

ENGROSSED LEGISLATIVE BILL 704

Introduced by McKinney, 11; Spivey, 13.

A BILL FOR AN ACT relating to child support; to amend section 43-512.13, Reissue Revised Statutes of Nebraska, and section 43-512.12, Revised Statutes Cumulative Supplement, 2024; to change provisions relating to the review and modification of an incarcerated individual's child support order; to harmonize provisions; and to repeal the original sections.

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

Section 1. Section 43-512.12, Revised Statutes Cumulative Supplement, 2024, is amended to read:

43-512.12 (1) Child support orders in cases in which a party has applied for services under Title IV-D of the federal Social Security Act, as amended, shall be reviewed by the Department of Health and Human Services to determine whether to refer such orders to the county attorney or authorized attorney for filing of an application for modification. An order shall be reviewed by the department upon its own initiative or at the request of either parent when such review is required by Title IV-D of the federal Social Security Act, as amended. After review the department shall refer an order to a county attorney or authorized attorney when the verifiable financial information available to the department indicates:

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

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

Assistance Act.

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

(2) Orders that are not addressed under subsection (1) of this section shall not be reviewed by the department if it has not been three years since the present child support obligation was ordered unless the requesting party demonstrates a substantial change in circumstances that is expected to last for the applicable time period established by subdivision (1)(a) of this section. Such substantial change in circumstances may include, but is not limited to, change in employment, earning capacity, or income or receipt of an ongoing source of income from a pension, gift, lottery winnings, casino winnings, parimutuel winnings, sports wagering winnings, or cash device winnings. An order may be reviewed after one year if the department's determination after the previous review was not to refer to the county attorney or authorized attorney for filing of an application for modification because financial circumstances had not lasted or were not expected to last for the time periods established by subdivision (1)(a) of this section.

(3)(a) Notwithstanding the time periods set forth in subdivision (1)(a) of this section, within fifteen business days of learning that a noncustodial parent will be incarcerated for more than one hundred eighty calendar days, the department shall initiate a review of the noncustodial parent's child support order. The department shall send notice by first-class mail to both parents informing them of such review and require the parties to submit financial information as provided in sections 43-512.14 and 43-512.17 within thirty days after the date of the notice. Such notice shall be sent to the incarcerated parent at the address of the facility at which the parent is incarcerated and to the administrator of such facility as defined in section 47-1003.

(b) The department shall, within one hundred twenty calendar days after the date the department learned the noncustodial parent was to be incarcerated:

(i) Complete such review; and

(ii) Notify the parties of its determination pursuant to section

43-512.13.

Sec. 2. Section 43-512.13, Reissue Revised Statutes of Nebraska, is amended to read:

43-512.13 (1)(a) When review of a child support order pursuant to subsection (1) or (2) of section 43-512.12 has been requested by one of the parents or initiated by the Department of Health and Human Services, the department shall send notice of the pending review to each parent affected by the order at the parent's last-known mailing address thirty days before the review is conducted. Such review shall require the parties to submit financial information as provided in sections 43-512.14 and 43-512.17.

(b) Except as provided in subsection (2) of this section, after the department completes the review of the child support order in accordance with section 43-512.12, it shall send notice to each parent of the determination to refer or not refer the order to the county attorney or authorized attorney for filing of an application for modification of the order in the district court.

(c) Each parent shall be allowed thirty days to submit to the department a written request for a review of such determination. The parent requesting review shall submit the request in writing to the department, stating the reasons for the request and providing written evidence to support the request.

(d) The department shall review the available verifiable financial information and make a final determination whether or not to refer the order to the county attorney or authorized attorney for filing of an application for modification of the child support order. Written notice of such final determination shall be sent to each parent affected by the order at the parent's last-known mailing address.

(e) A final determination under this subsection shall not be considered a contested case for purposes of the Administrative Procedure Act.

(2)(a) If, upon the completion of a review initiated pursuant to subsection (3) of section 43-512.12, the department finds a decrease in the amount of the present child support obligation is not warranted because it does not meet the criteria in subsection (1) or (2) of section 43-512.12, the

department shall grant the incarcerated parent a conference to review the department's findings. Such conference shall be scheduled within thirty days after the completion of the department's review and may be conducted in person or by means of virtual conferencing. The department shall send notice of such conference by first-class mail to both parents. The notice shall include the following:

- (i) The department's findings;
- (ii) Whether the conference will be conducted in person or virtually;
- (iii) The date, time, and location of the conference;
- (iv) That the parties may submit any additional written evidence to the department at least ten business days prior to the conference;
- (v) That the incarcerated parent may waive the conference and that such request shall be filed at least five business days prior to the conference date; and
- (vi) Any other information the department deems necessary.

(b) The department shall review all available verifiable financial information and, within thirty days after the conference, make a final determination whether or not a decrease in the present child support obligation is warranted in accordance with the criteria in subsection (1) or (2) of section 43-512.12 and whether or not to refer the order to the county attorney or authorized attorney. Written notice of such final determination shall be sent to each parent by first-class mail.

(c) If the incarcerated parent waives the conference under this subsection, the department shall make a final determination and send written notice of such final determination to each parent by first-class mail.

(d) Notices required to be sent to an incarcerated parent under this section shall be sent to the address of the facility at which the parent is incarcerated and to the administrator of such facility as defined in section 47-1003.

(e) A final determination under this subsection shall not be considered a contested case for purposes of the Administrative Procedure Act.

Sec. 3. Original section 43-512.13, Reissue Revised Statutes of Nebraska, and section 43-512.12, Revised Statutes Cumulative Supplement, 2024, are repealed.

PRESIDENT OF THE LEGISLATURE

*THIS IS TO CERTIFY that the within LB 704 was passed by the One Hundred Ninth
Legislature of Nebraska at its First Session on the day
of 20.....*

CLERK OF THE LEGISLATURE

Approved:

..... 20....., o'clockM.

GOVERNOR