

## LEGISLATIVE BILL 727

Approved by the Governor June 4, 1997

Introduced by Landis, 46

AN ACT relating to the Uniform Interstate Family Support Act; to amend sections 42-701, 42-702, 42-709, 42-711, 42-714, 42-717 to 42-720, 42-734, 42-740, 42-741, 42-746, and 42-747, Reissue Revised Statutes of Nebraska, and section 42-748, Revised Statutes Supplement, 1996; to change provisions relating to recognition and enforcement of child support orders; to harmonize provisions; to provide an operative date; to provide severability; and to repeal the original sections.

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

Section 1. Section 42-701, Reissue Revised Statutes of Nebraska, is amended to read:

42-701. Sections 42-701 to 42-751 and sections 11 to 15, 20, and 21 of this act shall be known and may be cited as the Uniform Interstate Family Support Act.

Sec. 2. Section 42-702, Reissue Revised Statutes of Nebraska, is amended to read:

42-702. In the Uniform Interstate Family Support Act:

(1) Child means an individual, whether over or under the age of majority, who is or is alleged to be owed a duty of support by the individual's parent or who is or is alleged to be the beneficiary of a support order directed to the parent.

(2) Child support order means a support order for a child, including a child who has attained the age of majority under the law of the issuing state.

(3) Duty of support means an obligation imposed or imposable by law to provide support for a child, spouse, or former spouse, including an unsatisfied obligation to provide support.

(4) Home state means the state in which a child lived with a parent or a person acting as parent for at least six consecutive months immediately preceding the time of filing of a petition or comparable pleading for support and, if a child is less than six months old, the state in which the child lived from birth with any of them. A period of temporary absence of any of them is counted as part of the six-month or other period.

(5) Income includes earnings or other periodic entitlements to money from any source and any other property subject to withholding for support under the law of this state.

(6) Income withholding order means an order or other legal process directed to an obligor's employer or other payor, as defined by the Income Withholding for Child Support Act or sections 42-347 to 42-380, to withhold support from the income of the obligor.

(7) Initiating state means a state from which a proceeding is forwarded or in which a proceeding is filed for forwarding to a responding state under the Uniform Interstate Family Support Act or a law or procedure substantially similar to the act; or under a law or procedure substantially similar to the Uniform Reciprocal Enforcement of Support Act; or the Revised Uniform Reciprocal Enforcement of Support Act, is filed for forwarding to a responding state.

(8) Initiating tribunal means the authorized tribunal in an initiating state.

(9) Issuing state means the state in which a tribunal issues a support order or renders a judgment determining parentage.

(10) Issuing tribunal means the tribunal that issues a support order or renders a judgment determining parentage.

(11) Law includes decisional and statutory law and rules and regulations having the force of law.

(12) Obligee means:

(i) An individual to whom a duty of support is or is alleged to be owed or in whose favor a support order has been issued or a judgment determining parentage has been rendered;

(ii) A state or political subdivision to which the rights under a duty of support or support order have been assigned or which has independent claims based on financial assistance provided to an individual obligee; or

(iii) An individual seeking a judgment determining parentage of the individual's child.

(13) Obligor means an individual, or the estate of a decedent:

- (i) Who owes or is alleged to owe a duty of support;
- (ii) Who is alleged but has not been adjudicated to be a parent of a child; or
- (iii) Who is liable under a support order.

(14) Register means to record or file a support order or judgment determining parentage in the appropriate location for the recording or filing of foreign judgments generally or foreign support orders specifically.

(15) Registering tribunal means a tribunal in which a support order is registered.

(16) Responding state means a state in which a proceeding is filed or to which a proceeding is forwarded for filing from an initiating state under the Uniform Interstate Family Support Act or a law or procedure substantially similar to the act, or under a law or procedure substantially similar to the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act.

(17) Responding tribunal means the authorized tribunal in a responding state.

(18) Spousal support order means a support order for a spouse or former spouse of the obligor.

(19) State means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term state includes:

(i) An Indian tribe; and

(ii) A includes a foreign jurisdiction that has enacted a law or established procedures for issuance and enforcement of support orders which are substantially similar to the procedures under the Uniform Interstate Family Support Act or the procedures under the Uniform Reciprocal Enforcement of Support Act or the Revised Uniform Reciprocal Enforcement of Support Act.

(20) Support enforcement agency means a public official or agency authorized to seek:

(i) Enforcement of support orders or laws relating to the duty of support;

(ii) Establishment or modification of child support;

(iii) Determination of parentage; or

(iv) To locate obligors or their assets.

(21) Support order means a judgment, decree, or order, whether temporary, final, or subject to modification, for the benefit of a child, a spouse, or a former spouse, which provides for monetary support, health care, arrearages, or reimbursement, and may include related costs and fees, interest, income withholding, attorney's fees, and other relief.

(22) Tribunal means a court, administrative agency, or quasi-judicial entity authorized to establish, enforce, or modify support orders or to determine parentage.

Sec. 3. Section 42-709, Reissue Revised Statutes of Nebraska, is amended to read:

42-709. (a) A tribunal of this state issuing a support order consistent with the law of this state has continuing, exclusive jurisdiction over a child support order:

(1) as long as this state remains the residence of the obligor, the individual obligee, or the child for whose benefit the support order is issued; or

(2) until each individual party has all of the parties who are individuals have filed written consent consents with the tribunal of this state for a tribunal of another state to modify the order and assume continuing, exclusive jurisdiction.

(b) A tribunal of this state issuing a child support order consistent with the law of this state may not exercise its continuing jurisdiction to modify the order if the order has been modified by a tribunal of another state pursuant to the Uniform Interstate Family Support Act or a law substantially similar to the Uniform Interstate Family Support Act.

(c) If a child support order of this state is modified by a tribunal of another state pursuant to the Uniform Interstate Family Support Act or a law substantially similar to the act, a tribunal of this state loses its continuing, exclusive jurisdiction with regard to prospective enforcement of the order issued in this state, and may only:

(1) enforce the order that was modified as to amounts accruing before the modification;

(2) enforce nonmodifiable aspects of that order; and

(3) provide other appropriate relief for violations of that order which occurred before the effective date of the modification.

(d) A tribunal of this state shall recognize the continuing, exclusive jurisdiction of a tribunal of another state which has issued a child support order pursuant to the Uniform Interstate Family Support Act or a law substantially similar to the act.

(e) A temporary support order issued ex parte or pending resolution of a jurisdictional conflict does not create continuing, exclusive jurisdiction in the issuing tribunal.

(f) A tribunal of this state issuing a support order consistent with the law of this state has continuing, exclusive jurisdiction over a spousal support order throughout the existence of the support obligation. A tribunal of this state may not modify a spousal support order issued by a tribunal of another state having continuing, exclusive jurisdiction over that order under the law of that state.

Sec. 4. Section 42-711, Reissue Revised Statutes of Nebraska, is amended to read:

42-711. (a) If a proceeding is brought under the Uniform Interstate Family Support Act, and one and only one tribunal has issued a child support order, the order of that tribunal controls and must be so recognized.

(b) If a proceeding is brought under the Uniform Interstate Family Support Act and two or more child support orders have been issued in this by tribunals of this state or another state with regard to the same an obligor and a child, a tribunal of this state shall apply the following rules in determining which order to recognize for purposes of continuing, exclusive jurisdiction:

(1) If only one tribunal has issued a child support order, the order of that tribunal must be recognized.

(2) If two or more tribunals have issued child support orders for the same obligor and child, and only one of the tribunals would have continuing, exclusive jurisdiction under the act, the order of that tribunal controls and must be so recognized.

(3) If two or more tribunals have issued child support orders for the same obligor and child, and more than one of the tribunals would have continuing, exclusive jurisdiction under the act, an order issued by a tribunal in the current home state of the child controls and must be so recognized, but if an order has not been issued in the current home state of the child, the order most recently issued controls and must be so recognized.

(4) If two or more tribunals have issued child support orders for the same obligor and child, and none of the tribunals would have continuing, exclusive jurisdiction under the act, the tribunal of this state may having jurisdiction over the parties shall issue a child support order, which controls and must be so recognized.

(b) The tribunal that has issued an order recognized under subsection (a) of this section is the tribunal having continuing, exclusive jurisdiction.

(c) If two or more child support orders have been issued for the same obligor and child and if the obligor or the individual obligee resides in this state, a party may request a tribunal of this state to determine which order controls and must be so recognized under subsection (b) of this section. The request must be accompanied by a certified copy of every support order in effect. The requesting party shall give notice of the request to each party whose rights may be affected by the determination.

(d) The tribunal that issued the controlling order under subsection (a), (b), or (c) of this section is the tribunal that has continuing, exclusive jurisdiction under section 42-709.

(e) A tribunal of this state which determines by order the identity of the controlling order under subdivision (b)(1) or (b)(2) of this section or which issues a new controlling order under subdivision (b)(3) of this section shall state in that order the basis upon which the tribunal made its determination.

(f) Within thirty days after issuance of an order determining the identity of the controlling order, the party obtaining the order shall file a certified copy of it with each tribunal that issued or registered an earlier order of child support. A party who obtains the order and fails to file a certified copy is subject to appropriate sanctions by a tribunal in which the issue of failure to file arises. The failure to file does not affect the validity or enforceability of the controlling order.

Sec. 5. Section 42-714, Reissue Revised Statutes of Nebraska, is amended to read:

42-714. (a) Except as otherwise provided in the Uniform Interstate Family Support Act, sections 42-714 to 42-732 apply to all proceedings under the act.

(b) The act provides for the following proceedings:

(1) establishment of an order for spousal support or child support pursuant to section 42-733;

(2) enforcement of a support order and income withholding order of another state without registration pursuant to sections 42-734 and 42-735 and sections 11 to 15 of this act;

(3) registration of an order for spousal support or child support of another state for enforcement pursuant to sections 42-736 to 42-747 and sections 20 and 21 of this act;

(4) modification of an order for child support or spousal support issued by a tribunal of this state pursuant to sections 42-707 to 42-710;

(5) registration of an order for child support of another state for modification pursuant to sections 42-736 to 42-747 and sections 20 and 21 of this act;

(6) determination of parentage pursuant to section 42-748; and

(7) assertion of jurisdiction over nonresidents pursuant to sections 42-705 and 42-706.

(c) An individual petitioner or a support enforcement agency may commence a proceeding authorized under the act by filing a petition in an initiating tribunal for forwarding to a responding tribunal or by filing a petition or a comparable pleading directly in a tribunal of another state which has or can obtain personal jurisdiction over the respondent.

Sec. 6. Section 42-717, Reissue Revised Statutes of Nebraska, is amended to read:

42-717. (a) Upon the filing of a petition authorized by the Uniform Interstate Family Support Act, an initiating tribunal of this state shall forward three copies of the petition and its accompanying documents:

(1) to the responding tribunal or appropriate support enforcement agency in the responding state; or

(2) if the identity of the responding tribunal is unknown, to the state information agency of the responding state with a request that they be forwarded to the appropriate tribunal and that receipt be acknowledged.

(b) If a responding state has not enacted the Uniform Interstate Family Support Act or a law or procedure substantially similar to the act, a tribunal of this state may issue a certificate or other document and make findings required by the law of the responding state. If the responding state is a foreign jurisdiction, the tribunal may specify the amount of support sought and provide other documents necessary to satisfy the requirements of the responding state.

Sec. 7. Section 42-718, Reissue Revised Statutes of Nebraska, is amended to read:

42-718. (a) When a responding tribunal of this state receives a petition or comparable pleading from an initiating tribunal or directly pursuant to subsection (c) of section 42-714, it shall cause the petition or pleading to be filed and notify the petitioner ~~by first-class mail~~ where and when it was filed.

(b) A responding tribunal of this state, to the extent otherwise authorized by law, may do one or more of the following:

(1) issue or enforce a support order, modify a child support order, or render a judgment to determine parentage;

(2) order an obligor to comply with a support order, specifying the amount and the manner of compliance;

(3) order income withholding;

(4) determine the amount of any arrearages, and specify a method of payment;

(5) enforce orders by civil or criminal contempt, or both;

(6) set aside property for satisfaction of the support order;

(7) place liens and order execution on the obligor's property;

(8) order an obligor to keep the tribunal informed of the obligor's current residential address, telephone number, employer, address of employment, and telephone number at the place of employment;

(9) issue a capias for an obligor who has failed after proper notice to appear at a hearing ordered by the tribunal and enter the capias in any local and state computer systems for criminal warrants;

(10) order the obligor to seek appropriate employment by specified methods;

(11) award reasonable attorney's fees and other fees and costs;

(12) issue an order releasing or subordinating a lien pursuant to section 42-371; and

(13) grant any other available remedy.

(c) A responding tribunal of this state shall include in a support order issued under the Uniform Interstate Family Support Act, or in the documents accompanying the order, the calculations on which the support order

is based.

(d) A responding tribunal of this state may not condition the payment of a support order issued under the act upon compliance by a party with provisions for visitation.

(e) If a responding tribunal of this state issues an order under the act, the tribunal shall send a copy of the order by ~~first-class mail~~ to the petitioner and the respondent and to the initiating tribunal, if any.

Sec. 8. Section 42-719, Reissue Revised Statutes of Nebraska, is amended to read:

42-719. If a petition or comparable pleading is received by an inappropriate tribunal of this state, it shall forward the pleading and accompanying documents to an appropriate tribunal in this state or another state and notify the petitioner by ~~first-class mail~~ where and when the pleading was sent.

Sec. 9. Section 42-720, Reissue Revised Statutes of Nebraska, is amended to read:

42-720. (a) A support enforcement agency of this state, upon request, shall provide services to a petitioner in a proceeding under the Uniform Interstate Family Support Act.

(b) A support enforcement agency that is providing services to the petitioner as appropriate shall:

(1) take all steps necessary to enable an appropriate tribunal in this state or another state to obtain jurisdiction over the respondent;

(2) request an appropriate tribunal to set a date, time, and place for a hearing;

(3) make a reasonable effort to obtain all relevant information, including information as to income and property of the parties;

(4) within five days, exclusive of Saturdays, Sundays, and legal holidays, after receipt of a written notice from an initiating, responding, or registering tribunal, send a copy of the notice by ~~first-class mail~~ to the petitioner;

(5) within five days, exclusive of Saturdays, Sundays, and legal holidays, after receipt of a written communication from the respondent or the respondent's attorney, send a copy of the communication by ~~first-class mail~~ to the petitioner; and

(6) notify the petitioner if jurisdiction over the respondent cannot be obtained.

(c) The act does not create or negate a relationship of attorney and client or other fiduciary relationship between a support enforcement agency or the attorney for the agency and the individual being assisted by the agency.

Sec. 10. Section 42-734, Reissue Revised Statutes of Nebraska, is amended to read:

42-734. ~~(a)~~ An income withholding order issued in another state may be sent by ~~first-class mail~~ to the person or entity defined as the obligor's employer under the Income Withholding for Child Support Act or sections 42-347 to 42-380 without first filing a petition or comparable pleading or registering the order with a tribunal of this state. ~~Upon receipt of the order, the employer shall:~~

~~(1) treat an income withholding order issued in another state which appears regular on its face as if it had been issued by a tribunal of this state;~~

~~(2) immediately provide a copy of the order to the obligor; and~~

~~(3) distribute the funds as directed in the withholding order.~~

~~(b) An obligor may contest the validity or enforcement of an income withholding order issued in another state in the same manner as if the order had been issued by a tribunal of this state. Section 42-739 applies to the contest. The obligor shall give notice of the contest to any support enforcement agency providing services to the obligee and to:~~

~~(1) the person or agency designated to receive payments in the income withholding order; or~~

~~(2) if no person or agency is designated, the obligee.~~

Sec. 11. (a) Upon receipt of an income withholding order, the obligor's employer shall immediately provide a copy of the order to the obligor.

(b) The employer shall treat an income withholding order issued in another state which appears regular on its face as if it had been issued by a tribunal of this state.

(c) Except as otherwise provided in subsection (d) of this section and section 12 of this act, the employer shall withhold and distribute the funds as directed in the withholding order by complying with the terms of the order which specify:

(1) the duration and amount of periodic payments of current child

support, stated as a sum certain;

(2) the person or agency designated to receive payments and the address to which the payments are to be forwarded;

(3) medical support, whether in the form of periodic cash payment, stated as a sum certain, or ordering the obligor to provide health insurance coverage for the child under a policy available through the obligor's employment;

(4) the amount of periodic payments of fees and costs for a support enforcement agency, the issuing tribunal, and the obligee's attorney, stated as sums certain; and

(5) the amount of periodic payments of arrearages and interest on arrearages, stated as sums certain.

(d) An employer shall comply with the law of the state of the obligor's principal place of employment for withholding from income with respect to:

(1) the employer's fee for processing an income withholding order;

(2) the maximum amount permitted to be withheld from the obligor's income; and

(3) the times within which the employer must implement the withholding order and forward the child support payment.

Sec. 12. If an obligor's employer receives multiple income withholding orders with respect to the earnings of the same obligor, the employer satisfies the terms of the multiple orders if the employer complies with the law of the state of the obligor's principal place of employment to establish the priorities for withholding and allocating income withheld for multiple child support obligees.

Sec. 13. An employer who complies with an income withholding order issued in another state in accordance with sections 42-734 and 42-735 and sections 11 to 15 of this act is not subject to civil liability to any individual or agency with regard to the employer's withholding of child support from the obligor's income.

Sec. 14. An employer who willfully fails to comply with an income withholding order issued by another state and received for enforcement is subject to the same penalties that may be imposed for noncompliance with an order issued by a tribunal of this state.

Sec. 15. (a) An obligor may contest the validity or enforcement of an income withholding order issued in another state and received directly by an employer in this state in the same manner as if the order had been issued by a tribunal of this state. Section 42-739 applies to the contest.

(b) The obligor shall give notice of the contest to:

(1) a support enforcement agency providing services to the obligee;

(2) each employer that has directly received an income withholding order; and

(3) the person or agency designated to receive payments in the income withholding order or if no person or agency is designated, to the obligee.

Sec. 16. Section 42-740, Reissue Revised Statutes of Nebraska, is amended to read:

42-740. (a) When a support order or income withholding order issued in another state is registered, the registering tribunal shall notify the nonregistering party. Notice must be given by first-class, certified, or registered mail or by any means of personal service authorized by the law of this state. The notice must be accompanied by a copy of the registered order and the documents and relevant information accompanying the order.

(b) The notice must inform the nonregistering party:

(1) that a registered order is enforceable as of the date of registration in the same manner as an order issued by a tribunal of this state;

(2) that a hearing to contest the validity or enforcement of the registered order must be requested within twenty days after the date of mailing or personal service of the notice;

(3) that failure to contest the validity or enforcement of the registered order in a timely manner will result in confirmation of the order and enforcement of the order and the alleged arrearages and precludes further contest of that order with respect to any matter that could have been asserted; and

(4) of the amount of any alleged arrearages.

(c) Upon registration of an income withholding order for enforcement, the registering tribunal shall notify the obligor's employer pursuant to the Income Withholding for Child Support Act or sections 42-347 to 42-380.

Sec. 17. Section 42-741, Reissue Revised Statutes of Nebraska, is

amended to read:

42-741. (a) A nonregistering party seeking to contest the validity or enforcement of a registered order in this state shall request a hearing within twenty days after the date of mailing or personal service of notice of the registration. The nonregistering party may seek to vacate the registration, to assert any defense to an allegation of noncompliance with the registered order, or to contest the remedies being sought or the amount of any alleged arrearages pursuant to section 42-742.

(b) If the nonregistering party fails to contest the validity or enforcement of the registered order in a timely manner, the order is confirmed by operation of law.

(c) If a nonregistering party requests a hearing to contest the validity or enforcement of the registered order, the registering tribunal shall schedule the matter for hearing and give notice to the parties by first-class mail of the date, time, and place of the hearing.

Sec. 18. Section 42-746, Reissue Revised Statutes of Nebraska, is amended to read:

42-746. (a) After a child support order issued in another state has been registered in this state, the responding tribunal of this state may modify that order only if section 20 of this act does not apply and after notice and hearing; it finds that:

(1) the following requirements are met:

(i) the child, the individual obligee, and the obligor do not reside in the issuing state;

(ii) a petitioner who is a nonresident of this state seeks modification; and

(iii) the respondent is subject to the personal jurisdiction of the tribunal of this state; or

(2) an individual party or the child, or a party who is an individual, is subject to the personal jurisdiction of the tribunal of this state and all of the individual parties who are individuals have filed a written consent consent in the issuing tribunal providing that for a tribunal of this state may to modify the support order and assume continuing, exclusive jurisdiction over the order. However, if the issuing state is a foreign jurisdiction that has not enacted a law or established procedures substantially similar to the procedures under the Uniform Interstate Family Support Act, the consent otherwise required of an individual residing in this state is not required for the tribunal to assume jurisdiction to modify the child support order.

(b) Modification of a registered child support order is subject to the same requirements, procedures, and defenses that apply to the modification of an order issued by a tribunal of this state and the order may be enforced and satisfied in the same manner.

(c) A tribunal of this state may not modify any aspect of a child support order that may not be modified under the law of the issuing state. If two or more tribunals have issued child support orders for the same obligor and child, the order that controls and must be so recognized under section 42-711 establishes the aspects of the support order which are nonmodifiable.

(d) On issuance of an order modifying a child support order issued in another state, a tribunal of this state becomes the tribunal having of continuing, exclusive jurisdiction.

(e) Within thirty days after issuance of a modified child support order, the party obtaining the modification shall file a certified copy of the order with the issuing tribunal which had continuing, exclusive jurisdiction over the earlier order; and in each tribunal in which the party knows that earlier order has been registered.

Sec. 19. Section 42-747, Reissue Revised Statutes of Nebraska, is amended to read:

42-747. A tribunal of this state shall recognize a modification of its earlier child support order by a tribunal of another state which assumed jurisdiction pursuant to the Uniform Interstate Family Support Act or a law substantially similar to the Uniform Interstate Family Support Act and, upon request, except as otherwise provided in the act, shall:

(1) enforce the order that was modified only as to amounts accruing before the modification;

(2) enforce only nonmodifiable aspects of that order;

(3) provide other appropriate relief only for violations of that order which occurred before the effective date of the modification; and

(4) recognize the modifying order of the other state, upon registration, for the purpose of enforcement.

Sec. 20. (a) If all of the parties who are individuals reside in this state and the child does not reside in the issuing state, a tribunal of

this state has jurisdiction to enforce and to modify the issuing state's child support order in a proceeding to register that order.

(b) A tribunal of this state exercising jurisdiction under this section shall apply the provisions of sections 42-701 to 42-713 and 42-736 to 42-747 and sections 20 and 21 of this act and the procedural and substantive law of this state to the enforcement or modification proceeding. Sections 42-714 to 42-735 and 42-748 to 42-750 and sections 11 to 15 of this act do not apply.

Sec. 21. Within thirty days after issuance of a modified child support order, the party obtaining the modification shall file a certified copy of the order with the issuing tribunal that had continuing, exclusive jurisdiction over the earlier order, and in each tribunal in which the party knows the earlier order has been registered. A party who obtains the order and fails to file a certified copy is subject to appropriate sanctions by a tribunal in which the issue of failure to file arises. The failure to file does not affect the validity or enforceability of the modified order of the new tribunal having continuing, exclusive jurisdiction.

Sec. 22. Section 42-748, Revised Statutes Supplement, 1996, is amended to read:

42-748. (a) A tribunal of this state may serve as an initiating or responding tribunal in a proceeding brought under the Uniform Interstate Family Support Act or a law or procedure substantially similar to the act, or under a law or procedure substantially similar to the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act to determine that the petitioner is a parent of a particular child or to determine that a respondent is a parent of that child.

(b) In a proceeding to determine parentage, a responding tribunal of this state shall apply sections 43-1401 to 43-1418 and the rules of this state on choice of law.

Sec. 23. This act becomes operative on January 1, 1998.

Sec. 24. If any section in this act or any part of any section is declared invalid or unconstitutional, the declaration shall not affect the validity or constitutionality of the remaining portions.

Sec. 25. Original sections 42-701, 42-702, 42-709, 42-711, 42-714, 42-717 to 42-720, 42-734, 42-740, 42-741, 42-746, and 42-747, Reissue Revised Statutes of Nebraska, and section 42-748, Revised Statutes Supplement, 1996, are repealed.