

LEGISLATURE OF NEBRASKA
ONE HUNDRED FOURTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 497

Introduced by Hadley, 37.

Read first time January 21, 2015

Committee: Judiciary

- 1 A BILL FOR AN ACT relating to divorce; to amend sections 42-365 and
- 2 42-366, Reissue Revised Statutes of Nebraska; to change provisions
- 3 relating to distribution of marital assets; to harmonize provisions;
- 4 and to repeal the original sections.
- 5 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 42-365, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 42-365 When dissolution of a marriage is decreed, the court may
4 order payment of such alimony by one party to the other ~~and division of~~
5 ~~property~~ as may be reasonable, having regard for the circumstances of the
6 parties, duration of the marriage, a history of the contributions to the
7 marriage by each party, including contributions to the care and education
8 of the children, and interruption of personal careers or educational
9 opportunities, and the ability of the supported party to engage in
10 gainful employment without interfering with the interests of any minor
11 children in the custody of such party. Reasonable security for payment
12 may be required by the court. A proceeding to modify or revoke an order
13 for alimony for good cause shall be commenced by filing a complaint to
14 modify. Service of process and other procedure shall comply with the
15 requirements for a dissolution action. Amounts accrued prior to the date
16 of filing of the complaint to modify may not be modified or revoked. A
17 decree may not be modified to award alimony if alimony was not allowed in
18 the original decree dissolving a marriage. A decree may not be modified
19 to award additional alimony if the entire amount of alimony allowed in
20 the original decree had accrued before the date of filing of the
21 complaint to modify. Except as otherwise agreed by the parties in writing
22 or by order of the court, alimony orders shall terminate upon the death
23 of either party or the remarriage of the recipient.

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

1 Sec. 2. Section 42-366, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 42-366 (1) To promote the amicable settlement of disputes between
4 the parties to a marriage attendant upon their separation or the
5 dissolution of their marriage, the parties may enter into a written
6 property settlement agreement containing provisions for the maintenance
7 of either of them, the disposition of any property owned by either of
8 them, and the support and custody of minor children.

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

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

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

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

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

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

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

11 Sec. 3. Original sections 42-365 and 42-366, Reissue Revised
12 Statutes of Nebraska, are repealed.