

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIFTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 702

FINAL READING

Introduced by Kolterman, 24; Riepe, 12.

Read first time January 03, 2018

Committee: Health and Human Services

1 A BILL FOR AN ACT relating to children; to amend sections 42-369,
2 43-512.12, 43-512.15, and 44-3,144, Reissue Revised Statutes of
3 Nebraska; to change provisions relating to children's health care
4 coverage; to change provisions relating to Title IV-D child support
5 order modification procedures; to change child support procedures as
6 related to incarcerated individuals; to redefine terms; to harmonize
7 provisions; and to repeal the original sections.
8 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 42-369, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 42-369 (1) All orders, decrees, or judgments for temporary or
4 permanent support payments, including child, spousal, or medical support,
5 and all orders, decrees, or judgments for alimony or modification of
6 support payments or alimony shall direct the payment of such sums to be
7 made commencing on the first day of each month for the use of the persons
8 for whom the support payments or alimony have been awarded. Such payments
9 shall be made to the clerk of the district court (a) when the order,
10 decree, or judgment is for spousal support, alimony, or maintenance
11 support and the order, decree, or judgment does not also provide for
12 child support, and (b) when the payment constitutes child care or day
13 care expenses, unless payments under subdivision (1)(a) or (1)(b) of this
14 section are ordered to be made directly to the obligee. All other support
15 order payments shall be made to the State Disbursement Unit. In all cases
16 in which income withholding has been implemented pursuant to the Income
17 Withholding for Child Support Act or sections 42-364.01 to 42-364.14,
18 support order payments shall be made to the State Disbursement Unit. The
19 court may order such payment to be in cash or guaranteed funds.

20 (2)(a) If the party against whom an order, decree, or judgment for
21 child support is entered or the custodial party has health care coverage
22 ~~insurance~~ available to him or her through an employer, organization, or
23 other health care coverage ~~insurance~~ entity which may extend to cover any
24 children affected by the order, decree, or judgment and the health care
25 coverage is accessible to the children and is available to the
26 responsible party at reasonable cost, the court shall require health care
27 coverage to be provided. Health care coverage is accessible if the
28 covered children can obtain services from a plan provider with reasonable
29 effort by the custodial party. When the administrative agency, court, or
30 other tribunal determines that the only health care coverage option
31 available through the noncustodial party is a plan that limits service

1 coverage to providers within a defined geographic area, the
2 administrative agency, court, or other tribunal shall determine whether
3 the child lives within the plan's service area. If the child does not
4 live within the plan's service area, the administrative agency, court, or
5 other tribunal shall determine whether the plan has a reciprocal
6 agreement that permits the child to receive coverage at no greater cost
7 than if the child resided in the plan's service area. The administrative
8 agency, court, or other tribunal shall also determine if primary care is
9 available within thirty minutes or thirty miles of the child's residence.
10 For the purpose of determining the accessibility of health care coverage,
11 the administrative agency, court, or other tribunal may determine and
12 include in an order that longer travel times are permissible if
13 residents, in part or all of the service area, customarily travel
14 distances farther than thirty minutes or thirty miles. If primary care
15 services are not available within these constraints, the health care
16 coverage is presumed inaccessible. If health care coverage is not
17 available or is inaccessible and one or more of the parties are receiving
18 Title IV-D services, then cash medical support shall be ordered. Cash
19 medical support or the cost of health care coverage ~~private health~~
20 ~~insurance~~ is considered reasonable in cost if the cost to the party
21 responsible for providing medical support does not exceed three percent
22 of his or her gross income. In applying the three-percent standard, the
23 cost is the cost of adding the children to existing health care coverage
24 or the difference between self-only and family health care coverage. Cash
25 medical support payments shall not be ordered if, at the time that the
26 order is issued or modified, the responsible party's income is or such
27 expense would reduce the responsible party's net income below the basic
28 subsistence limitation provided in Nebraska Court Rule section 4-218. If
29 such rule does not describe a basic subsistence limitation, the
30 responsible party's net income shall not be reduced below nine hundred
31 three dollars net monthly income for one person or below the poverty

1 guidelines updated annually in the Federal Register by the United States
2 Department of Health and Human Services under the authority of 42 U.S.C.
3 9902(2).

4 (b) For purposes of this section:

5 (i) Health care coverage has the same meaning as in section
6 44-3,144; and

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

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

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

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

28 Sec. 2. Section 43-512.12, Reissue Revised Statutes of Nebraska, is
29 amended to read:

30 43-512.12 (1) Child support orders in cases in which a party has
31 applied for services under Title IV-D of the federal Social Security Act,

1 as amended, shall be reviewed by the Department of Health and Human
2 Services to determine whether to refer such orders to the county attorney
3 or authorized attorney for filing of an application for modification. An
4 order shall be reviewed by the department upon its own initiative or at
5 the request of either parent when such review is required by Title IV-D
6 of the federal Social Security Act, as amended. After review the
7 department shall refer an order to a county attorney or authorized
8 attorney when the verifiable financial information available to the
9 department indicates:

10 (a) The present child support obligation varies from the Supreme
11 Court child support guidelines pursuant to section 42-364.16 by more than
12 the percentage, amount, or other criteria established by Supreme Court
13 rule, and the variation is due to financial circumstances which have
14 lasted at least three months and can reasonably be expected to last for
15 an additional six months; or

16 (b) Health care coverage meeting the requirements of subsection (2)
17 of section 42-369 is available to either party and the children do not
18 have health care coverage other than the medical assistance program under
19 the Medical Assistance Act.

20 Health care coverage cases may be modified within three years of
21 entry of the order.

22 (2) Orders that are not addressed under subsection (1) of this
23 section shall not be reviewed by the department if it has not been three
24 years since the present child support obligation was ordered unless the
25 requesting party demonstrates a substantial change in circumstances that
26 is expected to last for the applicable time period established by
27 subdivision (1)(a) of this section. Such substantial change in
28 circumstances may include, but is not limited to, change in employment,
29 earning capacity, or income or receipt of an ongoing source of income
30 from a pension, gift, or lottery winnings. An order may be reviewed after
31 one year if the department's determination after the previous review was

1 not to refer to the county attorney or authorized attorney for filing of
2 an application for modification because financial circumstances had not
3 lasted or were not expected to last for the time periods established by
4 subdivision (1)(a) of this section.

5 (3) Notwithstanding the time periods set forth in subdivision (1)(a)
6 of this section, within fifteen business days of learning that a
7 noncustodial parent will be incarcerated for more than one hundred eighty
8 calendar days, the department shall send notice by first-class mail to
9 both parents informing them of the right to request the state to review
10 and, if appropriate, adjust the order. Such notice shall be sent to the
11 incarcerated parent at the address of the facility at which the parent is
12 incarcerated.

13 Sec. 3. Section 43-512.15, Reissue Revised Statutes of Nebraska, is
14 amended to read:

15 43-512.15 (1) The county attorney or authorized attorney, upon
16 referral from the Department of Health and Human Services, shall file a
17 complaint to modify a child support order unless the attorney determines
18 in the exercise of independent professional judgment that:

19 (a) The variation from the Supreme Court child support guidelines
20 pursuant to section 42-364.16 is based on material misrepresentation of
21 fact concerning any financial information submitted to the attorney;

22 (b) The variation from the guidelines is due to a voluntary
23 reduction in net monthly income. Incarceration may not be treated as
24 voluntary unemployment in establishing or modifying support orders For
25 purposes of this section, a person who has been incarcerated for a period
26 of one year or more in a county or city jail or a federal or state
27 correctional facility shall be considered to have an involuntary
28 reduction of income unless (i) the incarceration is a result of a
29 conviction for criminal nonsupport pursuant to section 28-706 or a
30 conviction for a violation of any federal law or law of another state
31 substantially similar to section 28-706, (ii) the incarcerated individual

1 ~~has a documented record of willfully failing or neglecting to provide~~
2 ~~proper support which he or she knew or reasonably should have known he or~~
3 ~~she was legally obligated to provide when he or she had sufficient~~
4 ~~resources to provide such support, or (iii) the incarceration is a result~~
5 ~~of a conviction for a crime in which the child who is the subject of the~~
6 ~~child support order was victimized; or~~

7 (c) When the amount of the order is considered with all the other
8 undisputed facts in the case, no variation from the criteria set forth in
9 subdivisions (1)(a) and (b) of section 43-512.12 exists.

10 ~~(2) The department, a county attorney, or an authorized attorney~~
11 ~~shall not in any case be responsible for reviewing or filing an~~
12 ~~application to modify child support for individuals incarcerated as~~
13 ~~described in subdivision (1)(b) of this section.~~

14 ~~(2)~~ (3) The proceedings to modify a child support order shall comply
15 with section 42-364, and the county attorney or authorized attorney shall
16 represent the state in the proceedings.

17 ~~(3)~~ (4) After a complaint to modify a child support order is filed,
18 any party may choose to be represented personally by private counsel. Any
19 party who retains private counsel shall so notify the county attorney or
20 authorized attorney in writing.

21 Sec. 4. Section 44-3,144, Reissue Revised Statutes of Nebraska, is
22 amended to read:

23 44-3,144 For purposes of sections 44-3,144 to 44-3,150:

24 (1) Authorized attorney has the same meaning as in section 43-512;

25 (2) Child means an individual to whom or on whose behalf a legal
26 duty of support is owed by an obligor;

27 (3) Department means the Department of Health and Human Services;

28 (4) Employer means an individual, a firm, a partnership, a
29 corporation, an association, a union, a political subdivision, a state
30 agency, or any agent thereof who pays income to an obligor on a periodic
31 basis and has or provides health care coverage to the obligor-employee;

1 (5) Health care coverage means a health benefit plan or combination
2 of plans, including fee for service, health maintenance organization,
3 preferred provider organization, and other types of coverage available to
4 either party, under which medical services could be provided to dependent
5 children, ~~other than public medical assistance programs,~~ that provide
6 medical care or benefits;

7 (6) Insurer means an insurer as defined in section 44-103 offering a
8 group health plan as defined in 29 U.S.C. 1167, as such section existed
9 on January 1, 2002;

10 (7) Medical support means the provision of health care coverage,
11 contribution to the cost of health care coverage, contribution to
12 expenses associated with the birth of a child, other uninsured medical
13 expenses of a child, or any combination thereof;

14 (8) Medical assistance program means the program established
15 pursuant to the Medical Assistance Act;

16 (9) National medical support notice means a uniform administrative
17 notice issued by the county attorney, authorized attorney, or department
18 to enforce the medical support provisions of a support order;

19 (10) Obligee has the same meaning as in section 43-3341;

20 (11) Obligor has the same meaning as in section 43-3341;

21 (12) Plan administrator means the person or entity that administers
22 health care coverage for an employer;

23 (13) Qualified medical child support order means an order that meets
24 the requirements of 29 U.S.C. 1169, as such section existed on January 1,
25 2002; and

26 (14) Uninsured medical expenses means the reasonable and necessary
27 health-related expenses that are not paid by health care coverage.

28 Sec. 5. Original sections 42-369, 43-512.12, 43-512.15, and
29 44-3,144, Reissue Revised Statutes of Nebraska, are repealed.