

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

SECOND SESSION

**LEGISLATIVE BILL 935**

Introduced by Smith, 14.

Read first time January 10, 2012

Committee: Judiciary

A BILL

1 FOR AN ACT relating to domestic relations matters; to amend sections  
2 25-2740, 43-1801, 43-1802, and 43-1803, Reissue Revised  
3 Statutes of Nebraska; to change grandparent visitation  
4 provisions to person with a legitimate interest; to  
5 harmonize provisions; and to repeal the original  
6 sections.

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

1                   Section 1. Section 25-2740, Reissue Revised Statutes of  
2 Nebraska, is amended to read:

3                   25-2740 (1) For purposes of this section:

4                   (a) Domestic relations matters means proceedings under  
5 sections 28-311.09 and 28-311.10 (including harassment protection  
6 orders and valid foreign harassment protection orders), the  
7 Conciliation Court Law and sections 42-347 to 42-381 (including  
8 dissolution, separation, annulment, custody, and support), section  
9 43-512.04 (including child support or medical support), section  
10 42-924 (including domestic protection orders), sections 43-1401 to  
11 43-1418 (including paternity determinations and parental support),  
12 and sections 43-1801 to 43-1803 (including ~~grandparent visitation~~  
13 child visitation by a person with a legitimate interest); and

14                   (b) Paternity or custody determinations means proceedings  
15 to establish the paternity of a child under sections 43-1411 to  
16 43-1418 or proceedings to determine custody of a child under section  
17 42-364.

18                   (2) Except as provided in subsection (3) of this section,  
19 in domestic relations matters, a party shall file his or her petition  
20 or complaint and all other court filings with the clerk of the  
21 district court. The party shall state in the petition or complaint  
22 whether such party requests that the proceeding be heard by a county  
23 court judge or by a district court judge. If the party requests the  
24 case be heard by a county court judge, the county court judge  
25 assigned to hear cases in the county in which the matter is filed at

1 the time of the hearing is deemed appointed by the district court and  
2 the consent of the county court judge is not required. Such  
3 proceeding is considered a district court proceeding, even if heard  
4 by a county court judge, and an order or judgment of the county court  
5 in a domestic relations matter has the force and effect of a district  
6 court judgment. The testimony in a domestic relations matter heard  
7 before a county court judge shall be preserved as provided in section  
8 25-2732.

9 (3) In addition to the jurisdiction provided for  
10 paternity or custody determinations under subsection (2) of this  
11 section, a county court or separate juvenile court which already has  
12 jurisdiction over the child whose paternity or custody is to be  
13 determined has jurisdiction over such paternity or custody  
14 determination.

15 Sec. 2. Section 43-1801, Reissue Revised Statutes of  
16 Nebraska, is amended to read:

17 43-1801 ~~As used in sections 43-1801 to 43-1803, unless~~  
18 ~~the context otherwise requires, grandparent shall mean the biological~~  
19 ~~or adoptive parent of a minor child's biological or adoptive parent.~~  
20 ~~Such term shall not include a biological or adoptive parent of any~~  
21 ~~minor child's biological or adoptive parent whose parental rights~~  
22 ~~have been terminated.~~

23 For purposes of sections 43-1801 to 43-1803, person with  
24 a legitimate interest includes, but is not limited to, a grandparent,  
25 great-grandparent, stepparent, former stepparent, family member, and

1 legal guardian.

2           Sec. 3. Section 43-1802, Reissue Revised Statutes of  
3 Nebraska, is amended to read:

4           43-1802 (1) A ~~grandparent~~ person with a legitimate  
5 interest may seek visitation with ~~his or her minor grandchild~~ a minor  
6 child if:

7           (a) The child's parent or parents are deceased;

8           (b) The marriage of the child's parents has been  
9 dissolved or petition for the dissolution of such marriage has been  
10 filed, is still pending, but no decree has been entered; ~~or~~

11           (c) The parents of the minor child have never been  
12 married but paternity has been legally established; or -

13           (d) The legal custody of or parental responsibilities  
14 with respect to the child have been given or allocated to a party  
15 other than the child's parent or the child has been placed outside of  
16 and does not reside in the home of the child's parent, excluding any  
17 child who has been legally adopted.

18           (2) In determining whether a ~~grandparent~~ person with a  
19 legitimate interest shall be granted visitation, the court shall  
20 require evidence concerning the beneficial nature of the relationship  
21 of the ~~grandparent~~ person to the child. The evidence may be presented  
22 by affidavit and shall demonstrate that a significant beneficial  
23 relationship exists, or has existed in the past, between the  
24 ~~grandparent~~ person and the child and that it would be in the best  
25 interests of the child to allow such relationship to continue.

1 Reasonable rights of visitation may be granted when the court  
2 determines by clear and convincing evidence that there is, or has  
3 been, a significant beneficial relationship between the ~~grandparent~~  
4 person and the child, that it is in the best interests of the child  
5 that such relationship continue, and that such visitation will not  
6 adversely interfere with the parent-child relationship.

7 (3) The court may modify an order granting or denying  
8 such visitation upon a showing that there has been a material change  
9 in circumstances which justifies such modification and that the  
10 modification would serve the best interests of the child.

11 Sec. 4. Section 43-1803, Reissue Revised Statutes of  
12 Nebraska, is amended to read:

13 43-1803 (1) If the minor child's parent or parents are  
14 deceased or have never been married, a ~~grandparent~~ person with a  
15 legitimate interest seeking visitation shall file a petition in the  
16 district court in the county in which the minor child resides. If the  
17 marriage of the parents of a minor child has been dissolved or a  
18 petition for the dissolution of such marriage has been filed, is  
19 still pending, but no decree has been entered, a ~~grandparent~~ person  
20 with a legitimate interest seeking visitation shall file a petition  
21 for such visitation in the district court in the county in which the  
22 dissolution was had or the proceedings are taking place. The county  
23 court or the district court may hear the proceeding as provided in  
24 section 25-2740. The form of the petition and all other pleadings  
25 required by this section shall be prescribed by the Supreme Court.

1 The petition shall include the following:

2 (a) The name and address of the petitioner and his or her  
3 attorney;

4 (b) The name and address of the parent, guardian, or  
5 other party having custody of the child or children;

6 (c) The name and address of any parent not having custody  
7 of the child or children if applicable;

8 (d) The name and year of birth of each child with whom  
9 visitation is sought;

10 (e) The relationship of petitioner to such child or  
11 children;

12 (f) An allegation that the parties have attempted to  
13 reconcile their differences, but the differences are irreconcilable  
14 and such parties have no recourse but to seek redress from the court;  
15 and

16 (g) A statement of the relief sought.

17 (2) When a petition seeking visitation is filed, a copy  
18 of the petition shall be served upon the parent or parents or other  
19 party having custody of the child and upon any parent not having  
20 custody of such child by personal service or in the manner provided  
21 in section 25-517.02.

22 Sec. 5. Original sections 25-2740, 43-1801, 43-1802, and  
23 43-1803, Reissue Revised Statutes of Nebraska, are repealed.