and notice of such amendment shall be given in the same manner as for an original action under sections 42-347 to 42-381.

42-351

County or district court; jurisdiction.

(1) In proceedings under sections 42-347 to 42-381, the court shall have jurisdiction to inquire into such matters, make such investigations, and render such judgments and make such orders, both temporary and final, as are appropriate concerning the status of the marriage, the custody and support of minor children, the support of either party, the settlement of the property rights of the parties, and the award of costs and attorney's fees. The court shall determine jurisdiction for child custody proceedings under the Uniform Child Custody Jurisdiction and Enforcement Act.

(2) When final orders relating to proceedings governed by sections 42-347 to 42-381 are on appeal and such appeal is pending, the court that issued such orders shall retain jurisdiction to provide for such orders regarding custody, visitation, or support, orders shown to be necessary to allow the use of property or to prevent the irreparable harm to or loss of property during the pendency of such appeal, or other appropriate orders in aid of the appeal process. Such orders shall not be construed to prejudice any party on appeal.

42-352

Proceedings; complaint; filing; service.

A proceeding under sections 42-347 to 42-381 shall be commenced by filing a complaint in the district court. The proceeding may be heard by the county court or the district court as provided in section 25-2740. Summons shall be served upon the other party to the marriage by personal service or in the manner provided in section 25-517.02.

42-353

Complaint; contents.

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

- (1) The name and address of the plaintiff and his or her attorney;
- (2) The name and address, if known, of the defendant;
- (3) The date and place of marriage;
- (4) The name and date of birth of each child whose custody or welfare may be affected by the proceedings;
- (5) If the plaintiff is a party to any other pending action for divorce, separation, or dissolution of marriage, a statement as to where such action is pending;
- (6) A statement of the relief sought by the plaintiff, including adjustment of custody, property, and support rights; and

(7) An allegation that the marriage is irretrievably broken.

42-355

Defendant; proper service or appearance.

No marriage shall be dissolved or legal separation decreed unless the defendant has been properly served with process or entered an appearance in the case.

42-356

Hearings.

Hearings shall be held in open court upon the oral testimony of witnesses or upon the depositions of such witnesses taken as in other actions. The court may in its discretion close the hearing and may restrict the availability of the evidence or bill of exceptions.

42-357

Temporary and ex parte orders; violation; penalty.

The court may order either party to pay to the clerk of the district court or to the State Disbursement Unit, as provided in section 42-369, 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 complaint or by motion by the plaintiff or by the defendant 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 42-381 after the complaint is filed, upon application of either party and if the accompanying affidavit of the party or his or her agent shows to the court that the party is entitled thereto, 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 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 premises occupied by the other upon a showing that physical or emotional harm would otherwise result. Any restraining order issued excluding either party from the premises occupied by the other shall specifically set forth the location of the premises and shall be served upon the adverse party by the sheriff in the manner prescribed for serving a summons, and a return thereof shall be filed in the court. Any person who knowingly violates such an order after service shall be guilty of a Class II misdemeanor. 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 therefor, the court shall schedule a hearing within seventy-two hours to determine whether the order regarding the minor children shall remain in force. Section 25-1064 shall not apply to the issuance of ex parte orders pursuant to this section. Any judge of the county court or district court may grant a temporary ex parte order in accordance with this section.

42-358

Attorney for minor child; appointment; powers; child or spousal support; records; income withholding; contempt proceedings; fees; evidence; appeal.

(1) The court may appoint an attorney to protect the interests of any minor children of the parties. Such attorney shall be empowered to make independent investigations and to cause witnesses to appear and testify on matters pertinent to the welfare of the children. The court shall by order fix the fee, including disbursements, for such attorney, which amount

shall be taxed as costs and paid by the parties as ordered. If the court finds that the party responsible is indigent, the court may order the county to pay the costs.

(2) Following entry of any decree, the court having jurisdiction over the minor children of the parties may at any time appoint an attorney, as friend of the court, to initiate contempt proceedings for failure of any party to comply with an order of the court directing such party to pay temporary or permanent child support. The county attorney or authorized attorney may be appointed by the court for the purposes provided in this section, in which case the county attorney or authorized attorney shall represent the state.

(3) The clerk of each district court shall maintain records of support orders. The Title IV-D Division shall maintain support order payment records pursuant to section 43-3342.01 and the clerk of each district court shall maintain records of payments received pursuant to sections 42-369 and 43-3342.01. For support orders in all cases issued before September 6, 1991, and for support orders issued or modified on or after September 6, 1991, in cases in which no party has applied for services under Title IV-D of the federal Social Security Act, as amended, each month the Title IV-D Division shall certify all cases in which the support order payment is delinquent in an amount equal to the support due and payable for a one-month period of time to the judge presiding over domestic relations cases and to the county attorney or authorized attorney. A rebuttable presumption of contempt shall be established if a prima facie showing is made that the court-ordered child or spousal support is delinquent. In cases in which one of the parties receives services under Title IV-D of the federal Social Security Act, as amended, the Title IV-D Division shall certify all such delinquent support order payments to the county attorney or the authorized attorney.

In each case certified, if income withholding has not been implemented it shall be implemented pursuant to the Income Withholding for Child Support Act. If income withholding is not feasible and no other action is pending for the collection of support payments, the court shall appoint an attorney to commence contempt of court proceedings. If the county attorney or authorized attorney consents, he or she may be appointed for such purpose. The contempt proceeding shall be instituted within ten days following appointment, and the case shall be diligently prosecuted to completion. The court shall by order fix the fee, including disbursements, for such attorney, which amount shall be taxed as costs and paid by the parties as ordered. Any fees allowed for the services of any county attorney or authorized attorney shall be paid to the Department of Health and Human Services when there is an assignment of support to the department pursuant to section 43-512.07 or when an application for child support services is on file with a county attorney or authorized attorney. If the court finds the party responsible is indigent, the court may order the county to pay the costs.

(4) If, at the hearing, the person owing child or spousal support is called for examination as an adverse party and such person refuses to answer upon the ground that his or her testimony may be incriminating, the court may, upon the motion of the county attorney or authorized attorney, require the person to answer and produce the evidence. In such a case the evidence produced shall not be admissible in any criminal case against such person nor shall any evidence obtained because of the knowledge gained by such evidence be so admissible.

(5) The court may order access to all revenue information maintained by the Department of Revenue or other agencies concerning the income of persons liable or who pursuant to this section and sections 42-358.08 and 42-821 may be found liable to pay child or spousal support payments.

(6) Any person aggrieved by a determination of the court may appeal such decision to the Court of Appeals.

42-358.01

Delinquent support order payments; records.

Records of delinquencies in support order payments shall be kept by the Title IV-D Division or by the clerks of the district courts pursuant to their responsibilities under law.

42-358.02

Delinquent child support payments; interest; rate; report; Title IV-D Division; duties.

(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 Title IV-D Division shall compute interest and identify delinquencies pursuant to this section on the payments received by the State Disbursement Unit pursuant to section 42-369 and shall report such information to the court and to the county attorney or authorized attorney.

(4) Support order payments shall be credited in the following manner:

(a) First, to the payments due for the current month in the following order: Child support payments, then spousal support payments, and lastly medical support payments;

(b) Second, toward any payment arrearage owing, in the following order: Child support payment arrearage, then spousal support payment arrearage, and lastly medical support payment arrearage; and

(c) Third, toward the interest on any payment arrearage, in the following order: Child support payment arrearage interest, then spousal support payment arrearage interest, and lastly medical support payment arrearage interest.

(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.

42-358.03

Permanent child support payments; failure to pay; work release program.

Any person found guilty of contempt of court for failure to pay permanent child support payments and imprisoned therefor shall be committed to a court-supervised work release program. Ninety percent of earnings realized from such program shall be applied to payment of delinquencies in support payments minus appropriate deductions for the cost of work release.

42-358.04

Delinquent permanent child support payments; remarriage; effect.

Remarriage of the person entitled to collect under a permanent child support decree shall not work to cut off delinquent payments due under such decree.

42-358.05

Child or spousal support; performance of decree; court powers.

After a hearing on the issue, the court may order immediate implementation of income withholding pursuant to the Income Withholding for Child Support Act or require the posting of a bond at the time that a temporary or permanent child support or spousal support decree is issued to insure performance of the decree.

42-358.06

Delinquent permanent child or spousal support payments; lien.

A lien upon the property of one who is delinquent in permanent child or spousal support payments may be instituted and enforced according to the terms of section 42-371.

42-358.07

Clerk of the district court; nonperformance of duties; removal from office.

Any clerk of the district court who fails to perform his or her duties under sections 42-358 to 42-358.07 or the Income Withholding for Child Support Act shall be removed from office after conviction for such offense.

42-358.08

Information regarding absent parent; duty to furnish; enforcement.

Notwithstanding any other provision of law regarding the confidentiality of records and when not prohibited by the federal Privacy Act of 1974, Public Law 93-579, as amended, each department and agency of state, county, and city government and each employer or other payor as defined in section 43-1709 shall, upon request, furnish to any court-appointed individuals, the county attorney, any authorized attorney, or the Department of Health and Human Services an absent parent's address, social security number, amount of income, health insurance information, and employer's name and address for the exclusive purpose of establishing and collecting child or spousal support. Information so obtained shall be used for no other purpose. This section may be enforced by filing a court action.

42-359

Applications for support or alimony; financial statements.

Applications for support or alimony shall be accompanied by a statement of the applicant's financial condition and, to the best of the applicant's knowledge, a statement of the other party's financial condition. Such other party may file his statement if he so desires, and shall do so if ordered by the court. Statements shall be under oath and shall show income from salary or other sources, assets, debts and payments thereon, living expenses, and other relevant information. Required forms for financial statements may be furnished by the court.

42-360

Reconciliation; transfer of action; when; counseling; costs.

No decree shall be entered under sections 42-347 to 42-381 unless the court finds that every reasonable effort to effect reconciliation has been made. Proceedings filed pursuant to sections 42-347 to 42-381 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 42-381 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.

42-361

Marriage irretrievably broken; findings.

(1) If both of the parties state under oath or affirmation that the marriage is irretrievably broken, or one of the parties so states and the other does not deny it, the court, after hearing, shall make a finding whether the marriage is irretrievably broken.

(2) If one of the parties has denied under oath or affirmation that the marriage is irretrievably broken, the court shall consider all relevant factors, including the circumstances that gave rise to the filing of the complaint and the prospect of reconciliation, and shall make a finding whether the marriage is irretrievably broken.

42-362

Spouse mentally ill; guardian ad litem; attorney; appointment; order for support.

When the pleadings or evidence in any action pursuant to sections 42-347 to 42-381 indicate that either spouse is mentally ill, a guardian ad litem or an attorney, or both, shall be appointed to represent the interests of such spouse. Such guardian's fee or attorney's fee, or both, shall be taxed as costs when allowed by the court and shall be paid by the county if the parties are unable to do so. When a marriage is dissolved and the evidence indicates that either spouse is mentally ill, the court may, at the time of dissolving the marriage or at any time thereafter, make such order for the support and maintenance of such mentally ill person as it may deem necessary and proper, having due regard to the property and income of the parties, and the court may require the party ordered to provide support and maintenance to file a bond or otherwise give security for such support. Such an order for support may be entered upon the application of the guardian or guardian ad litem or of any person, county, municipality, or institution charged with the support of such mentally ill person. The order for support may, if necessary, be revised from time to time on like application.

42-363

Waiting period.

No suit for divorce shall be heard or tried until sixty days after perfection of service of process, at which time the suit may be heard or tried and a decree may be entered.

42-364

Dissolution or legal separation; decree; parenting plan; children; custody determination; rights of parents; child support; termination of parental rights; court; duties; modification proceedings.

(1) When dissolution of a marriage or legal separation is decreed, the court may include a parenting plan developed under the Parenting Act, if a parenting plan has been so developed, and such orders in relation to any minor child and the child's maintenance as are justified, including placing the minor child in the custody of the court or third parties or terminating parental rights pursuant to this section if the best interests of the minor child require such orders. Custody and time spent with each parent shall be determined on the basis of the best interests of the minor child with the objective of maintaining the ongoing involvement of both parents in the minor child's life. A decree of dissolution of a marriage or legal separation shall include the social security number of each party.

(2) In determining custody arrangements and the time to be spent with each parent, the court shall consider the best interests of the minor child which shall include, but not be limited to:

(a) The relationship of the minor child to each parent prior to the commencement of the action or any subsequent hearing;

(b) The desires and wishes of the minor child if of an age of comprehension regardless of chronological age, when such desires and wishes are based on sound reasoning;

(c) The general health, welfare, and social behavior of the minor child; and

(d) Credible evidence of abuse inflicted on any family or household member. For purposes of this subdivision, abuse and family or household member shall have the meanings prescribed in section 42-903.

(3) In determining custody arrangements and the time to be spent with each parent, the court shall not give preference to either parent based on the sex of the parent and no presumption shall exist that either parent is more fit or suitable than the other.

(4) Regardless of the custody determination of the court, (a) each parent shall continue to have full and equal access to the education and medical records of his or her child unless the court orders to the contrary and (b) either parent may make emergency decisions affecting the health or safety of his or her child while the child is in the physical custody of such parent pursuant to a visitation order entered by the court.

(5) After a hearing in open court, the court may place the custody of a minor child with both parents on a shared or joint custody basis when both parents agree to such an arrangement. In that event, each parent shall have equal rights to make decisions in the best interests of the minor child in his or her custody. The court may place a minor child in joint custody after conducting a hearing in open court and specifically finding that joint custody is in the best interests of the minor child regardless of any parental agreement or consent.

(6) In determining the amount of child support to be paid by a parent, the court shall consider the earning capacity of each parent and the guidelines provided by the Supreme Court pursuant to section 42-364.16 for the establishment of child support obligations. Upon application, hearing, and presentation of evidence of an abusive disregard of the use of child support money paid by one party to the other, the court may require the party receiving such payment to file a verified report with the court, as often as the court requires, stating the manner in which such money is used. Child support paid to the party having custody of the minor child shall be the property of such party except as provided in section 43-512.07. The clerk of the district court shall maintain a record, separate from all other judgment dockets, of all decrees and orders in which the payment of child support or spousal support has been ordered, whether ordered by a district court, county court, separate juvenile court, or county court sitting as a juvenile court. Orders for child support in cases in which a party has applied for services under Title IV-D of the federal Social Security Act, as amended, shall be reviewed as provided in sections 43-512.12 to 43-512.18.

(7) Whenever termination of parental rights is placed in issue by the pleadings or evidence, the court shall transfer jurisdiction to a juvenile court established pursuant to the Nebraska Juvenile Code unless a showing is made that the county court or district court is a more appropriate forum. In making such determination, the court may consider such factors as cost to the parties, undue delay, congestion of dockets, and relative resources available for investigative and supervisory assistance. A determination that the county court or district court is a more appropriate forum shall not be a final order for the purpose of enabling an appeal. If no such transfer is made, the court shall appoint an attorney as guardian ad litem to protect the interests of any minor child. The court may terminate the parental rights of one or both parents after notice and hearing when the court finds such action to be in the best interests of the minor child and it appears by the evidence that one or more of the following conditions exist:

(a) The minor child has been abandoned by one or both parents;

(b) One parent has or both parents have substantially and continuously or repeatedly neglected the minor child and refused to give such minor child necessary parental care and protection;

(c) One parent is or both parents are unfit by reason of debauchery, habitual use of intoxicating liquor or narcotic drugs, illegal possession or sale of illegal substances, or repeated lewd and lascivious behavior, which conduct is found by the court to be seriously detrimental to the health, morals, or well-being of the minor child; or

(d) One parent is or both parents are unable to discharge parental responsibilities because of mental illness or mental deficiency and there are reasonable grounds to believe that such condition will continue for a prolonged indeterminate period.

(8) Whenever termination of parental rights is placed in issue, the court shall inform a parent who does not have legal counsel of the parent's right to retain counsel and of the parent's right to retain legal counsel at county expense if such parent is unable to afford legal counsel. If such parent is unable to afford legal counsel and requests the court to appoint legal counsel, the court shall immediately appoint an attorney to represent the parent in the termination proceedings. The court shall order the county to pay the attorney's fees and all reasonable expenses incurred by the attorney in protecting the rights of the parent. At such hearing, the guardian ad litem shall take all action necessary to protect the interests of the minor child. The court shall fix the fees and expenses of the guardian ad litem and tax the same as costs but may order the county to pay on finding the responsible party indigent and unable to pay.

(9) Modification proceedings relating to support, custody, visitation, or removal of children from the jurisdiction of the court shall be commenced by filing a complaint to modify. Modification of a parenting plan is governed by the Parenting Act. Proceedings to modify a parenting plan shall be commenced by filing a complaint to modify. Service of process and other procedure shall comply with the requirements for a dissolution action.

42-364.01

Child support; withholding of earnings; court; powers.

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 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;

(2) To pay to the parent-employee, on his or her regularly scheduled payday 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 two dollars and fifty cents in any calendar month, as compensation for the employer's reasonable cost incurred in complying with such order;

(4) To remit within seven calendar days after the date the obligor is paid such sums withheld, less the deduction as allowed by the court pursuant to subdivision (3) of this section, to the State Disbursement Unit;

(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.

42-364.02

Child support; withholding of earnings; application; who may file.

Any person having a direct interest in the welfare of a minor child may file an application, with the court that has previously ordered a parent to pay any amount for the support of 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. 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, 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.

42-364.03

Child support; withholding of earnings; hearing notice; interrogatories.

Upon the filing of an application to withhold and transmit earnings, the court shall set a date, time, and place for a hearing thereon, which hearing shall be set not more than three weeks later than the date such application is filed. The applicant shall then cause to be served on the employer a copy of the application, a notice of hearing and interrogatories to be completed and returned by the employer to the court no later than three days prior to the hearing, which interrogatories when completed shall show whether the parent-employee is an employee of the employer, whether such parent-employee performs work or provides services or makes sales for the employer in Nebraska, the present length of employment of the parent-employee with the employer, the present pay period for such parent-employee, the average earnings for such parent-employee per pay period, the average disposable earnings for such parent-employee per pay period, and the name and address of the person, office or division of the employer responsible for the preparation of the parent-employee's earnings payments. The applicant shall also cause to be served on the parent-employee a copy of the application and a notice of hearing.

42-364.04

Child support; withholding of earnings; service of documents.

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.

42-364.05

Child support; withholding of earnings; court; jurisdiction.

The court that entered the order requiring the parent to pay any amount for the support of a minor child and in which the application to withhold and transmit earnings is filed shall have jurisdiction of any employer who transacts any business in the state or contracts to supply services or things in the state and of the parent-employee and all the parent-employee's earnings if the parent-employee be a resident of the state, and, if the parent-employee not be a resident of the state, of those earnings of the parent-employee arising from the performance of work, the providing of services, or the sale of goods or services for the employer by the parent-employee in the state. Such court has jurisdiction regardless of where in the state the employer transacts business or contracts to supply services or things, or where the parent-employee resides or performs work, provides services, or sells goods and services. A failure of service, as required by the provisions of sections 42-364.03 and 42-364.04, upon the parent-employee shall not affect the court's jurisdiction of the earnings and of the employer.

42-364.06

Child support; withholding of earnings; court order.

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.

42-364.07

Child support; withholding of earnings; attorney's fee.

The court may award a reasonable attorney's fee to the applicant for the services of the applicant's attorney in obtaining the order to withhold and transmit earnings. Such fee shall be reasonably related to the time spent by the attorney in obtaining such order and not to the amounts collected or to be collected pursuant to such order. If the court awards an attorney's fee, it shall provide that such fee shall be paid from that portion of the amounts withheld and transmitted to the clerk of the court which the court designates as the attorney fee award.

42-364.08

Child support; withholding of earnings; limitations.

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.

42-364.10

Child support; withholding of earnings; order; dissolution; revocation; modification; service.

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 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.

42-364.11

Child support; withholding of earnings; terms, defined.

For the purposes of sections 42-364.01 to 42-364.14, 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 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 42-357 and 42-363 to 42-365 or those provisions allowing garnishment, attachment, or execution;

(3) Employer shall mean any person, partnership, limited liability company, 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) Workweek shall mean any seven consecutive days during which a parent-employee performs work, provides services, or sells goods or services for an employer; and

(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 an employer pays earnings to a parent-employee.

42-364.12

Child support; withholding of earnings; employer; civil contempt; liability for damages; injunction.

Any employer failing to make answer truthfully and completely to the interrogatories propounded pursuant to section 42-364.03 may be punished by the court for civil contempt. The court shall first afford such employer a reasonable opportunity to purge itself of such contempt. Any employer who shall fail or refuse to deliver earnings pursuant to an order to withhold and transmit earnings, when such employer has had in its possession such earnings, shall be personally liable for the amount of such earnings which the employer failed or refused to deliver, together with costs, interest, and reasonable attorney's fees. Any employer who fails to notify in writing the clerk of the court entering an order to withhold and transmit earnings of the termination of the parent-employee and the name and address of the parent-employee's new employer, if known, within thirty days after the termination of employment, may be punished by the court for civil contempt. Any employer who dismisses, demotes, disciplines, or in any way penalizes a parent-employee on account of any proceeding to collect child support, on account of any order or orders entered by the court in such proceeding, or on account of the employer's compliance with such order or orders, shall be liable to the parent-employee for all

damages, together with costs, interest thereon, and a reasonable attorney's fee, resulting from the employer's action and may be enjoined by any court of competent jurisdiction from continuing such action. Any proceeding to punish an employer for contempt, to hold the employer liable for earnings not withheld and transmitted, to hold the employer liable for actions taken against the parent-employee, or to enjoin the employer from continuing such actions, must be commenced within ninety days after the employer's act or failure to act upon which such proceeding is based.

42-364.13

Support order; requirements.

(1) Any order for support entered by the court shall specifically provide that any person ordered to pay a judgment shall be required to furnish to the clerk of the district court his or her address, telephone number, and social security number, the name of his or her employer, whether or not such person has access to employer-related health insurance coverage and, if so, the health insurance policy information, and any other information the court deems relevant until such judgment is 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. If both parents are parties to the action, such order shall provide that each be required to furnish to the clerk of the district court all of the information required by this subsection. Failure to comply with this section shall be punishable by contempt.

(2) All support orders entered by the court shall include the birthdate and social security number of any child for whom the order requires the provision of support.

(3) Until the Title IV-D Division has operative the statewide automated data processing and retrieval system necessary for centralized collection and disbursement of support order payments:

(a) If any case contains an order or judgment for child, medical, or spousal support, the order shall include the following statements:

In the event that the (plaintiff or defendant) fails to pay any child, medical, or spousal support payment, as such failure is certified each month by the district court clerk in cases in which court-ordered support is delinquent in an amount equal to the support due and payable for a one-month period of time, he or she shall be subject to income withholding and may be required to appear in court on a date to be determined by the court and show cause why such payment was not made. In the event that the (plaintiff or defendant) fails to pay and appear as ordered, a warrant shall be issued for his or her arrest.

(b) If the court orders income withholding regardless of whether or not payments are in arrears pursuant to section 43-1718.01 or 43-1718.02, the statement in this subsection may be altered to read as follows:

In the event that the (plaintiff or defendant) fails to pay any child, medical, or spousal support payment, as such failure is certified each month by the district court clerk in cases in which court-ordered support is delinquent in an amount equal to the support due and payable for a one-month period of time, he or she may be required to appear in court on a date to be determined by the court and show cause why such payment was not made. In the event that the (plaintiff or defendant) fails to pay and appear as ordered, a warrant shall be issued for his or her arrest.

(4) When the Title IV-D Division has operative the statewide automated data processing and retrieval system necessary for centralized collection and disbursement of support order payments:

(a) If any case contains an order or judgment for child, medical, or spousal support, the order shall include the following statements:

In the event that the (plaintiff or defendant) fails to pay any child, medical, or spousal support payment, as such failure is certified each month by the State Disbursement Unit in cases in which court-ordered support is delinquent in an amount equal to the support due and payable for a one-month period of time, he or she shall be subject to income withholding and may be required to appear in court on a date to be determined by the court and show cause why such payment was not made. In the event that the (plaintiff or defendant) fails to pay and appear as ordered, a warrant shall be issued for his or her arrest.

(b) If the court orders income withholding regardless of whether or not payments are in arrears pursuant to section 43-1718.01 or 43-1718.02, the statement in this subsection may be altered to read as follows:

In the event that the (plaintiff or defendant) fails to pay any child, medical, or spousal support payment, as such failure is certified each month by the State Disbursement Unit in cases in which court-ordered support is delinquent in an amount equal to the support due and payable for a one-month period of time, he or she may be required to appear in court on a date to be determined by the court and show cause why such payment was not made. In the event that the (plaintiff or defendant) fails to pay and appear as ordered, a warrant shall be issued for his or her arrest.

42-364.14

Parent-employee; consent to withholding of earnings; procedure.

Nothing in sections 42-364.01 to 42-364.13 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.

42-364.15

Enforcement of visitation orders; procedure; costs.

In any proceeding when a court has ordered a parent to pay, temporarily or permanently, any amount 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.

42-364.16

Child support guidelines; establishment; use.

The Supreme Court shall provide by court rule, as a rebuttable presumption, guidelines for the establishment of all child support obligations. Child support shall be established in accordance with such guidelines, which guidelines are presumed to be in the best interests of the child, unless the court finds that one or both parties have produced sufficient evidence to rebut the presumption that the application of the guidelines will result in a fair and equitable child support order.

42-365

Decree; alimony; division of property; criteria; modification; revocation; termination.

When dissolution of a marriage is decreed, the court may order payment of such alimony by one party to the other and division of property as may be reasonable, having regard for the circumstances of the parties, duration of the marriage, a history of the contributions to the marriage by each party, including contributions to the care and education of the children, and interruption of personal careers or educational opportunities, and the ability of the supported party to engage in gainful employment without interfering with the interests of any

minor children in the custody of such party. Reasonable security for payment may be required by the court. A proceeding to modify or revoke an order for alimony for good cause shall be commenced by filing a complaint to modify. Service of process and other procedure shall comply with the requirements for a dissolution action. Amounts accrued prior to the date of filing of the complaint to modify may not be modified or revoked. A decree may not be modified to award alimony if alimony was not allowed in the original decree dissolving a marriage. A decree may not be modified to award additional alimony if the entire amount of alimony allowed in the original decree had accrued before the date of filing of the complaint to modify. Except as otherwise agreed by the parties in writing or by order of the court, alimony orders shall terminate upon the death of either party or the remarriage of the recipient.

While the criteria for reaching a reasonable division of property and a reasonable award of alimony may overlap, the two serve different purposes and are to be considered separately. The purpose of a property division is to distribute the marital assets equitably between the parties. The purpose of alimony is to provide for the continued maintenance or support of one party by the other when the relative economic circumstances and the other criteria enumerated in this section make it appropriate.

42-366

Property settlements; effect; enforcement; modification.

(1) To promote the amicable settlement of disputes between the parties to a marriage attendant upon their separation or the dissolution of their marriage, the parties may enter into a written property settlement agreement containing provisions for the maintenance of either of them, the disposition of any property owned by either of them, and the support and custody of minor children.

(2) In a proceeding for dissolution of marriage or for legal separation, the terms of the agreement, except terms providing for the support and custody of minor children, shall be binding upon the court unless it finds, after considering the economic circumstances of the parties and any other relevant evidence produced by the parties, on their own motion or on request of the court, that the agreement is unconscionable.

(3) If the court finds the agreement unconscionable, the court may request the parties to submit a revised agreement or the court may make orders for the disposition of property, support, and maintenance.

(4) If the court finds that the agreement is not unconscionable as to support, maintenance, and property: (a) Unless the agreement provides to the contrary, its terms may be set forth in the decree of dissolution or legal separation and the parties shall be ordered to perform them; or (b) if the agreement provides that its terms shall not be set forth in the decree, the decree shall identify the agreement and shall state that the court has found the terms not unconscionable, and the parties shall be ordered to perform them.

(5) Terms of the agreement set forth in the decree may be enforced by all remedies available for the enforcement of a judgment, including contempt.

(6) Alimony may be ordered in addition to a property settlement award.

(7) Except for terms concerning the custody or support of minor children, the decree may expressly preclude or limit modification of terms set forth in the decree.

(8) If the parties fail to agree upon a property settlement which the court finds to be conscionable, the court shall order an equitable division of the marital estate. The court shall include as part of the marital estate, for purposes of the division of property at the time of dissolution, any pension plans, retirement plans, annuities, and other deferred compensation benefits owned by either party, whether vested or not vested.

42-367

Temporary allowance; costs; payment.

In every action for dissolution of marriage or legal separation, the court may require the husband to pay any sum necessary to enable the wife to maintain the action during its pendency. When dissolution of marriage or a legal separation is decreed, the court may decree costs against either party and award execution for the same, or it may direct such costs to be paid out of any property sequestered, or in the power of the court, or in the hands of a receiver.

42-368**Decree of separation; support order; modification; revocation.**

When a legal separation is decreed, the court may order payment of such support by one party to the other as may be reasonable, having regard for the circumstances of the parties and the ability of the supported party to engage in gainful employment without interfering with the interests of any minor children in the custody of such party. Orders for support may be modified or revoked for good cause shown upon notice and hearing, except as to amounts accrued prior to date of service of motion to modify, to which date modification may be retroactive. Orders for child support in cases in which a party has applied for services under Title IV-D of the Social Security Act, as amended, shall be reviewed as provided in sections 43-512.12 to 43-512.18.

42-369**Support or alimony; presumption; items includable; payments; disbursement; enforcement; health insurance.**

(1) All orders, decrees, or judgments for temporary or permanent support payments, alimony, or modification of support payments or alimony shall direct the payment of such sums to be made commencing on the first day of each month for the use of the persons for whom the support payments or alimony have been awarded. Such payments shall be made to the clerk of the district court (a) when the order, decree, or judgment is for spousal support, alimony, or maintenance support and the order, decree, or judgment does not also provide for child support, and (b) when the payment constitutes child care or day care expenses, unless payments under subdivisions (1)(a) or (1)(b) of this section are ordered to be made directly to the obligee. All other support order payments shall be made to the State Disbursement Unit, except payments made pursuant to subdivisions (1)(a) and (1)(b) of this section. In all cases in which income withholding has been implemented pursuant to the Income Withholding for Child Support Act or sections 42-364.01 to 42-364.14, support order payments shall be made to the State Disbursement Unit. The court may order such payment to be in cash or guaranteed funds.

(2) If the person against whom an order, decree, 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, decree, or judgment 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 unless the parties have otherwise stipulated in writing or to the court.

(3) Such an order, decree, or judgment for support may include the providing of necessary shelter, food, clothing, care, medical support as defined in section 43-512, medical attention, expenses of confinement, education expenses, funeral expenses, and any other expense the court may deem reasonable and necessary.

(4) Orders, decrees, and judgments for temporary or permanent support or alimony shall be filed with the clerk of the district court and have the force and effect of judgments when entered. The clerk and the State Disbursement Unit shall disburse all payments received as directed by the court and as provided in sections 42-358.02 and 43-512.07. Records shall be kept of all funds received and disbursed by the clerk and the unit and shall be open to inspection by the parties and their attorneys.

(5) Unless otherwise specified by the court, an equal and proportionate share of any child support awarded shall be presumed to be payable on behalf of each child subject to the order, decree, or judgment for purposes of an assignment under section 43-512.07.

42-370**Contempt proceedings; attorney's fees; costs.**

Nothing in sections 42-347 to 42-381 shall prohibit a party from initiating contempt proceedings. Costs, including a reasonable attorney's fee, may be taxed against a party found to be in contempt.

42-371

Judgments and orders; liens; release; time limitation on lien; refusal to release lien; procedure for relief; security; attachment; priority.

Under the Uniform Interstate Family Support Act and sections 42-347 to 42-381, 43-290, 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) a partial or total release of the judgment or (b) a document subordinating the lien of the judgment to any other lien, generally or on specific real or personal property. Release of a judgment for child support or spousal support or subordination of a lien of a judgment for child support or spousal support must be approved by the court which rendered the judgment unless all such payments are current, in which case a release or subordination document executed by the judgment creditor shall be sufficient to remove or subordinate the lien. A properly executed, notarized release or subordination document, explicitly reciting that all child support payments or spousal support payments are current, shall be prima facie evidence that such payments are in fact current. The judgment debtor may file a motion in the court which rendered the original judgment for an order releasing or subordinating 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 will remain subject to the lien or will maintain priority over other liens sufficient to cover all support due and which may become due;

(2) Full faith and credit shall be accorded to a lien arising by operation of law against real and personal property for amounts of overdue support owed by an obligor who resides or owns property in this state when another state agency, party, or other entity seeking to enforce such lien complies with the procedural rules relating to the filing of the lien in this state. The state agency, party, or other entity seeking to enforce such lien shall send a certified copy of the support order with all modifications, the notice of lien prescribed by 42 U.S.C. 652(a)(11) and 42 U.S.C. 654(9)(E), and the appropriate fee to the clerk of the district court in the jurisdiction within this state in which the lien is sought. Upon receiving the appropriate documents and fee, the clerk of the district court shall accept the documents filed and such acceptance shall constitute entry of the foreign support order for purposes of this section only. Entry of a lien arising in another state pursuant to this section shall result in such lien being afforded the same treatment as liens arising in this state. The filing process required by this section shall not be construed as requiring an application, complaint, answer, and hearing as might be required for the filing or registration of foreign judgments under the Nebraska Uniform Enforcement of Foreign Judgments Act or the Uniform Interstate Family Support Act;

(3) 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;

(4) Alimony and property settlement award judgments, if not covered by subdivision (3) 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;

(5) Whenever a judgment creditor refuses to execute a release of the judgment or subordination of a lien as provided in this section, the person desiring such release or subordination 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 or subordination is not requested for the purpose of avoiding payment and that the release or subordination will not unduly reduce the security, the court may issue an order releasing real or personal property from the judgment lien or issue an order subordinating the judgment lien. As a condition for such release or subordination, the court may require the posting of a bond with the clerk in an amount fixed by the court, guaranteeing payment of the judgment;

(6) The court may in any case, upon application or its own motion, after notice and hearing, order a person required to make payments 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;

(7)(a) The lien of a mortgage or deed of trust which secures a loan, the proceeds of which are used to purchase real property, and (b) any lien given priority pursuant to a subordination document under this section shall attach prior to any lien authorized by this section. Any mortgage or deed of trust which secures the refinancing, renewal, or extension of a real property purchase money mortgage or deed of trust shall have the same lien priority with respect to any lien authorized by this section as the original real property purchase money mortgage or deed of trust to the extent that the amount of the loan refinanced, renewed, or extended does not exceed the amount used to pay the principal and interest on the existing real property purchase money mortgage or deed of trust, plus the costs of the refinancing, renewal, or extension; and

(8) Any lien authorized by this section against personal property registered with any county consisting of a motor vehicle or mobile home shall attach upon notation of the lien against the motor vehicle or mobile home certificate of title and shall have its priority established pursuant to the terms of section 60-110 or a subordination document executed under this section.

42-371.01

Duty to pay child support; termination, when; procedure; State Court Administrator; duties.

(1) An obligor's duty to pay child support for a child terminates when (a) the child reaches nineteen years of age, (b) the child marries, (c) the child dies, or (d) the child is emancipated by a court of competent jurisdiction, unless the court order for child support specifically extends child support after such circumstances.

(2) The termination of child support does not relieve the obligor from the duty to pay any unpaid child support obligations owed or in arrears.

(3) The obligor may provide written application for termination of a child support order when the child being supported reaches nineteen years of age, marries, dies, or is otherwise emancipated. The application shall be filed with the clerk of the district court where child support was ordered. A certified copy of the birth certificate, marriage license, death certificate, or court order of emancipation shall accompany the application for termination of the child support. The clerk of the district court shall send notice of the filing of the child support termination application to the last-known address of the obligee. The notice shall inform the obligee that if he or she does not file a written objection within thirty days after the date the notice was mailed, child support may be terminated without further notice. The court shall terminate child support if no written objection has been filed within thirty days after the date the clerk's notice to the obligee was mailed, the forms and procedures have been complied with, and the court believes that a hearing on the matter is not required.

(4) The State Court Administrator shall develop uniform procedures and forms to be used to terminate child support.

42-372

Decree; appeals.

(1) A decree dissolving a marriage becomes final and operative, except for the purpose of review by appeal, at the time specified in section 42-372.01.

(2) For the purpose of review by appeal, the decree shall be treated as a final order as soon as it is entered. If an appeal is instituted that does not challenge the finding that the marriage is irretrievably broken, then the decree shall become final and operative, as to that portion of the decree that dissolves the marriage, at the time specified in section 42-372.01 as if no such appeal had been instituted. If an appeal is instituted within thirty days after the date the decree is entered that challenges the finding that the marriage is irretrievably broken, such decree does not become final until such proceedings are finally determined or the date of death of one of the parties to the dissolution, whichever occurs first.

42-372.01**Decree; when final.**

(1) Except for purposes of appeal as prescribed in section 42-372, for purposes of remarriage as prescribed in subsection (2) of this section, and for purposes of continuation of health insurance coverage as prescribed in subsection (3) of this section, a decree dissolving a marriage becomes final and operative thirty days after the decree is entered or on the date of death of one of the parties to the dissolution, 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 entered.

(2) For purposes of remarriage other than remarriage between the parties, a decree dissolving a marriage becomes final and operative six months after the decree is entered or on the date of death of one of the parties to the dissolution, 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 entered.

(3) For purposes of continuation of health insurance coverage, a decree dissolving a marriage becomes final and operative six months after the decree is entered.

(4) A decree dissolving a marriage rendered prior to September 9, 1995, which is not final and operative becomes operative pursuant to the provisions of section 42-372 as such section existed immediately preceding September 9, 1995.

42-373**Annulments; procedure.**

Actions for annulment of a marriage shall be brought in the same manner as actions for dissolution of marriage and shall be subject to all applicable provisions of sections 42-347 to 42-381 pertaining to dissolution of marriage, except that the only residence requirement shall be that the plaintiff is an actual resident of the county in which the complaint is filed.

42-374**Annulment; conditions.**

A marriage may be annulled for any of the following causes:

- (1) The marriage between the parties is prohibited by law;
- (2) Either party is impotent at the time of marriage;
- (3) Either party had a spouse living at the time of marriage;
- (4) Either party was mentally ill or a person with mental retardation at the time of marriage; or
- (5) Force or fraud.

42-375**Annulments; persons under disability; who may bring action; denial, when.**

Annulment actions on behalf of persons under disability may be brought by a parent or adult next friend. An annulment may not be decreed if the marriage is found to be voidable and the parties freely cohabited after the ground for annulment has terminated or become known to the innocent party.

42-376**Doubted marriage; procedure.**

When the validity of a marriage is doubted, either party may file a complaint and the court shall decree it annulled or affirmed according to the proof. Notice shall be given the other party as in the case of a complaint for dissolution of marriage.

42-377**Legitimacy of children.**

Children born to the parties, or to the wife, in a marriage relationship which may be dissolved or annulled pursuant to sections 42-347 to 42-381 shall be legitimate unless otherwise decreed by the court, and in every case the legitimacy of all children conceived before the commencement of the suit shall be presumed until the contrary is shown.

42-378

Nullity of marriage; procedure; costs.

When the court finds that a party entered into the contract of marriage in good faith supposing the other to be capable of contracting, and the marriage is declared a nullity, such fact shall be entered in the decree and the court may order such innocent party compensated as in the case of dissolution of marriage, including an award for costs and attorney fees.

42-380

Restoration of former name; procedure.

(1) When a pleading is filed pursuant to section 42-353 or pursuant to an action for annulment as authorized by section 42-373, either the plaintiff or the defendant may include a request to restore his or her former name. The court shall grant such request except for good cause shown. The mere fact that a parent and child may have different surnames following a dissolution of marriage or annulment shall not be sufficient to constitute good cause. The decree of dissolution or declaration of annulment shall specifically provide for the name change, giving both the old name and the name as it will be after the decree or declaration. A change of name granted pursuant to this section shall become effective on the same date that the decree of dissolution or declaration of annulment, as the case may be, is entered. The requirements of sections 25-21,270 to 25-21,273 shall not apply to this section.

(2) A decree of dissolution or declaration of annulment entered before August 25, 1989, in an action in which a request for name restoration was not included or granted shall not hinder or prevent the petitioner or respondent from effecting a common-law name change.

42-381

Minor child; rights of parents.

In any final decree or decree of modification in an action for dissolution of marriage, declaration concerning the validity of a marriage, legal separation, or declaration of paternity, regardless of the determination of the court relating to the custody of a minor child, (1) each parent shall continue to have full and equal access to the education and medical records of his or her child unless the court orders to the contrary and (2) either parent may make emergency decisions affecting the health or safety of his or her child while the child is in the physical custody of such parent.

Article 6. Community Property

42-603

Property acquired; presumption.

Property acquired, as defined in section 42-617, shall not be regarded as community property unless the contrary be satisfactorily proved.

42-617

Property acquired, definition.

As used in sections 42-603 and 42-617 to 42-620, the words property acquired shall mean (1) all property acquired by either husband or wife, or both, during marriage, and on and after September 7, 1947, and prior to April 20, 1949, and (2) all property acquired after April 20, 1949, (a) by exchange for, (b) by the increase of, (c) with the proceeds of, or (d) with the income from, any property defined in subdivision (1) of this section.

42-618

Receipt, management, control, and disposition of property.

Notwithstanding that any property may in fact be community property, a husband or wife shall have power to receive, manage, control, and dispose of or otherwise deal with property standing in his or her name or under his or her management or control, in such manner as he or she would be so entitled to deal therewith by law, had Chapter 156, Session Laws of Nebraska, 1947, never been enacted.

42-619

Claims; limitation; affidavit asserting ownership; filing and recording.

The Legislature recognizes that many husbands and wives have failed to keep proper records; that community income and separate funds have been commingled; that property has been acquired by husband or wife on or after September 7, 1947, in many cases with separate funds; that to protect property rights against loss of evidence, it is necessary that claims that property acquired, as defined in section 42-617, was, or is, community property should be filed or recorded. Any claim or defense by either husband or wife or other person, in any action, proceeding, or controversy, that any property acquired, as defined in section 42-617, was or is community property, shall be barred one year from April 20, 1949, unless, within one year from April 20, 1949, an affidavit by either the husband or wife, or other interested person, asserting that the property therein described was or is community property has been filed or recorded as herein provided. In case of real estate, such affidavit shall be recorded in the office of the register of deeds of the county in which the real estate is situated; in case of stocks, the affidavit shall be filed with the corporation issuing the same; in case of bonds, notes, secured or unsecured, securities, or other evidences of indebtedness or other debts, the affidavit shall be delivered to the debtor; in case of life insurance, the affidavit shall be filed with the home office of the insurer; and in case of all other personal property the affidavit shall be filed with the county clerk of the county in which the husband resides or last resided in Nebraska. The filing or recording of an affidavit as provided in sections 42-603 and 42-617 to 42-620, shall not constitute notice to purchasers, mortgagees, pledgees, or assignees for value, that such property is claimed to be community property. This section shall not apply to claims of any person in exclusive possession of property under claim of right, on April 20, 1949.

42-620

Severability.

If, for any reason, any of the foregoing sections 42-603 and 42-617 to 42-619 or any part thereof are held to be invalid, the Legislature declares that it would have passed section 6 irrespective of the fact that such sections or any part thereof may be declared invalid.

Article 8. Conciliation Court Law

42-801

Purposes of sections.

The purposes of sections 42-801 to 42-823 are to protect the rights of children and to promote the public welfare by preserving, promoting, and protecting family life and the institution of matrimony, and to provide means for the reconciliation of spouses and the amicable settlement of domestic and family controversies.

42-802

Act, how cited.

Sections 42-801 to 42-823 may be cited as the Conciliation Court Law.

42-803

Applicability of law.

The provisions of the Conciliation Court Law shall be applicable only in counties in which the county court and the district court determines that the social conditions in the county and the number of domestic relations cases in the courts render the procedures provided in

such law necessary to the full and proper consideration of such cases and the effectuation of the purposes of such law. Such determination shall be made annually in the month of December.

42-804

County court and district court; jurisdiction.

Each county court and district court shall exercise the jurisdiction conferred by the Conciliation Court Law and while sitting in the exercise of such jurisdiction shall be known and referred to as the conciliation court. All petitions and filings shall be made with the clerk of the district court and may be heard by the county court or the district court as provided in section 25-2740.

42-805

Designation of judge.

In counties having more than one judge of the district court, the judges at their annual meeting shall designate at least one judge of the county court or district court to hear cases under the Conciliation Court Law. Such assignment may be exclusive or in conjunction with any other assignment. The judge or judges so designated shall hold as many sessions of the conciliation court as are necessary for the prompt disposition of the business before the court.

42-806

Transfer of case.

The judge of the conciliation court may transfer any case before the conciliation court pursuant to the Conciliation Court Law to the presiding judge of the county court or to the presiding judge of the district court, as appropriate, for assignment for trial or other proceedings by another judge of the court, whenever in the opinion of the judge of the conciliation court such transfer is necessary to expedite the business of the conciliation court or to insure the prompt consideration of the case. When any case is so transferred, the judge to whom it is transferred shall act as the judge of the conciliation court in the matter.

42-807

Acting judge; appointment.

The presiding judge of the court may appoint a judge of the court other than the judge of the conciliation court to act as judge of the conciliation court during any period when the judge of the conciliation court is on vacation, absent, or for any reason unable to perform his or her duties. Any judge so appointed shall have all of the powers and authority of a judge of the conciliation court in cases under the Conciliation Court Law.

42-808

Counselor of conciliation; counties with 250,000 inhabitants or more; personnel; appointment; powers; compensation.

(1) In each county with a population of two hundred fifty thousand inhabitants or more, the county court and district court may appoint one counselor of conciliation and one secretary to assist the conciliation court in disposing of its business and carrying out its functions.

(2) The counselor of conciliation so appointed shall have the power to:

(a) Hold conciliation conferences with parties to and hearings in proceedings under the Conciliation Court Law and make recommendations concerning such proceedings to the judge of the conciliation court;

(b) Provide such supervision in connection with the exercise of his or her jurisdiction as the judge of the conciliation court may direct;

(c) Cause such reports to be made, such statistics to be compiled, and such records to be kept as the judge of the conciliation court may direct;

(d) Hold such hearings in all conciliation court cases as may be required by the judge of the conciliation court and make such investigations as may be required by the court to carry out the intent of the Conciliation Court Law;

(e) Make investigations provided for by sections 42-351 and 42-358 as may be directed by the judge of the conciliation court; and

(f) Hold informal hearings under section 42-367 and make recommendations to the court for entry of orders thereunder as may be directed by the judge of the conciliation court.

(3) The judge of the conciliation court may also appoint, with the consent of the board of county commissioners, such associate counselors of conciliation and other office assistants as may be necessary to assist the conciliation court in disposing of its business. Such associate counselors shall carry out their duties under the supervision of the judge of the conciliation court and shall have all the powers of the counselor of conciliation. Office assistants shall work under the supervision and direction of the counselor of conciliation.

(4) Salaries of persons appointed under this section shall be fixed by the board of county commissioners. All persons appointed under this section may be dismissed for any reason by a majority vote of the judges of the county court and the district court of the county.

(5) The board of county commissioners shall furnish adequate office space, equipment, and supplies for the use of the personnel of the conciliation court.

42-809

Counselor of conciliation; counties with less than 250,000 inhabitants; personnel; appointment; compensation.

(1) In each county having a population of less than two hundred fifty thousand inhabitants, the county court and district court may appoint, with the consent and approval of the board of county commissioners, the following persons to assist the conciliation court in disposing of its business and carrying out its functions:

(a) One counselor of conciliation who shall have the powers provided in subsection (2) of section 42-808; and

(b) Such associate counselors and office assistants as may be required to properly handle the work of the court.

(2) The salaries of persons appointed under the provisions of this section shall be fixed by the board of county commissioners of the county. All persons appointed under the provisions of this section may be dismissed for any reason by a majority vote of the judges of the district court of the county.

(3) The board of county commissioners shall furnish adequate office space, equipment, and supplies for the use of the personnel of the conciliation court.

(4) The county court and district court or the board of county commissioners may, at any time, abolish any or all positions created pursuant to the provisions of this section.

42-810

Hearings; conferences; files; confidentiality.

(1) All court hearings or conferences in proceedings under the provisions of the Conciliation Court Law shall be held in private and the court shall exclude all persons except the officers of the court, the parties, their counsel, and witnesses. Conferences may be held with each party and his or her counsel separately and in the discretion of the judge or counselor conducting the conference or hearing, counsel for one party may be excluded when the adverse party is present. All communications, verbal or written, from parties to the judge or counselor in a proceeding under the provisions of such law shall be deemed made to such officer in official confidence.

(2) The files of the conciliation court shall be closed. The petition, supporting affidavit, reconciliation agreement, and any court order made in the matter may be opened to inspection by any party or his or her counsel upon the written authority of the judge of the conciliation court.

42-811

Controversy between spouses; jurisdiction of court.

42-816**Fees prohibited.**

No fee shall be charged by any officer for filing the petition, nor shall any fee be charged by any officer for the performance of any duty pursuant to the provisions of sections 42-801 to 42-823.

42-817**Petition; hearing; notice; citation; compel attendance of witnesses.**

The court shall fix a reasonable time and place for hearing on the petition and shall cause such notice of the filing of the petition and of the time and place of the hearing as it deems necessary to be given to the respondents. The court may, when it deems it necessary, issue a citation to any respondent requiring him to appear at the time and place stated in the citation, and may require the attendance of witnesses as in other civil cases.

42-818**Hearing; time; place; objection; effect.**

For the purpose of conducting hearings pursuant to the provisions of sections 42-801 to 42-823, the conciliation court may be convened at any time and place within the county, and the hearing may be had in chambers or otherwise, except that the time and place for hearing shall not be different from the time and place provided by law for the trial of civil actions if any party, prior to the hearing, objects to any different time or place.

42-819**Hearing; procedure.**

The hearing shall be conducted informally as a conference or series of conferences to effect a reconciliation of the spouses or an amicable adjustment or settlement of the issues of the controversy. To facilitate and promote the purposes of sections 42-801 to 42-823, the court may, with the consent of both of the parties to the proceeding, recommend or invoke the aid of physicians, psychiatrists, endocrinologists, or other specialists or scientific experts, or of the pastor or director of any religious denomination to which the parties may belong. Such aid shall not be at the expense of the court or of the county unless the board of county commissioners specifically provides and authorizes such aid.

42-820**Hearing; orders; effect; reconciliation agreement.**

(1) At or after the hearing, the court may make such orders in respect to the conduct of the spouses and the subject matter of the controversy as the court deems necessary to preserve the marriage or to implement the reconciliation of the spouses, but in no event shall such orders be effective for more than thirty days from the hearing of the petition, unless the parties mutually consent to a continuation of such time.

(2) Any reconciliation agreement between the parties may be reduced to writing and, with the consent of the parties, a court order may be made requiring the parties to comply therewith.

42-821**Petition for conciliation; limitation on certain actions; order for temporary custody, child support, and alimony; authorized.**

(1) During a period beginning upon the filing of the petition for conciliation and continuing until the earlier of (a) thirty days after the hearing of the petition for conciliation or (b) the dismissal of the petition, neither spouse shall file any action for dissolution of marriage, annulment of marriage, or separate maintenance, except that, for the purpose of protecting the minor children of the parties and the parties, the county court and district court shall have authority after proper notice to enter orders for temporary custody of minor children,

temporary child support, and temporary alimony, notwithstanding any such reconciliation proceedings. An order for temporary child support or an order for temporary alimony which is a part of an order providing for temporary child support when the spouse and child reside in the same household shall be governed by the provisions of sections 42-347 to 42-381 relating to child and spousal support. Certified copies of such orders shall be filed by the clerk of the court and treated in the same manner as other such orders.

(2) If, after the expiration of the period specified in subsection (1) of this section, the controversy between the spouses has not been terminated, either spouse may institute proceedings for dissolution of marriage, annulment of marriage, or separate maintenance. The pendency of a dissolution of marriage, annulment, or separate maintenance action shall not operate as a bar to the instituting of proceedings for conciliation under the Conciliation Court Law, but if such action is pending before a petition for conciliation is filed, the court may permit proceeding with such action at any time for good cause shown.

42-822

Divorce, annulment, or separate maintenance; petition; minor child; transfer to conciliation court.

Whenever any action for divorce, annulment of marriage, or separate maintenance is filed and it appears to the court at any time during the pendency of the action that there is any minor child of the spouses or of either of them whose welfare may be adversely affected by the dissolution or annulment of the marriage or the disruption of the household and that there appears to be some reasonable possibility of a reconciliation being effected, the case may be transferred to the conciliation court for proceedings for reconciliation of the spouses or amicable settlement of issues in controversy, in accordance with the Conciliation Court Law.

42-823

Application for proceedings; minor child not involved; jurisdiction.

Whenever application is made to the conciliation court for conciliation proceedings in respect to a controversy between spouses, or a contested action for divorce, annulment of marriage, or separate maintenance, but there is no minor child whose welfare may be affected by the results of the controversy, and it appears to the court that reconciliation of the spouses or amicable adjustment of the controversy can probably be achieved, and that the work of the court in cases involving children will not be seriously impeded by acceptance of the case in the same manner as similar cases involving the welfare of children are disposed of, such acceptance may be made. In the event of such application and acceptance, the court shall have the same jurisdiction over the controversy and the parties thereto, or having any relation thereto, that it has under the provisions of sections 42-801 to 42-823 in similar cases involving the welfare of children.

Article 10. Uniform Premarital Agreement Act.

42-1001

Act, how cited.

Sections 42-1001 to 42-1011 shall be known and may be cited as the Uniform Premarital Agreement Act.

42-1002

Definitions.

As used in the Uniform Premarital Agreement Act:

(1) Premarital agreement means an agreement between prospective spouses made in contemplation of marriage and to be effective upon marriage.

(2) Property means an interest, present or future, legal or equitable, vested or contingent, in real or personal property, including income and earnings.

42-1003

Formalities.

A premarital agreement must be in writing and signed by both parties.

42-1004

Content.

(1) Parties to a premarital agreement may contract with respect to:

(a) The rights and obligations of each of the parties in any of the property of either or both of them whenever and wherever acquired or located;

(b) The right to buy, sell, use, transfer, exchange, abandon, lease, consume, expend, assign, create a security interest in, mortgage, encumber, dispose of, or otherwise manage and control property;

(c) The disposition of property upon separation, marital dissolution, death, or the occurrence or nonoccurrence of any other event;

(d) The modification or elimination of spousal support;

(e) The making of a will, trust, or other arrangement, to carry out the provisions of the agreement;

(f) The ownership rights in and disposition of the death benefit from a life insurance policy;

(g) The choice of law governing the construction of the agreement; and

(h) Any other matter, including their personal rights and obligations, not in violation of public policy or a statute imposing a criminal penalty.

(2) The right of a child to support may not be adversely affected by a premarital agreement.

42-1005

Effect of marriage.

A premarital agreement becomes effective upon marriage.

42-1006

Enforcement.

(1) A premarital agreement is not enforceable if the party against whom enforcement is sought proves that:

(a) That party did not execute the agreement voluntarily; or

(b) The agreement was unconscionable when it was executed and, before execution of the agreement, that party:

(i) Was not provided a fair and reasonable disclosure of the property or financial obligations of the other party;

(ii) Did not voluntarily and expressly waive, in writing, any right to disclosure of the property or financial obligations of the other party beyond the disclosure provided; and

(iii) Did not have, or reasonably could not have had, an adequate knowledge of the property or financial obligations of the other party.

(2) If a provision of a premarital agreement modifies or eliminates spousal support and that modification or elimination causes one party to the agreement to be eligible for support under a program of public assistance at the time of separation or marital dissolution, a court, notwithstanding the terms of the agreement, may require the other party to provide support to the extent necessary to avoid that eligibility.

(3) An issue of unconscionability of a premarital agreement shall be decided by the court as a matter of law.

42-1007

Enforcement; void marriage.

If a marriage is determined to be void, an agreement that would otherwise have been a premarital agreement is enforceable only to the extent necessary to avoid an inequitable result.

42-1008

Limitation of actions.

Any statute of limitations applicable to an action asserting a claim for relief under a premarital agreement is tolled during the marriage of the parties to the agreement. However, equitable defenses limiting the time for enforcement, including laches and estoppel, are available to either party.

42-1009**Application and construction.**

The Uniform Premarital Agreement Act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of the act among states enacting it.

42-1010**Severability.**

If any provision of the Uniform Premarital Agreement Act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of the act are severable.

42-1011**Time of taking effect.**

The Uniform Premarital Agreement Act takes effect on July 16, 1994, and applies to any premarital agreement executed on or after that date.

Article 11. Spousal Pension Rights Act.**42-1101****Act, how cited.**

Sections 42-1101 to 42-1113 shall be known and may be cited as the Spousal Pension Rights Act.

42-1102**Terms, defined.**

For purposes of the Spousal Pension Rights Act:

(1) Alternate payee means a spouse, former spouse, child, or other dependent of a member who is recognized by a domestic relations order as having a right to receive all or a portion of the benefits payable by a statewide public retirement system with respect to such member;

(2) Benefit means an annuity, a pension, a retirement allowance, a withdrawal of accumulated contributions, or an optional benefit accrued or accruing to a member under a statewide public retirement system;

(3) Domestic relations order means a judgment, decree, or order, including approval of a property settlement agreement, which relates to the provision of child support, alimony payments, maintenance support, or marital property rights to a spouse, former spouse, child, or other dependent of a member and is made pursuant to a state domestic relations law of this state or another state;

(4) Earliest retirement date means the earlier of (a) the date on which the member is entitled to a distribution under the system or (b) the later of (i) the date that the member attains fifty years of age or (ii) the earliest date that the member could receive benefits under the system if the member separated from service;

(5) Qualified domestic relations order means a domestic relations order which creates or recognizes the existence of an alternate payee's right, or assigns to an alternate payee the

right, to receive all or a portion of the benefits payable with respect to a member under a statewide public retirement system, which directs the system to disburse benefits to the alternate payee, and which meets the requirements of section 42-1103;

(6) Segregated amounts means the amounts which would have been payable to the alternative payee during the period of time that the qualified status of an order is being determined. Such amounts shall equal the amounts payable for such period if the order had been determined to be a qualified domestic relations order; and

(7) Statewide public retirement system means the Retirement System for Nebraska Counties, the Nebraska Judges Retirement System, the School Retirement System of the State of Nebraska, the Nebraska State Patrol Retirement System, and the State Employees Retirement System of the State of Nebraska.

42-1103

Qualified domestic relations order; requirements.

A domestic relations order is a qualified domestic relations order only if such order:

(1) Clearly specifies the following:

(a) The name, social security number, and last-known mailing address, if any, of the member;

(b) The name, social security number, and last-known mailing address, if any, of the alternate payee covered by the order;

(c) The statewide public retirement system or systems to which the order applies;

(d) The number of payments or period to which such order applies; and

(e) The amount or percentage of the member's benefits to be paid by each statewide public retirement system to each alternate payee or the manner in which such amount or percentage is determined;

(2) Does not require a statewide public retirement system to provide any type or form of benefit, or any option, not otherwise provided under the plan;

(3) Does not require a statewide public retirement system to provide increased benefits determined on the basis of actuarial value;

(4) Does not require a statewide public retirement system to pay to an alternate payee benefits which are required to be paid to another alternate payee under another order previously determined to be a qualified domestic relations order; and

(5) Does not require the payment of benefits to an alternate payee before the earliest retirement date of a member.

42-1104

Order; payment of benefits; alternate payee.

(1) A qualified domestic relations order may provide for the payment of benefits to an alternate payee beginning on or after the member's earliest retirement date but before the member terminates employment. Payment of the benefit to the alternate payee pursuant to a qualified domestic relations order shall commence either on the member's retirement date or on the first day of the month immediately following the month in which the alternate payee notifies the statewide public retirement system of the election to begin payment, but not prior to the member's earliest retirement date.

(2) If payment begins after the member's earliest retirement date but prior to the member's retirement date, the alternate payee is only entitled to the actuarial equivalent of the alternate payee's share of the member's benefit payable on the member's earliest retirement date or the alternate payee's election date, whichever is later.

42-1105

Order; form of benefit payment.

An alternate payee under a qualified domestic relations order shall receive the form of benefit payment specified in the order or, if not specified, selected by the alternate payee, if such form is a form available to the member and is not a joint and survivor annuity with the alternate payee's subsequent spouse.

42-1106**Death of alternate payee; effect.**

If the alternate payee dies prior to receiving any payment of his or her interest in the member's benefit under a qualified domestic relations order, such interest reverts to the member. If the alternate payee dies after commencement of payments of his or her interest, then the alternate payee's beneficiary is entitled to the balance of the payee's interest under the payment option provided by the order or selected by the payee, except a joint and survivor annuity option with the alternate payee and alternate payee's spouse.

42-1107**Order; surviving spouse; payment option.**

A qualified domestic relations order may provide that a spouse under a judgment for separate maintenance or a former spouse is considered the surviving spouse under the plan. If the order requires the member to select a payment option with survivorship rights, the Public Employees Retirement Board shall require consent by such spouse for the selection of the annuity option by the member or for any change in the selection of the annuity option by the member. The order may specifically require that the annuity option be a joint and survivor annuity.

42-1108**Order; alternate payee; file with board; notice.**

The alternate payee shall file a copy of the domestic relations order involving benefits under a statewide public retirement system with the Public Employees Retirement Board within ninety days after the date that the order was entered. Upon good cause shown, the board may accept an order after ninety days following its entry. Within ten days, the board shall notify in writing the member and alternate payee that the board has received the domestic relations order. Such notice shall include a description of the procedure to determine if the domestic relations order is a qualified domestic relations order under the Spousal Pension Rights Act. The Public Employees Retirement Board shall be held harmless by the alternate payee and the member for any amounts paid in violation of an order prior to the date on which the order is filed with the board.

42-1109**Rules and regulations.**

The Public Employees Retirement Board shall adopt and promulgate rules and regulations to establish reasonable procedures to determine the qualified status of domestic relations orders and to administer distributions under such orders. Such procedures shall allow an alternate payee to designate a representative for receipt of copies of notices.

42-1110**Qualified domestic relations order; how determined; procedure.**

(1) The Public Employees Retirement Board, or the board's designee, shall determine, within a reasonable period of time after receiving a domestic relations order, if the order is a qualified domestic relations order under the Spousal Pension Rights Act. The board may determine that an order is not qualified for the following reasons:

- (a) The order fails to fulfill all the requirements under section 42-1103;
- (b) The order requires the board to act contrary to the statutory provisions of the statewide public retirement system; or
- (c) The order requires payment to the alternate payee in the form of a joint and survivor annuity with respect to the alternate payee and his or her subsequent spouse.

(2) Failure to file an order within ninety days after its entry shall not be the basis for determining that an order is not a qualified domestic relations order.

(3) Within seven days after making the determination, the board or its designee shall notify the alternate payee and the member whether the domestic relations order is a qualified

domestic relation order under the act. If the order is not a qualified domestic relations order, the notice shall specify the basis for such determination.

(4) A determination by the board or its designee that a domestic relations order is not a qualified domestic relations order does not prohibit a member or an alternate payee from filing an amended order with the board.

42-1111

Director; separate accounting required; when; investment authority.

(1) During the period of time that a determination, by the board, its designee, or a court of competent jurisdiction, is being made as to whether a domestic relations order is a qualified domestic relations order, the director of the statewide public retirement systems shall separately account for the segregated amounts.

(2) If a member of the statewide public retirement systems participates in a defined contribution account, the member shall maintain investment authority over the entire account until the order is determined to be a qualified domestic relations order, but upon such determination, the alternate payee shall receive investment authority over the alternate payee's share of the account.

(3) If within the eighteen-month period the order is determined to be a qualified domestic relations order, the director of the statewide public retirement systems shall pay the segregated amounts plus interest to the alternate payee or payees entitled thereto.

(4) If within the eighteen-month period the order is determined not to be a qualified domestic relations order or the qualified status of the order is not resolved, the director of the statewide public retirement systems shall pay the segregated amounts plus interest to the member or other beneficiaries entitled thereto.

(5) If the determination that the order is a qualified domestic relations order is made after the eighteen-month period, the order will be applied prospectively only.

(6) For purposes of this section, the eighteen-month period begins on the date that the first payment would be required under the domestic relations order.

42-1112

Order filed prior to July 19, 1996; applicability.

A domestic relations order filed with the Public Employees Retirement Board prior to July 19, 1996, shall be deemed a qualified domestic relations order under the Spousal Pension Rights Act if the statewide public retirement system is making payments under the order on July 19, 1996, and such order conforms to section 414(p)(11) of the Internal Revenue Code.

42-1113

Liability.

The member and alternate payee shall hold the statewide public retirement system and its fiduciaries harmless from any liabilities which arise from (1) treating a domestic relations order as being, or not being, a qualified domestic relations order, or (2) taking action pursuant to section 42-1111. The system's obligation to the member and each alternate payee shall be discharged to the extent of any payment made pursuant to the Spousal Pension Rights Act.

Article 12. Address Confidentiality Act.

42-1201

Act, how cited.

Sections 42-1201 to 42-1210 shall be known and may be cited as the Address Confidentiality Act.

42-1202

Findings.

The Legislature finds that persons attempting to escape from actual or threatened abuse, sexual assault, or stalking frequently establish new addresses in order to prevent their assailants or probable assailants from finding them. The purposes of the Address Confidentiality Act are to enable state and local agencies to respond to requests for public records without disclosing the location of a victim of abuse, sexual assault, or stalking, to enable interagency cooperation with the office of the Secretary of State in providing address confidentiality for victims of abuse, sexual assault, or stalking, and to enable state and local agencies to accept a program participant's use of an address designated by the Secretary of State as a substitute mailing address.

42-1203

Terms, defined.

For purposes of the Address Confidentiality Act:

(1) Abuse means causing or attempting to cause physical harm, placing another person in fear of physical harm, or causing another person to engage involuntarily in sexual activity by force, threat of force, or duress, when committed by (a) a person against his or her spouse, (b) a person against his or her former spouse, (c) a person residing with the victim if such person and the victim are or were in a dating relationship, (d) a person who formerly resided with the victim if such person and the victim are or were in a dating relationship, (e) a person against a parent of his or her children, whether or not such person and the victim have been married or resided together at any time, (f) a person against a person with whom he or she is in a dating relationship, (g) a person against a person with whom he or she formerly was in a dating relationship, or (h) a person related to the victim by consanguinity or affinity;

(2) Address means a residential street address, school address, or work address of an individual as specified on the individual's application to be a program participant;

(3) Dating relationship means an intimate or sexual relationship;

(4) Program participant means a person certified as a program participant under section 42-1204;

(5) Sexual assault has the same meaning as in section 28-319, 28-320, 28-320.01, or 28-386; and

(6) Stalking has the same meaning as in sections 28-311.02 to 28-311.05.

42-1204

Substitute address; application to Secretary of State; approval; certification; renewal; prohibited acts; violation; penalty.

(1) An adult, a parent or guardian acting on behalf of a minor, or a guardian acting on behalf of an incapacitated person as defined in section 30-2601 may apply to the Secretary of State to have an address designated by the Secretary of State serve as the substitute address of such adult, minor, or incapacitated person. The Secretary of State shall approve an application if it is filed in the manner and on the form prescribed by the Secretary of State and if it contains:

(a) A sworn statement by the applicant that the applicant has good reason to believe (i) that the applicant, or the minor or incapacitated person on whose behalf the application is made, is a victim of abuse, sexual assault, or stalking and (ii) that the applicant fears for his or her safety, his or her children's safety, or the safety of the minor or incapacitated person on whose behalf the application is made;

(b) A designation of the Secretary of State as agent for purposes of service of process and receipt of mail;

(c) The mailing address and the telephone number or numbers where the applicant can be contacted by the Secretary of State;

(d) The new address or addresses that the applicant requests not be disclosed for the reason that disclosure will increase the risk of abuse, sexual assault, or stalking; and

(e) The signature of the applicant and of any individual or representative of any office designated in writing under section 42-1209 who assisted in the preparation of the application and the date on which the applicant signed the application.

(2) Applications shall be filed in the office of the Secretary of State.

(3) Upon filing a properly completed application, the Secretary of State shall certify the applicant as a program participant. Such certification shall be valid for four years following

the date of filing unless the certification is withdrawn or invalidated before that date. The Secretary of State may by rule and regulation establish a renewal procedure.

(4) A person who falsely attests in an application that disclosure of the applicant's address would endanger the applicant, the applicant's children, or the minor or incapacitated person on whose behalf the application is made, or who knowingly provides false or incorrect information upon making an application, is guilty of a Class II misdemeanor.

42-1205

Certification; forfeiture or cancellation; when.

(1) If a program participant obtains a name change, he or she shall forfeit his or her certification as a program participant unless the program participant applies to the Secretary of State for recertification and provides documentation of the legal name change.

(2) The Secretary of State may cancel a program participant's certification if there is a change in the mailing address from the one listed on the application under section 42-1204, unless the program participant provides the Secretary of State with notice of the change of address in such manner as is provided by rules and regulations adopted and promulgated by the Secretary of State.

(3) The Secretary of State may cancel certification of a program participant if mail forwarded to the program participant's address is returned as undeliverable.

(4) The Secretary of State shall cancel certification of a program participant who applies using false information.

42-1206

Address or substitute address; use; when.

(1) A program participant may request that state and local agencies use the address designated by the Secretary of State as the program participant's substitute address. When creating a new public record, a state or local agency which has a bona fide statutory, tax situs, or administrative requirement for the participant's residence address may request that the participant verbally provide the agency with such residence address if the agency has the capability to use such address for such bona fide purpose without permanently entering it into the agency's records. If the agency does not have such capability, it shall accept the address designated by the Secretary of State as a program participant's substitute address, unless the Secretary of State determines that:

(a) The state or local agency has a bona fide statutory, tax situs, or administrative requirement for the use of the address which would otherwise be confidential under the Address Confidentiality Act; and

(b) The address will be used only for such bona fide statutory, tax situs, or administrative requirement.

(2) The Secretary of State shall forward all first-class mail to each program participant's substitute address.

42-1207

Vote as absentee voter; authorized.

(1) A program participant who is otherwise qualified to vote may apply as an absentee voter under sections 32-938 to 32-951. The county clerk or election commissioner shall transmit the absentee ballot to the program participant at the address designated by the program participant in his or her application as an absentee voter. Neither the name nor the address of a program participant shall be included in any list of registered voters available to the public.

(2) The county clerk or election commissioner shall not make a program participant's address contained in voter registration records available for public inspection or copying except under the following circumstances:

(a) If requested by a law enforcement agency, to the law enforcement agency; or

(b) If directed by a court order, to a person identified in the order.

42-1208

Secretary of State; use of substitute address; exceptions.

The Secretary of State shall not make any records in a program participant's file available for inspection or copying, other than the substitute address designated by the Secretary of State, except under the following circumstances:

(1) If requested of the Secretary of State by the chief commanding officer of a law enforcement agency or the officer's designee in the manner provided for by rules and regulations adopted and promulgated by the Secretary of State;

(2) To a person identified in a court order upon the receipt by the Secretary of State of that court order which specifically orders the disclosure of a particular program participant's address and the reasons stated therefor; or

(3) To verify the participation of a specific program participant, in which case the Secretary of State may only confirm or deny information supplied by the requester.

42-1209

Program participants; application assistance.

The Secretary of State shall designate state and local agencies and nonprofit entities that provide counseling and shelter services to victims of abuse, sexual assault, or stalking to assist persons applying to be program participants. Any assistance or counseling rendered by the office of the Secretary of State or its designees to such applicants shall not be deemed legal advice or the practice of law.

42-1210

Rules and regulations.

The Secretary of State may adopt and promulgate rules and regulations to carry out the Address Confidentiality Act.