

AMENDMENTS TO LB 849

(Amendments to Standing Committee amendments, AM2120)

Introduced by Stuthman, 22.

1 1. Insert the following sections:

2 Sec. 13. Section 43-512.12, Revised Statutes Supplement,
3 2009, is amended to read:

4 43-512.12 (1) Child support orders in cases in which
5 a party has applied for services under Title IV-D of the
6 federal Social Security Act, as amended, shall be reviewed by
7 the Department of Health and Human Services to determine whether
8 to refer such orders to the county attorney or authorized attorney
9 for filing of an application for modification. An order shall
10 be reviewed by the department upon its own initiative or at the
11 request of either parent when such review is required by Title IV-D
12 of the federal Social Security Act, as amended. After review the
13 department shall refer an order to a county attorney or authorized
14 attorney when the verifiable financial information available to the
15 department indicates:

16 ~~(1)~~ (a) The present child support obligation varies from
17 the Supreme Court child support guidelines pursuant to section
18 42-364.16 by more than the percentage, amount, or other criteria
19 established by Supreme Court rule, and the variation is due to
20 financial circumstances which have lasted at least three months and
21 can reasonably be expected to last for an additional six months; or

22 ~~(2)~~ (b) Health care coverage meeting the requirements

1 of subsection (2) of section 42-369 is available to either party
2 and the children do not have health care coverage other than
3 the medical assistance program under the Medical Assistance Act.~~An~~
4 ~~order~~ Health care coverage cases may be modified within three years
5 of entry of the order.

6 (2) Orders that are not addressed under subsection (1)
7 of this section shall not be reviewed by the department if it has
8 not been three years since the present child support obligation was
9 ordered. ~~An order shall not be reviewed by the department more than~~
10 ~~once every three years unless the requesting party demonstrates~~
11 ~~a substantial change in circumstances,~~ and an that is expected
12 to last for the applicable time period established by subdivision
13 (1)(a) of this section. Such substantial change in circumstances
14 may include, but is not limited to, change in employment, earning
15 capacity, income, or receipt of an ongoing source of income from
16 a pension, gift, or lottery winnings. An order may be reviewed
17 after one year if the department's determination after the previous
18 review was not to refer to the county attorney or authorized
19 attorney for filing of an application for modification because
20 financial circumstances had not lasted or were not expected to last
21 for the time periods established by subdivision ~~(1)~~ (1)(a) of this
22 section.

23 Sec. 14. Section 43-1701, Reissue Revised Statutes of
24 Nebraska, is amended to read:

25 43-1701 Sections 43-1701 to 43-1743 and section 17 of
26 this act shall be known and may be cited as the Income Withholding
27 for Child Support Act.

1 Sec. 15. Section 43-1702, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 43-1702 It is the intent of the Legislature to encourage
4 the use of all proven techniques for the collection of child,
5 spousal, and medical support and monetary judgments. While income
6 withholding is the preferred technique, other techniques such as
7 liens on property and contempt proceedings should be used when
8 appropriate. The purpose of the Income Withholding for Child
9 Support Act is to provide a simplified and relatively automatic
10 procedure for implementing income withholding in order to guarantee
11 that child, spousal, and medical support obligations and monetary
12 judgments are met when income is available for that purpose, to
13 encourage voluntary withholding by obligors, and to facilitate
14 the implementation of income withholding based on foreign support
15 orders.

16 Sec. 16. Section 43-1703, Reissue Revised Statutes of
17 Nebraska, is amended to read:

18 43-1703 For purposes of the Income Withholding for Child
19 Support Act, unless the context otherwise requires, the definitions
20 found in sections 43-1704 to 43-1717 and section 17 of this act
21 shall be used.

22 Sec. 17. Monetary judgment means a monetary judgment
23 against an obligor that is unsatisfied and is owed to the federal
24 or state governmental unit in a case in which services are being
25 provided under Title IV-D of the federal Social Security Act, as
26 amended, and the judgment is related to the support of a child.
27 Monetary judgment includes, but is not limited to, the cost of

1 genetic testing that the obligor has been ordered to pay by a
2 court, plus any accumulated interest on the judgment under sections
3 45-103 to 45-103.04, whether the order was issued prior to, on, or
4 after the operative date of this section.

5 Sec. 18. Section 43-1717, Reissue Revised Statutes of
6 Nebraska, is amended to read:

7 43-1717 Support order shall mean any order, decree, or
8 judgment for child, spousal, or medical support or for payment
9 of any arrearage for such support issued by a court or agency
10 of competent jurisdiction, whether issued prior to, on, or after
11 November 16, 1985, whether for temporary or permanent support,
12 whether interlocutory or final, whether or not modifiable, and
13 whether or not incidental to a proceeding for dissolution of
14 marriage, judicial or legal separation, separate maintenance,
15 paternity, guardianship, or civil protection or any other action. A
16 support order may include payment for any monetary judgment.

17 Sec. 19. Section 43-1718.02, Reissue Revised Statutes of
18 Nebraska, is amended to read:

19 43-1718.02 (1) In any case in which services are not
20 provided under Title IV-D of the federal Social Security Act, as
21 amended, and a support order has been issued or modified on or
22 after July 1, 1994, the obligor's income shall be subject to income
23 withholding regardless of whether or not payments pursuant to such
24 order are in arrears, and the court shall require such income
25 withholding in its order unless:

26 (a) One of the parties demonstrates and the court
27 finds that there is good cause not to require immediate income

1 withholding; or

2 (b) A written agreement between the parties providing an
3 alternative arrangement is incorporated into the support order.

4 (2) If the court pursuant to subsection (1) of this
5 section orders income withholding regardless of whether or not
6 payments are in arrears, the obligor shall prepare a notice
7 to withhold income. The notice to withhold income shall be
8 substantially similar to a prototype prepared by the department and
9 made available by the department to the State Court Administrator
10 and the clerks of the district courts. The notice to withhold shall
11 direct:

12 (a) That the employer or other payor shall withhold
13 from the obligor's disposable income the amount stated in the
14 notice to withhold for the purpose of satisfying the obligor's
15 ongoing obligation for support payments as they become due, and if
16 there are arrearages, ~~reducing~~ to reduce such arrearages in child,
17 spousal, or medical support payments arising from the obligor's
18 failure to fully comply with a support order, and after the
19 obligor's support obligation is current, to satisfy any monetary
20 judgment against the obligor;

21 (b) That the employer or other payor shall pay to the
22 obligor, on his or her regularly scheduled payday, such income then
23 due which is not required to be withheld as stated on the notice or
24 pursuant to any court order;

25 (c) That the employer or other payor shall not withhold
26 more than the maximum amount permitted to be withheld under section
27 303(b) of the federal Consumer Credit Protection Act, 15 U.S.C.

1 1673(b) (2) (A) and (B), and the amount withheld, including interest,
2 to satisfy an arrearage of child, spousal, or medical support or
3 any monetary judgment when added to the amount withheld to pay
4 current support and the fee provided for in subdivision (2) (d) of
5 this section shall not exceed such maximum amount;

6 (d) That the employer or other payor may assess an
7 additional administrative fee from the obligor's disposable income
8 not to exceed two dollars and fifty cents in any calendar month
9 as compensation for the employer's or other payor's reasonable cost
10 incurred in complying with the notice;

11 (e) That the employer or other payor shall remit, within
12 seven days after the date the obligor is paid and in the manner
13 specified in the notice, the income withheld, less the deduction
14 allowed as an administrative fee by subdivision (2) (d) of this
15 section, to the State Disbursement Unit and shall notify the unit
16 of the date such income was withheld;

17 (f) That the notice to withhold income shall terminate
18 with respect to the employer or other payor without any court
19 action or action by the obligor thirty days after the obligor
20 ceases employment with or is no longer entitled to income from such
21 employer or other payor;

22 (g) That the employer or other payor may combine amounts
23 required to be withheld from the income of two or more obligors in
24 a single payment to the unit if the portion of the single payment
25 which is attributable to each individual obligor is separately
26 identified;

27 (h) That an employer or other payor who fails to withhold

1 and remit income of an obligor after receiving proper notice or who
2 discriminates, demotes, disciplines, or terminates an employee or
3 payee after receiving a notice to withhold income shall be subject
4 to the penalties prescribed in subsections (4) and (5) of this
5 section; and

6 (i) That if the employer or other payor receives more
7 than one notice to withhold income of a single obligor and the
8 amount of income available to be withheld pursuant to the limits
9 specified in subdivision (c) of this subsection is insufficient to
10 satisfy the total support amount ~~certified~~ stated in the notices,
11 the income available shall first be applied to current support. If
12 the total amount of income available to be withheld is insufficient
13 to satisfy the total amount of current support ~~certified~~ stated
14 by the notices, the employer or other payor shall withhold for
15 each notice the proportion that the amount of the current support
16 ~~certified~~ stated in such notice bears to the total amount of
17 current support ~~certified~~ stated in all notices received for
18 the obligor. Any remaining income available to be withheld after
19 current support is satisfied for all notices shall be applied to
20 arrearages. If arrearages are ~~certified~~ stated in more than one
21 notice, the employer or other payor shall withhold for each notice
22 the proportion that the amount of the arrearage ~~certified~~ stated in
23 such notice bears to the total amount of arrearage ~~certified~~ stated
24 in all notices received for the obligor. Any income available to be
25 withheld after the obligor's support obligation is current shall be
26 applied to any monetary judgment. If a monetary judgment is stated
27 in more than one notice, the employer or other payor shall withhold

1 for each notice the proportion that the amount of the monetary
2 judgments stated in such notice bears to the total amount of
3 monetary judgments stated in all notices received for the obligor.

4 Compliance with the order by the employer or other payor
5 shall operate as a discharge of the employer's or other payor's
6 liability to the obligor as to the portion of the obligor's income
7 withheld.

8 (3) The obligor shall deliver the notice to withhold
9 income to his or her current employer or other payor and provide a
10 copy of such notice to the clerk of the district court.

11 (4) Any employer or other payor who fails to withhold and
12 remit any income of an obligor receiving income from the employer
13 or other payor, after proper notice as provided in subsection (2)
14 of this section, shall be required to pay to the unit the amount
15 specified in the notice.

16 (5) An employer or other payor shall not use an order or
17 notice to withhold income or order or the possibility of income
18 withholding as a basis for (a) discrimination in hiring, (b)
19 demotion of an employee or payee, (c) disciplinary action against
20 an employee or payee, or (d) termination of an employee or payee.

21 Upon application by the obligor and after a hearing on
22 the matter, the court may impose a civil fine of up to five hundred
23 dollars for each violation of this subsection.

24 An employer or other payor who violates this subsection
25 shall be required to make full restitution to the aggrieved
26 employee or payee, including reinstatement and backpay.

27 (6) When an obligor ceases employment with or is no

1 longer entitled to income from an employer or other payor, the
2 notice to withhold income shall not cease to operate against the
3 obligor and income withholding shall continue to apply to any
4 subsequent employment or income of the obligor. The notice to
5 withhold income shall terminate with respect to the employer or
6 other payor without any court action or action by the obligor
7 thirty days after the obligor ceases employment with or is no
8 longer entitled to income from such employer or other payor. A
9 notice to withhold income shall also terminate when the child,
10 spousal, or medical support obligation terminates, ~~and~~ all past-due
11 support has been paid, and any monetary judgment has been paid, in
12 which case the obligor shall notify the employer or other payor to
13 cease withholding income.

14 (7) A notice to withhold income may be modified or
15 revoked by a court of competent jurisdiction as a result of
16 modification of the support order. A notice to withhold income may
17 also be modified or revoked by a court of competent jurisdiction,
18 for other good cause shown, after notice and a hearing on the
19 issue.

20 (8) The obligee or obligor may file an action in district
21 court to enforce this section.

22 (9) If after an order is issued in any case under this
23 section the case becomes one in which services are provided under
24 Title IV-D of the federal Social Security Act, as amended, the
25 county attorney or authorized attorney or the Department of Health
26 and Human Services shall implement income withholding as otherwise
27 provided in the Income Withholding for Child Support Act.

1 Sec. 20. Section 43-1720, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 43-1720 If the department has previously sent a notice of
4 assignment and opportunity for hearing on the same support order
5 under section 48-647, the county attorney, authorized attorney,
6 or the department shall ~~certify~~ state the amount to be withheld
7 from an obligor's disposable income pursuant to section 43-1722
8 and shall notify the obligor's employer or other payor pursuant
9 to section 43-1723. If the department has not previously sent
10 such notice, and except in cases in which the court has ordered
11 income withholding pursuant to subsection (1) of section 43-1718.01
12 or section 43-1718.02, upon receiving certification pursuant to
13 section 42-358 or notice of delinquent payments of medical support,
14 the county attorney, the authorized attorney, or the department
15 shall send a notice by certified mail to the last-known address of
16 the obligor stating:

17 (1) That an assignment of his or her income by means of
18 income withholding will go into effect within fifteen days after
19 the date the notice is sent;

20 (2) That the income withholding will continue to apply to
21 any subsequent employer or other payor of the obligor;

22 (3) The amount of support and any monetary judgment the
23 obligor owes;

24 (4) The amount of income that will be withheld; and

25 (5) That within the fifteen-day period, the obligor may
26 request a hearing in the manner specified in the notice to contest
27 a mistake of fact. For purposes of this subdivision, mistake of

1 fact shall mean (a) an error in the amount of current or overdue
2 support or the amount of any monetary judgment, (b) an error in
3 the identity of the obligor, or (c) an error in the amount to be
4 withheld as provided in section 43-1722.

5 Sec. 21. Section 43-1722, Reissue Revised Statutes of
6 Nebraska, is amended to read:

7 43-1722 (1) If no hearing is requested by the obligor,
8 (2) if after a hearing the department determines that the
9 assignment should go into effect, (3) in cases in which the
10 court has ordered income withholding pursuant to subsection (1)
11 of section 43-1718.01, or (4) in cases in which the court has
12 ordered income withholding pursuant to section 43-1718.02, which
13 case subsequently becomes one in which services are being provided
14 under Title IV-D of the federal Social Security Act, as amended,
15 the county attorney, the authorized attorney, or the department
16 shall ~~certify~~ state the amount to be withheld from the obligor's
17 disposable income. Such amount shall not in any case exceed the
18 maximum amount permitted to be withheld under section 303(b) of
19 the federal Consumer Credit Protection Act, 15 U.S.C. 1673(b) (2) (A)
20 and (B), and the amount withheld, including interest, to satisfy
21 an arrearage of child, spousal, or medical support or any monetary
22 judgment when added to the amount withheld to pay current support
23 and the fee provided for in section 43-1723 shall not exceed such
24 maximum amount.

25 Sec. 22. Section 43-1723, Reissue Revised Statutes of
26 Nebraska, is amended to read:

27 43-1723 Except as otherwise provided in this section,

1 the county attorney, the authorized attorney, or the department
2 shall notify the obligor's employer or other payor, by first-class
3 mail or by electronic means, within the time determined by the
4 department which shall comply with the requirements of Title IV-D
5 of the federal Social Security Act, as amended. The notice shall
6 specify the basis for the assignment of income and shall direct:

7 (1) That the employer or other payor shall withhold from
8 the obligor's disposable income the amount ~~certified~~ stated by the
9 county attorney, the authorized attorney, or the department for
10 the purpose of reducing and satisfying the obligor's (a) previous
11 arrearage in child, spousal, or medical support payments arising
12 from the obligor's failure to fully comply with a support order
13 previously entered, ~~and~~ (b) ongoing obligation for support payments
14 as they become due, and (c) then any monetary judgment;

15 (2) That the employer or other payor shall implement
16 income withholding no later than the first pay period that begins
17 following the date on the notice;

18 (3) That the employer or other payor shall pay to the
19 obligor, on his or her regularly scheduled payday, such income
20 then due which is not ~~certified~~ stated to be withheld pursuant to
21 section 43-1722 or any court order;

22 (4) That the employer or other payor may assess an
23 additional administrative fee from the obligor's disposable income
24 not to exceed two dollars and fifty cents in any calendar month
25 as compensation for the employer's or other payor's reasonable cost
26 incurred in complying with the notice;

27 (5) That the employer or other payor shall remit, within

1 seven days after the date the obligor is paid and in the manner
2 specified in the notice, the income withheld, less the deduction
3 allowed as an administrative expense by subdivision (4) of this
4 section, to the State Disbursement Unit as designated in the notice
5 and shall notify the unit of the date such income was withheld;

6 (6) That the employer or other payor shall notify the
7 county attorney, the authorized attorney, or the department in
8 writing of the termination of the employment or income of the
9 obligor, the last-known address of the obligor, and the name and
10 address of the obligor's new employer or other payor, if known, and
11 shall provide such written notification within thirty days after
12 the termination of employment or income;

13 (7) That income withholding is binding on the employer
14 or other payor until further notice by the county attorney, the
15 authorized attorney, or the department;

16 (8) That the employer or other payor may combine amounts
17 required to be withheld from the income of two or more obligors in
18 a single payment to the unit as designated in an income withholding
19 notice if the portion of the single payment which is attributable
20 to each individual obligor is separately identified;

21 (9) That an employer or other payor who fails to withhold
22 and remit income of an obligor after receiving proper notice or who
23 discriminates, demotes, disciplines, or terminates an employee or
24 payee after receiving an income withholding notice shall be subject
25 to the penalties prescribed in sections 43-1724 and 43-1725; and

26 (10) That if the employer or other payor receives more
27 than one notice to withhold income of a single obligor and

1 the amount of income available to be withheld pursuant to the
2 limits specified in section 43-1722 is insufficient to satisfy
3 the total support amount ~~certified~~ stated in the notices, the
4 income available shall first be applied to current support. If the
5 total amount of income available to be withheld is insufficient
6 to satisfy the total amount of current support ~~certified~~ stated
7 by the notices, the employer or other payor shall withhold for
8 each notice the proportion that the amount of the current support
9 ~~certified~~ stated in such notice bears to the total amount of
10 current support ~~certified~~ stated in all notices received for
11 the obligor. Any remaining income available to be withheld after
12 current support is satisfied for all notices shall be applied to
13 arrearages. If arrearages are ~~certified~~ stated in more than one
14 notice, the employer or other payor shall withhold for each notice
15 the proportion that the amount of the arrearage ~~certified~~ stated in
16 such notice bears to the total amount of arrearage ~~certified~~ stated
17 in all notices received for the obligor. Any income available to be
18 withheld after the obligor's support obligation is current shall be
19 applied to any monetary judgment. If a monetary judgment is stated
20 in more than one notice, the employer or other payor shall withhold
21 for each notice the proportion that the amount of the monetary
22 judgments stated in such notice bears to the total amount of
23 monetary judgments stated in all notices received for the obligor.

24 Compliance with the order by the employer or other payor
25 shall operate as a discharge of the employer's or other payor's
26 liability to the obligor as to the portion of the obligor's income
27 withheld. The county attorney, the authorized attorney, or the

1 department need not notify the Commissioner of Labor as a payor if
2 the commissioner is withholding for child support from the obligor
3 under section 48-647 for the same support order.

4 Sec. 23. Section 43-1724, Reissue Revised Statutes of
5 Nebraska, is amended to read:

6 43-1724 Any employer or other payor who fails to withhold
7 and remit any income of an obligor receiving income from the
8 employer or other payor, after proper notice as provided in
9 section 43-1723, shall be required to pay the ~~certified~~ stated
10 amount to the State Disbursement Unit. The county attorney or
11 authorized attorney may file an action in district court to
12 enforce this section. The court may sanction an employer or other
13 payor twenty-five dollars per day, up to five hundred dollars per
14 incident, for failure to comply with proper notice.

15 Sec. 24. Section 43-1726, Reissue Revised Statutes of
16 Nebraska, is amended to read:

17 43-1726 When an obligor ceases employment with or is
18 no longer entitled to income from an employer or other payor,
19 the notice to withhold income shall not cease to operate against
20 the obligor and income withholding shall continue to apply to
21 any subsequent employment or income of the obligor. The notice
22 to withhold income shall terminate with respect to the employer
23 or other payor without any court action or action by the county
24 attorney, the authorized attorney, or the department thirty days
25 after the obligor ceases employment with or is no longer entitled
26 to income from such employer or other payor, except that a notice
27 to withhold income shall not terminate with respect to unemployment

1 compensation benefits being withheld by the Commissioner of Labor
2 pursuant to section 48-647. The employer or other payor shall
3 return a copy of the notice to withhold income to the county
4 attorney, the authorized attorney, or the department, indicate
5 that the employment or obligation to pay income has ceased, and
6 cooperate in providing any known forwarding information. The county
7 attorney, the authorized attorney, or the department shall notify
8 the clerk of the appropriate district court that such employment or
9 obligation to pay income has ceased. A notice to withhold income
10 shall also terminate when the child, spousal, or medical support
11 obligation terminates, and all past-due support has been paid, and
12 any monetary judgments have been paid in which case the county
13 attorney, the authorized attorney, or the department shall notify
14 the employer or other payor to cease withholding income.

15 Sec. 25. Section 43-1727, Reissue Revised Statutes of
16 Nebraska, is amended to read:

17 43-1727 (1) An income withholding notice may be modified
18 or revoked by a court of competent jurisdiction or by the county
19 attorney, the authorized attorney, or the department as a result
20 of a review conducted pursuant to sections 43-512.12 to 43-512.18.
21 An income withholding notice may also be modified or revoked by
22 a court of competent jurisdiction, for other good cause shown,
23 after notice and a hearing on the issue. An income withholding
24 notice may also be modified or revoked by the county attorney, the
25 authorized attorney, or the department as provided in subsection
26 (2) of this section or for other good cause. Payment by the obligor
27 of overdue support or any monetary judgment, other than through

1 income withholding, after receipt of notice of income withholding
2 shall not by itself constitute good cause for modifying or revoking
3 an income withholding notice.

4 (2) When income withholding has been implemented and, as
5 a result, a support delinquency has been eliminated, the Title
6 IV-D Division or its designee shall notify the county attorney,
7 the authorized attorney, or the department. Upon receipt of such
8 notification, the county attorney, the authorized attorney, or the
9 department shall modify the income withholding notice to require
10 income withholding for current support ~~only~~ and any monetary
11 judgments and shall notify the employer or other payor of the
12 change in the same manner as provided in section 43-1723.

13 Sec. 26. Section 43-3330, Reissue Revised Statutes of
14 Nebraska, is amended to read:

15 43-3330 A financial institution shall receive from the
16 department a listing of obligors to be used in matches within the
17 financial institution's system. The listing from the department
18 shall include the name and social security number or taxpayer
19 identification number of each obligor to be used in matches within
20 the financial institution's system. The financial institution shall
21 receive the listing within thirty days after the end of each
22 calendar quarter subsequent to January 1, 1998, and shall match the
23 listing to its records of accounts held in one or more individuals'
24 names which are open accounts and such accounts closed within the
25 preceding calendar quarter within thirty days after receiving the
26 listing and provide the department with a match listing of all
27 matches made within five working days of the match. The match

1 listing from the financial institution shall include the name,
2 address, and social security number or taxpayer identification
3 number of each obligor matched and the balance of each account. The
4 financial institution shall also provide the names and addresses of
5 all other owners of accounts in the match listing as reflected on a
6 signature card or other similar document on file with the financial
7 institution. The financial institution shall submit all match
8 listings by disk, magnetic tape, or other medium approved by the
9 department. Nothing in this section shall (1) require a financial
10 institution to disclose the account number assigned to the account
11 of any individual or (2) serve to encumber the ownership interest
12 of any person in or impact any right of setoff against an account.
13 The financial institution shall maintain the confidentiality of all
14 records supplied and shall use the records only for the purposes
15 of this section. To maintain the confidentiality of the listing and
16 match listing, the department shall implement appropriate security
17 provisions for the listing and match listing which are as stringent
18 as those established under the Federal Tax Information Security
19 Guidelines for federal, state, and local agencies.

20 2. Correct the operative date and repealer sections so
21 that section 13 added by this amendment becomes operative with the
22 emergency clause and the other sections added by this amendment
23 become operative three calendar months after adjournment of this
24 legislative session.

25 3. Renumber the remaining sections and correct the
26 internal references accordingly.