

outstanding contracts or such lesser amount as is certified in the report of the certified public accountant to be adequate to assure the performance by the seller of each of those outstanding contracts. Upon compliance by the seller with this paragraph, the surety company canceling the surety bond shall cease to be liable with respect to any outstanding contracts of the seller except those with respect to which a breach of condition occurred prior to cancellation and timely claims were filed.

4. Section 523A.2, subsection 1, paragraphs b and f, subsection 5, and, to the extent it is applicable, subsection 6, apply to sellers whose agreements are covered by a surety bond maintained under this section, and section 523A.2 continues to apply to any agreements of those sellers that are not covered by a surety bond maintained under this section.

5. Upon receiving a notice of cancellation of a surety bond, the county attorney shall notify the seller of the requirements of this chapter resulting from cancellation of the bond. The notice may be in the form of a copy of this section and sections 523A.1 and 523A.2.

6. Upon receiving a notice of cancellation, unless the seller has complied with the requirements of this section, the county attorney shall seek an injunction to prohibit the seller from making further agreements subject to this chapter and shall commence an action to attach and levy execution upon property of the seller when the seller fails to perform an agreement subject to this chapter, to the extent necessary to secure compliance with this chapter, and may bring criminal charges under section 523A.2, subsection 6.

Sec. 5. Section 82.1, Code 1981, is amended by adding the following new subsection:

NEW SUBSECTION. "Door-to-door sale" also means a sale of funeral services or funeral merchandise regulated under chapter 523A, irrespective of the place or manner of sale.

Sec. 6. Chapter 523A, Code 1981, as amended by this Act, applies only to agreements executed on or after the effective date of this Act. Agreements executed prior to the effective date of this Act shall be governed by chapter 523A as it existed on the date those agreements were executed.

Approved May 20, 1982

CHAPTER 1250
CHILD CUSTODY IN DISSOLUTIONS
H.F. 2442

AN ACT relating to custody of children upon dissolution of marriage.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 598.1, Code 1981, is amended by adding the following new subsections:

NEW SUBSECTION. "Joint custody" or "joint legal custody" means an award of custody of a minor child to both parents under which both parents have rights and responsibilities toward the child and under which neither parent has rights superior to those of the other parent. The court may award physical care to one parent only.

NEW SUBSECTION. "Physical care" means the right and responsibility to maintain the principal home of the minor child and provide for the routine care of the child.

Sec. 2. Chapter 598, Code 1981, is amended by adding the following new section:

NEW SECTION. CUSTODY OF CHILDREN.

1. The court, insofar as is reasonable and in the best interest of the child, shall order the custody award, including liberal visitation rights where appropriate, which will assure a minor child frequent and continuing contact with both parents after the parents have separated or dissolved the marriage, and which will encourage parents to share the rights and responsibilities of raising the child. Unless otherwise ordered by the court in the custody decree, both parents shall have legal access to information concerning the child, including but not limited to medical, educational and law enforcement records.

2. On the application of either parent, the court shall consider granting joint custody in cases where the parents do not agree to joint custody. If the court does not grant joint custody under this subsection, the court shall state in its decision the reasons for denying joint custody. Before ruling upon the joint custody petition in these cases, the court may require the parties to participate in custody mediation counseling to determine whether joint custody is in the best interest of the child. The court may require the child's participation in the mediation counseling insofar as the court determines the child's participation is advisable.

The costs of custody mediation counseling shall be paid in full or in part by the parties and taxed as court costs.

3. In considering what custody arrangement under either subsection 1 or 2 is in the best interests of the minor child, the court shall consider the following factors:

- a. Whether each parent would be a suitable custodian for the child.
- b. Whether the psychological and emotional needs and development of the child will suffer due to lack of active contact with and attention from both parents.
- c. Whether the parents can communicate with each other regarding the child's needs.
- d. Whether both parents have actively cared for the child before and since the separation.
- e. Whether each parent can support the other parent's relationship with the child.
- f. Whether the custody arrangement is in accord with the child's wishes or whether the child has strong opposition, taking into consideration the child's age and maturity.
- g. Whether one or both the parents agree or are opposed to joint custody.
- h. The geographic proximity of the parents.

4. Joint legal custody does not require joint physical care. When the court determines such action would be in the child's best interest, physical care may be given to one joint custodial parent and not to the other. However, physical care given to one parent does not affect the other parent's rights and responsibilities as a legal custodian of the child.

5. When the parent awarded custody or physical care of the child cannot act as custodian or caretaker because the parent has died or has been judicially adjudged incompetent, the court shall award custody including physical care of the child to the surviving parent unless the court finds that such an award is not in the child's best interests.

Sec. 3. Section 598.12, Code 1981, is amended to read as follows:

598.12 ATTORNEY FOR MINOR CHILD.

1. The court may appoint an attorney to represent the interests of the minor child or children of the parties. Such The attorney shall be empowered to make independent investigations and to cause witnesses to appear and testify before the court on matters pertinent to the interests of the children.

2. The court may require that the department of social services or an appropriate agency make an investigation of both parties regarding the home conditions, parenting capabilities, and other matters pertinent to the best interests of the child or children in a dispute concerning custody of the child or children. The investigation report completed by the department of

social services or an appropriate agency shall be submitted to the court and available to both parties. The investigation report completed by the department of social services or an appropriate agency shall be a part of the record unless otherwise ordered by the court.

3. The court shall enter an order in favor of ~~such~~ the attorney, the department of social services, or an appropriate agency for fees and disbursements, which amount shall be charged against the party responsible for court costs unless the court determines that the party responsible for costs is indigent in which event the fees shall be borne by the county.

Sec. 4. Section 598.21, subsection 1, paragraph g, Code 1981, is amended to read as follows:

g. The desirability of awarding the family home or the right to live in the family home for a reasonable period to the party having custody of ~~any~~ the children, or if the parties have joint legal custody, to the party having physical care of the children.

Sec. 5. Section 598.21, subsection 3, paragraph e, Code 1981, is amended to read as follows:

e. The earning capacity of the party seeking maintenance, including educational background, training, employment skills, work experience, length of absence from the job market, ~~eustodial~~ responsibilities for children under either an award of custody or physical care, and the time and expense necessary to acquire sufficient education or training to enable the party to find appropriate employment.

Sec. 6. Section 598.21, subsection 4, paragraph d, Code 1981, is amended to read as follows:

d. The desirability that the ~~eustodian~~ party awarded either sole custody or, in the case of joint custody, physical care remain in the home as a full-time parent.

Sec. 7. Section 598.21, subsection 4, paragraph e, Code 1981, is amended to read as follows:

e. The cost of day care if the ~~eustodian~~ party awarded either sole custody or, in the case of joint custody, physical care works outside the home, or the value of ~~eustodial~~ the child care services performed by the ~~eustodian~~ party if the ~~eustodian~~ party remains in the home.

Sec. 8. Section 598.21, subsection 6, Code 1981, is amended to read as follows:

6. The court may provide for joint custody of the children by the parties pursuant to section 2 of this Act. ~~Orders~~ All orders relating to custody of a child are subject to ~~the provisions of~~ chapter 598A.

Sec. 9. Section 598.21, subsection 8, Code 1981, is amended to read as follows:

8. The court may subsequently modify orders made under this section when there is a substantial change in circumstances. ~~Any~~ The court contemplating a change in child support because of alleged change in circumstances shall ~~take into consideration~~ consider each parent's earning capacity, economic circumstances and cost of living. Modifications of orders pertaining to child custody shall be made pursuant to chapter 598A. If the petition for a modification of an order pertaining to child custody asks either for joint custody or that joint custody be modified to an award of sole custody, the modification, if any, shall be made pursuant to section 2 of this Act.

Approved May 17, 1982