

AMENDMENTS TO LB 199

Introduced by Judiciary.

1 1. Strike original sections 2 and 12 and insert the
2 following new sections:

3 Sec. 2. Section 42-364, Reissue Revised Statutes of
4 Nebraska, is amended to read:

5 42-364 (1) In an action under Chapter 42 involving
6 child support, child custody, parenting time, visitation, or other
7 access, the parties and their counsel, if represented, shall
8 develop a parenting plan as provided in the Parenting Act. If
9 the parties and counsel do not develop a parenting plan, the
10 complaint shall so indicate as provided in section 42-353 and
11 before July 1, 2010, the case may be referred to mediation,
12 specialized alternative dispute resolution, or other alternative
13 dispute resolution process and on or after such date the case
14 shall be referred to mediation or specialized alternative dispute
15 resolution as provided in the Parenting Act. The decree in an
16 action involving the custody of a minor child shall include the
17 determination of legal custody and physical custody based upon the
18 best interests of the child, as defined in the Parenting Act, and
19 child support. Such determinations shall be made by incorporation
20 into the decree of (a) a parenting plan developed by the parties,
21 if approved by the court, or (b) a parenting plan developed by the
22 court based upon evidence produced after a hearing in open court if
23 no parenting plan is developed by the parties or the plan developed

1 by the parties is not approved by the court. The decree shall
2 conform to the Parenting Act. The social security number of each
3 parent and the minor child shall be furnished to the clerk of the
4 district court but shall not be disclosed or considered a public
5 record.

6 (2) In determining legal custody or physical custody,
7 the court shall not give preference to either parent based on the
8 sex of the parent and, except as provided in section 43-2933, no
9 presumption shall exist that either parent is more fit or suitable
10 than the other. Custody shall be determined on the basis of the
11 best interests of the child, as defined in the Parenting Act.
12 Unless parental rights are terminated, both parents shall continue
13 to have the rights stated in section 42-381.

14 (3) Custody of a minor child may be placed with both
15 parents on a joint legal custody or joint physical custody basis,
16 or both, (a) when both parents agree to such an arrangement in the
17 parenting plan and the court determines that such an arrangement is
18 in the best interests of the child or (b) if the court specifically
19 finds, after a hearing in open court, that joint physical custody
20 or joint legal custody, or both, is in the best interests of the
21 minor child regardless of any parental agreement or consent.

22 (4) In determining the amount of child support to be
23 paid by a parent, the court shall consider the earning capacity
24 of each parent and the guidelines provided by the Supreme Court
25 pursuant to section 42-364.16 for the establishment of child
26 support obligations. Upon application, hearing, and presentation of
27 evidence of an abusive disregard of the use of child support money

1 or cash medical support paid by one party to the other, the court
2 may require the party receiving such payment to file a verified
3 report with the court, as often as the court requires, stating the
4 manner in which ~~such~~ child support money or cash medical support
5 is used. Child support money or cash medical support paid to the
6 party having custody of the minor child shall be the property of
7 such party except as provided in section 43-512.07. The clerk of
8 the district court shall maintain a record, separate from all other
9 judgment dockets, of all decrees and orders in which the payment
10 of child support, cash medical support, or spousal support has
11 been ordered, whether ordered by a district court, county court,
12 separate juvenile court, or county court sitting as a juvenile
13 court. Orders for child support or cash medical support in cases
14 in which a party has applied for services under Title IV-D of
15 the federal Social Security Act, as amended, shall be reviewed as
16 provided in sections 43-512.12 to 43-512.18.

17 (5) Whenever termination of parental rights is placed in
18 issue:

19 (a) The court shall transfer jurisdiction to a juvenile
20 court established pursuant to the Nebraska Juvenile Code unless
21 a showing is made that the county court or district court
22 is a more appropriate forum. In making such determination, the
23 court may consider such factors as cost to the parties, undue
24 delay, congestion of dockets, and relative resources available for
25 investigative and supervisory assistance. A determination that the
26 county court or district court is a more appropriate forum shall
27 not be a final order for the purpose of enabling an appeal. If

1 no such transfer is made, the court shall appoint an attorney as
2 guardian ad litem to protect the interests of any minor child.
3 The court may terminate the parental rights of one or both parents
4 after notice and hearing when the court finds such action to be in
5 the best interests of the minor child, as defined in the Parenting
6 Act, and it appears by the evidence that one or more of the grounds
7 for termination of parental rights stated in section 43-292 exist;
8 and

9 (b) The court shall inform a parent who does not have
10 legal counsel of the parent's right to retain counsel and of
11 the parent's right to retain legal counsel at county expense if
12 such parent is unable to afford legal counsel. If such parent
13 is unable to afford legal counsel and requests the court to
14 appoint legal counsel, the court shall immediately appoint an
15 attorney to represent the parent in the termination proceedings.
16 The court shall order the county to pay the attorney's fees and
17 all reasonable expenses incurred by the attorney in protecting the
18 rights of the parent. At such hearing, the guardian ad litem shall
19 take all action necessary to protect the interests of the minor
20 child. The court shall fix the fees and expenses of the guardian ad
21 litem and tax the same as costs but may order the county to pay on
22 finding the responsible party indigent and unable to pay.

23 (6) Modification proceedings relating to support,
24 custody, parenting time, visitation, other access, or removal of
25 children from the jurisdiction of the court shall be commenced
26 by filing a complaint to modify. Modification of a parenting
27 plan is governed by the Parenting Act. Proceedings to modify a

1 parenting plan shall be commenced by filing a complaint to modify.
2 Such actions may be referred to mediation, specialized alternative
3 dispute resolution, or other alternative dispute resolution process
4 before July 1, 2010, and on and after such date shall be referred
5 to mediation or specialized alternative dispute resolution as
6 provided in the Parenting Act. Service of process and other
7 procedure shall comply with the requirements for a dissolution
8 action.

9 (7) In any proceeding under this section relating to
10 custody of a child of school age, certified copies of school
11 records relating to attendance and academic progress of such child
12 are admissible in evidence.

13 Sec. 3. Section 42-369, Reissue Revised Statutes of
14 Nebraska, is amended to read:

15 42-369 (1) All orders, decrees, or judgments for
16 temporary or permanent support payments, including child, spousal,
17 or medical support, and all orders, decrees, or judgments for
18 alimony or modification of support payments or alimony shall direct
19 the payment of such sums to be made commencing on the first day
20 of each month for the use of the persons for whom the support
21 payments or alimony have been awarded. Such payments shall be made
22 to the clerk of the district court (a) when the order, decree, or
23 judgment is for spousal support, alimony, or maintenance support
24 and the order, decree, or judgment does not also provide for
25 child support, and (b) when the payment constitutes child care
26 or day care expenses, unless payments under subdivision (1)(a) or
27 (1)(b) of this section are ordered to be made directly to the

1 obligee. All other support order payments shall be made to the
2 State Disbursement Unit. In all cases in which income withholding
3 has been implemented pursuant to the Income Withholding for Child
4 Support Act or sections 42-364.01 to 42-364.14, support order
5 payments shall be made to the State Disbursement Unit. The court
6 may order such payment to be in cash or guaranteed funds.

7 ~~(2)~~ (2)(a) If the ~~person~~ party against whom an order,
8 decree, or judgment for child support is entered or the custodial
9 ~~parent or guardian~~ party has health insurance available to him
10 or her through an employer, ~~or organization,~~ or other health
11 insurance entity which may extend to cover any children affected
12 by the order, decree, or judgment and the health care coverage
13 is accessible to the children and is available to the responsible
14 party at reasonable cost, the court shall require health care
15 coverage to be provided. Health care coverage is accessible if
16 the covered children can obtain services from a plan provider with
17 reasonable effort by the custodial party. When the administrative
18 agency, court, or other tribunal determines that the only health
19 care coverage option available through the noncustodial party
20 is a plan that limits service coverage to providers within a
21 defined geographic area, the administrative agency, court, or
22 other tribunal shall determine whether the child lives within the
23 plan's service area. If the child does not live within the plan's
24 service area, the administrative agency, court, or other tribunal
25 shall determine whether the plan has a reciprocal agreement that
26 permits the child to receive coverage at no greater cost than if
27 the child resided in the plan's service area. The administrative

1 agency, court, or other tribunal shall also determine if primary
2 care is available within thirty minutes or thirty miles of the
3 child's residence. For the purpose of determining the accessibility
4 of health care coverage, the administrative agency, court, or
5 other tribunal may determine and include in an order that longer
6 travel times are permissible if residents, in part or all of
7 the service area, customarily travel distances farther than thirty
8 minutes or thirty miles. If primary care services are not available
9 within these constraints, the health care coverage is presumed
10 inaccessible. If health care coverage is not available or is
11 inaccessible and one or more of the parties are receiving Title
12 IV-D services, then cash medical support shall be ordered. Cash
13 medical support or the cost of health care coverage is considered
14 reasonable in cost if the cost to the party responsible for
15 providing medical support does not exceed three percent of his
16 or her gross income. In applying the three-percent standard, the
17 cost is the cost of adding the children to existing health care
18 coverage or the difference between self-only and family health care
19 coverage. Cash medical support payments shall not be ordered if,
20 at the time that the order is issued or modified, the responsible
21 party's income is or such expense would reduce the responsible
22 party's net income below the basic subsistence limitation provided
23 in Nebraska Court Rule section 4-218. If such rule does not
24 describe a basic subsistence limitation, the responsible party's
25 net income shall not be reduced below nine hundred three dollars
26 net monthly income for one person or below the poverty guidelines
27 updated annually in the Federal Register by the U. S. Department of

1 Health and Human Services under the authority of 42 U.S.C. 902(2).
2 ~~the court shall require the option to be exercised or comparable~~
3 ~~coverage be obtained by either party for additional coverage which~~
4 ~~favours the best interests of the child or children affected unless~~
5 ~~the parties have otherwise stipulated in writing or to the court.~~

6 (b) For purposes of this section:

7 (i) Health care coverage has the same meaning as in
8 section 44-3,144; and

9 (ii) Cash medical support means an amount ordered to be
10 paid toward the cost of health insurance provided by a public
11 entity or by another parent through employment or otherwise or for
12 other medical costs not covered by insurance.

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

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

27 (5) Unless otherwise specified by the court, an equal and

1 proportionate share of any child support awarded shall be presumed
2 to be payable on behalf of each child subject to the order, decree,
3 or judgment for purposes of an assignment under section 43-512.07.

4 Sec. 13. Sections 2, 3, 4, 5, 7, 8, 9, 10, 13, and 14 of
5 this act become operative on September 30, 2009. Sections 6 and 15
6 of this act become operative on October 1, 2009. Sections 11, 12,
7 and 16 of this act become operative on January 1, 2010. Sections 1
8 and 17 of this act become operative on October 1, 2010.

9 Sec. 14. Original sections 42-364, 42-369, 43-512,
10 43-512.03, 43-512.12, 43-512.16, and 43-512.17, Reissue Revised
11 Statutes of Nebraska, and section 44-3,144, Revised Statutes
12 Cumulative Supplement, 2008, are repealed.

13 Sec. 15. Original section 43-512.07, Reissue Revised
14 Statutes of Nebraska, is repealed.

15 Sec. 16. Original sections 48-2302 and 77-27,166, Reissue
16 Revised Statutes of Nebraska, are repealed.

17 Sec. 17. Original section 42-358.02, Reissue Revised
18 Statutes of Nebraska, is repealed.