

ONE HUNDRED FIRST LEGISLATURE - SECOND SESSION - 2010
COMMITTEE STATEMENT
LB901

Hearing Date: Thursday February 11, 2010
Committee On: Judiciary
Introducer: Wightman
One Liner: Change child custody determination provisions

Roll Call Vote - Final Committee Action:
Advanced to General File with amendment(s)

Vote Results:

Aye: 8 Senators Ashford, Christensen, Coash, Lathrop, Council, Lautenbaugh,
McGill, Rogert

Nay:

Absent:

Present Not Voting:

Proponents:

Sen. John Wightman
Jim Gordon

Casey Karges
Bryan Funk
William Mueller
Nancy Johnson

Representing:

Introducer
The Mediation Center; Nebraska Mediation Association;
Self
Mediation Association
Self
Nebraska State Bar Association
Conway, Pauley, and Johnson, P.C.

Opponents:

Representing:

Neutral:

Representing:

Summary of purpose and/or changes:

Legislative Bill 901 restores statutory language eliminated in 2007 that outlined specific factors the courts are to consider in determining custody and parenting time issues, and grants the courts limited authority to waive the requirement for mediation of custody and parenting time disputes.

Currently, section 42-364 provides that custody is to be determined on the basis of the best interest of the child as defined in the Parenting Act, which was enacted in 2007 by LB 554. However, LB 554 removed a list of factors district courts previously considered to determine a child's best interest in custody and visitation matters. LB 901 restores the statutory language to remove any uncertainty regarding the specific factors courts shall consider in determining custody and parenting arrangements.

LB 901 also authorizes the court to waive the mediation requirement that will go into effect on July 1, 2010 in limited circumstances if:

- Good cause is shown; and
 - When both parents agree and such parental agreement is bona fide and not asserted to avoid the purposes of the Parenting Act; or
 - When mediation or specialized alternative dispute resolution is not possible without undue delay or hardship to
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either parent.

In these limited cases, the court must hold a separate evidentiary hearing and the burden of proof for the party or parties seeking the waiver is clear and convincing evidence.

LB 901 contains an emergency clause to make the waiver authority effective prior to the July 1, 2010 date for mandatory mediation. The operative date for the bill is July 1, 2010.

Explanation of amendments:

Committee Amendment AM 1926 adds provisions and replaces the original version of the bill. The amendment harmonizes the restored language with the Parenting Act. The amendment also broadens the authority of the court to waive mandatory mediation in modification proceedings with the same requirements that apply to an original action.

Finally, the amendment adds the waiver authority to the mandatory mediation provision of the Parenting Act in section 43-2937.

Brad Ashford, Chairperson