

LEGISLATURE OF NEBRASKA
ONE HUNDRED FIFTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 826

Introduced by Vargas, 7.

Read first time January 04, 2018

Committee: Judiciary

- 1 A BILL FOR AN ACT relating to the Uniform Child Custody Jurisdiction and
- 2 Enforcement Act; to amend section 43-1238, Reissue Revised Statutes
- 3 of Nebraska; to provide for jurisdiction to make factual findings as
- 4 prescribed; to harmonize provisions; and to repeal the original
- 5 section.
- 6 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 43-1238, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 43-1238 (a) Except as otherwise provided in section 43-1241, a court
4 of this state has jurisdiction to make an initial child custody
5 determination only if:

6 (1) this state is the home state of the child on the date of the
7 commencement of the proceeding or was the home state of the child within
8 six months before the commencement of the proceeding and the child is
9 absent from this state but a parent or person acting as a parent
10 continues to live in this state;

11 (2) a court of another state does not have jurisdiction under
12 subdivision (a)(1) of this section, or a court of the home state of the
13 child has declined to exercise jurisdiction on the ground that this state
14 is the more appropriate forum under section 43-1244 or 43-1245, and:

15 (A) the child and the child's parents, or the child and at least one
16 parent or a person acting as a parent, have a significant connection with
17 this state other than mere physical presence; and

18 (B) substantial evidence is available in this state concerning the
19 child's care, protection, training, and personal relationships;

20 (3) all courts having jurisdiction under subdivision (a)(1) or (a)
21 (2) of this section have declined to exercise jurisdiction on the ground
22 that a court of this state is the more appropriate forum to determine the
23 custody of the child under section 43-1244 or 43-1245; or

24 (4) no court of any other state would have jurisdiction under the
25 criteria specified in subdivision (a)(1), (a)(2), or (a)(3) of this
26 section.

27 (b) Subsection (a) of this section is the exclusive jurisdictional
28 basis for making a child custody determination by a court of this state.
29 In addition to having jurisdiction to make judicial determinations about
30 the custody and care of the child, a court of this state with exclusive
31 jurisdiction under subsection (a) of this section has jurisdiction and

1 authority to make factual findings regarding (1) the abuse, abandonment,
2 or neglect of the child, (2) the nonviability of reunification with at
3 least one of the child's parents due to such abuse, abandonment, neglect,
4 or a similar basis under state law, and (3) whether it would be in the
5 best interests of such child to be removed from the United States to a
6 foreign country, including the child's country of origin or last habitual
7 residence. If there is sufficient evidence to support such factual
8 findings, the court shall issue an order containing such findings when
9 requested by one of the parties or upon the court's own motion.

10 (c) Physical presence of, or personal jurisdiction over, a party or
11 a child is not necessary or sufficient to make a child custody
12 determination.

13 Sec. 2. Original section 43-1238, Reissue Revised Statutes of
14 Nebraska, is repealed.