

AMENDMENTS TO LB845

Introduced by Judiciary.

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

3 Section 1. The Legislature finds that individuals with
4 disabilities, as defined in section 42-364, continue to face unfair,
5 preconceived, and unnecessary societal biases as well as antiquated
6 attitudes regarding their ability to successfully parent their children.

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

9 42-364 (1)(a) In an action under Chapter 42 involving child support,
10 child custody, parenting time, visitation, or other access, the parties
11 and their counsel, if represented, shall develop a parenting plan as
12 provided in the Parenting Act. If the parties and counsel do not develop
13 a parenting plan, the complaint shall so indicate as provided in section
14 42-353 and the case shall be referred to mediation or specialized
15 alternative dispute resolution as provided in the Parenting Act. For good
16 cause shown and (i) when both parents agree and such parental agreement
17 is bona fide and not asserted to avoid the purposes of the Parenting Act,
18 or (ii) when mediation or specialized alternative dispute resolution is
19 not possible without undue delay or hardship to either parent, the
20 mediation or specialized alternative dispute resolution requirement may
21 be waived by the court. In such a case where waiver of the mediation or
22 specialized alternative dispute resolution is sought, the court shall
23 hold an evidentiary hearing and the burden of proof for the party or
24 parties seeking waiver is by clear and convincing evidence.

25 (b) The decree in an action involving the custody of a minor child
26 shall include the determination of legal custody and physical custody
27 based upon the best interests of the child, as defined in the Parenting

1 Act, and child support. Such determinations shall be made by
2 incorporation into the decree of (i) a parenting plan developed by the
3 parties, if approved by the court, or (ii) a parenting plan developed by
4 the court based upon evidence produced after a hearing in open court if
5 no parenting plan is developed by the parties or the plan developed by
6 the parties is not approved by the court. The decree shall conform to the
7 Parenting Act.

8 (c) The social security number of each parent and the minor child
9 shall be furnished to the clerk of the district court but shall not be
10 disclosed or considered a public record.

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

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

27 (4) In determining the amount of child support to be paid by a
28 parent, the court shall consider the earning capacity of each parent and
29 the guidelines provided by the Supreme Court pursuant to section
30 42-364.16 for the establishment of child support obligations. Upon
31 application, hearing, and presentation of evidence of an abusive

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

16 (5) Whenever termination of parental rights is placed in issue the
17 court shall transfer jurisdiction to a juvenile court established
18 pursuant to the Nebraska Juvenile Code unless a showing is made that the
19 county court or district court is a more appropriate forum. In making
20 such determination, the court may consider such factors as cost to the
21 parties, undue delay, congestion of dockets, and relative resources
22 available for investigative and supervisory assistance. A determination
23 that the county court or district court is a more appropriate forum shall
24 not be a final order for the purpose of enabling an appeal. If no such
25 transfer is made, the court shall conduct the termination of parental
26 rights proceeding as provided in the Nebraska Juvenile Code.

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

1 a complaint to modify. Such actions shall be referred to mediation or
2 specialized alternative dispute resolution as provided in the Parenting
3 Act. For good cause shown and (a) when both parents agree and such
4 parental agreement is bona fide and not asserted to avoid the purposes of
5 the Parenting Act, or (b) when mediation or specialized alternative
6 dispute resolution is not possible without undue delay or hardship to
7 either parent, the mediation or specialized alternative dispute
8 resolution requirement may be waived by the court. In such a case where
9 waiver of the mediation or specialized alternative dispute resolution is
10 sought, the court shall hold an evidentiary hearing and the burden of
11 proof for the party or parties seeking waiver is by clear and convincing
12 evidence. Service of process and other procedure shall comply with the
13 requirements for a dissolution action.

14 (7) In any proceeding under this section relating to custody of a
15 child of school age, certified copies of school records relating to
16 attendance and academic progress of such child are admissible in
17 evidence.

18 (8) For purposes of this section, disability has the same meaning as
19 in 42 U.S.C. 12102, as such section existed on January 1, 2018.

20 Sec. 3. Original section 42-364, Reissue Revised Statutes of
21 Nebraska, is repealed.