

FILED MAR 17 1997

SENATE FILE **479**
BY COMMITTEE ON HUMAN RESOURCES

(SUCCESSOR TO SSB 164)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to child custody, support, and visitation, and
2 providing penalties.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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S.F. 479

1 Section 1. Section 598.21, Code 1997, is amended by adding
2 the following new subsection:

3 NEW SUBSECTION. 8A. If a parent awarded joint legal
4 custody and physical care or sole legal custody is relocating
5 the residence of the minor child to another state, the court
6 shall modify the custody order to preserve, as nearly as
7 possible, the existing relationship between the minor child
8 and the nonrelocating parent. If modified, the order shall,
9 at a minimum, include a provision for extended visitation
10 during summer vacations and school breaks and scheduled
11 telephone contact between the nonrelocating parent and the
12 minor child. The modification may include a provision
13 assigning the responsibility for transportation of the minor
14 child for visitation purposes to either or both parents. If
15 the court makes a finding of past interference by the parent
16 awarded joint legal custody and physical care or sole legal
17 custody with the minor child's access to the other parent, the
18 court may order the posting of a cash bond to assure future
19 compliance with the visitation provisions of the decree. The
20 supreme court shall prescribe guidelines for the forfeiting of
21 the bond and restoration of the bond following forfeiting of
22 the bond.

23 EXPLANATION

24 This bill provides that if a party awarded joint legal
25 custody and physical care or sole legal custody relocates the
26 residence of the minor child and if the change of residence
27 will be to a location outside of the state, the order is to be
28 modified to preserve to the greatest extent possible the
29 existing relationship between the minor child and the
30 nonrelocating parent. The modification is to include, at a
31 minimum, extended visitation during summer vacations and
32 school breaks and scheduled telephone contact. The modified
33 order may also assign responsibility for the transportation of
34 the minor child for purposes of visitation with the
35 nonrelocating parent to either or both parents. The bill

1 provides that if there has been prior interference by one
2 parent with access to the minor child by the other parent, the
3 parent awarded joint legal custody and physical care or sole
4 legal custody may be required to post a cash bond to assure
5 future compliance.

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Bartz, Chair
Vilsack
Black

SSB 164

Human Resources

Succeeded By

SENATE/HOUSE FILE SE/HF 479

BY (PROPOSED GOVERNOR'S BILL)

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to child custody, support, and visitation, and
2 providing penalties.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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1 Section 1. Section 598.1, Code 1997, is amended to read as
2 follows:

3 598.1 DEFINITIONS.

4 As used in this chapter:

5 1. "Best interest of the child" includes, but is not
6 limited to, the opportunity for the maximum possible
7 continuous physical and emotional ~~contact-possible-with~~ access
8 by the child to both parents, unless direct physical or
9 significant emotional harm to the child may result from this
10 contact access. Refusal by one parent to provide this
11 opportunity access by the child to the other parent without
12 just cause shall be considered harmful to the best interest of
13 the child.

14 2. "Dissolution of marriage" means a termination of the
15 marriage relationship and shall be synonymous with the term
16 "divorce".

17 3. "Joint custody" or "joint legal custody" means an award
18 of legal custody of a minor child to both parents jointly
19 under which both parents have legal custodial rights and
20 responsibilities toward the child and under which neither
21 parent has legal custodial rights superior to those of the
22 other parent. The court may award physical care to one parent
23 only. Rights and responsibilities of joint legal custody
24 include, but are not limited to, equal participation in
25 decisions affecting the child's legal status, medical care,
26 education, extracurricular activities, third-party child care,
27 and religious instruction.

28 3A. "Joint physical care" means an award of physical care
29 of a minor child to both joint legal custodial parents under
30 which both parents have rights and responsibilities toward the
31 child including, but not limited to, shared parenting time
32 with the child, maintaining homes for the child, providing
33 routine care for the child and under which neither parent has
34 physical care rights superior to those of the other parent.

35 3B. "Legal custody" or "custody" means an award of the

1 rights of legal custody of a minor child to a parent under
2 which a parent has legal custodial rights and responsibilities
3 toward the child. Rights and responsibilities of legal
4 custody include, but are not limited to, decision making
5 affecting the child's legal status, medical care, education,
6 extracurricular activities, third-party child care, and
7 religious instruction.

8 4. "Minor child" means any person under legal age.

9 5. "Physical care" means the right and responsibility to
10 maintain the-principal a home of for the minor child and
11 provide for the routine care of the child.

12 6. "Support" or "support payments" means an amount which
13 the court may require either of the parties to pay under a
14 temporary order or a final judgment or decree, and may include
15 alimony, child support, maintenance, and any other term used
16 to describe these obligations. For orders entered on or after
17 July 1, 1990, unless the court specifically orders otherwise,
18 medical support is not included in the monetary amount of
19 child support. The obligations may include support for a
20 child who is between the ages of eighteen and twenty-two years
21 who is regularly attending an accredited school in pursuance
22 of a course of study leading to a high school diploma or its
23 equivalent, or regularly attending a course of vocational-
24 technical training either as a part of a regular school
25 program or under special arrangements adapted to the
26 individual person's needs; or is, in good faith, a full-time
27 student in a college, university, or community college; or has
28 been accepted for admission to a college, university, or
29 community college and the next regular term has not yet begun;
30 or a child of any age who is dependent on the parties to the
31 dissolution proceedings because of physical or mental
32 disability.

33 Sec. 2. Section 598.21, subsection 4, Code 1997, is
34 amended to read as follows:

35 4. The supreme court shall maintain uniform child support

1 guidelines and criteria and review the guidelines and criteria
2 at least once every four years, pursuant to the federal Family
3 Support Act of 1988, Pub. L. No. 100-485. The initial review
4 shall be performed within four years of October 12, 1989, and
5 subsequently within the four-year period of the most recent
6 review. The supreme court shall incorporate into the
7 guidelines provisions for the awarding of child support in
8 orders providing for joint physical care of a child. It is
9 the intent of the general assembly that, to the extent
10 possible within the requirements of federal law, the court and
11 the child support recovery unit consider the individual facts
12 of each judgment or case in the application of the guidelines
13 and determine the support obligation, accordingly. It is also
14 the intent of the general assembly that in the supreme court's
15 review of the guidelines, the supreme court shall do both of
16 the following: emphasize the ability of a court to apply the
17 guidelines in a just and appropriate manner based upon the
18 individual facts of a judgment or case; and in determining
19 monthly child support payments, consider other children for
20 whom either parent is legally responsible for support and
21 other child support obligations actually paid by either party
22 pursuant to a court or administrative order.

23 a. Upon every judgment of annulment, dissolution, or
24 separate maintenance, the court may order either parent or
25 both parents to pay an amount reasonable and necessary for
26 supporting a child. If the court awards joint-physical care,
27 the court shall make specific findings and shall issue orders
28 with respect to each parent for the support of the child. In
29 establishing the amount of support, consideration shall be
30 given to the responsibility of both parents to support and
31 provide for the welfare of the minor child and of a child's
32 need, whenever practicable, for a close relationship with both
33 parents. There shall be a rebuttable presumption that the
34 amount of child support which would result from the
35 application of the guidelines prescribed by the supreme court

1 is the correct amount of child support to be awarded. A
2 variation from the guidelines shall not be considered by a
3 court without a record or written finding, based on stated
4 reasons, that the guidelines would be unjust or inappropriate
5 as determined under the criteria prescribed by the supreme
6 court.

7 The court shall order as child medical support a health
8 benefit plan as defined in chapter 252E if available to either
9 parent at a reasonable cost. A health benefit plan is
10 considered reasonable in cost if it is employment-related or
11 other group health insurance, regardless of the service
12 delivery mechanism. The premium cost of the health benefit
13 plan may be considered by the court as a reason for varying
14 from the child support guidelines. If a health benefit plan
15 is not available at a reasonable cost, the court may order any
16 other provisions for medical support as defined in chapter
17 252E.

18 b. The guidelines prescribed by the supreme court shall be
19 used by the department of human services in determining child
20 support payments under sections 252C.2 and 252C.4. A
21 variation from the guidelines shall not be considered by the
22 department without a record or written finding, based on
23 stated reasons, that the guidelines would be unjust or
24 inappropriate as determined under criteria prescribed by the
25 supreme court.

26 c. The guidelines prescribed by the supreme-court shall
27 incorporate provisions for medical support as defined in
28 chapter 252E to be effective on or before January 1, 1991.

29 d. For purposes of calculating a support obligation under
30 this section, the income of the parent from whom support is
31 sought shall be used as the noncustodial parent income for
32 purposes of application of the guidelines, regardless of the
33 legal custody or an order for joint physical care of the
34 child.

35 e. Unless the special circumstances of the case justify a

1 deviation, the court or the child support recovery unit shall
2 establish a monthly child support payment of twenty-five
3 dollars for a parent who is nineteen years of age or younger,
4 who has not received a high school or high school equivalency
5 diploma, and to whom each of the following apply:

6 (1) The parent is attending a school or program described
7 as follows or has been identified as one of the following:

8 (a) The parent is in full-time attendance at an accredited
9 school and is pursuing a course of study leading to a high
10 school diploma.

11 (b) The parent is attending an instructional program
12 leading to a high school equivalency diploma.

13 (c) The parent is attending a vocational education program
14 approved pursuant to chapter 258.

15 (d) The parent has been identified by the director of
16 special education of the area education agency as a child
17 requiring special education as defined in section 256B.2.

18 (2) The parent provides proof of compliance with the
19 requirements of subparagraph (1) to the child support recovery
20 unit, if the unit is providing services under chapter 252B, or
21 if the unit is not providing services pursuant to chapter
22 252B, to the court as the court may direct.

23 Failure to provide proof of compliance under this
24 subparagraph or proof of compliance under section 598.21A is
25 grounds for modification of the support order using the
26 uniform child support guidelines and imputing an income to the
27 parent equal to a forty-hour work week at the state minimum
28 wage, unless the parent's education, experience, or actual
29 earnings justify a higher income.

30 f. If a child receives public assistance or is receiving
31 services under chapter 252B, the child support recovery unit
32 may initiate proceedings to establish a support obligation or
33 the amount of support for the child, without considering
34 custody, visitation, joint physical care, or other issues
35 unrelated to support.

1 Sec. 3. Section 598.21, Code 1997, is amended by adding
2 the following new subsections:

3 NEW SUBSECTION. 8A. In addition to the factors to be
4 considered by the court pursuant to subsection 8, in
5 determining if a substantial change in circumstances exists
6 for the purposes of modifying the custody provisions of an
7 order made under this section, the court shall consider all of
8 the following:

- 9 a. Interference with access between the child and one
10 parent caused by the other parent.
- 11 b. A change in the work schedule of one parent creating a
12 conflict with access by the child to the other parent.

13 NEW SUBSECTION. 8B. If a parent awarded joint legal
14 custody and physical care or sole legal custody is relocating
15 the residence of the minor child to another state, the court
16 shall modify the custody order to preserve, as nearly as
17 possible, the existing relationship between the minor child
18 and the nonrelocating parent. If modified, the order shall,
19 at a minimum, include a provision for extended visitation
20 during summer vacations and school breaks and scheduled
21 telephone contact between the nonrelocating parent and the
22 minor child. The modification may include a provision
23 assigning the responsibility for transportation of the minor
24 child for visitation purposes to either or both parents. If
25 the court makes a finding of past interference by the parent
26 awarded joint legal custody and physical care or sole legal
27 custody with the minor child's access to the other parent, the
28 court may order the posting of a cash bond to assure future
29 compliance with the visitation provisions of the decree. The
30 supreme court shall prescribe guidelines for the forfeiting of
31 the bond and restoration of the bond following forfeiting of
32 the bond.

33 Sec. 4. Section 598.21, subsection 10, Code 1997, is
34 amended to read as follows:

35 10. Notwithstanding any other provision of law to the

1 contrary, if a child receives public assistance or is
2 receiving services under chapter 252B, or in any other
3 instance when an application for modification or adjustment of
4 support is submitted by the child support recovery unit, the
5 sole issues which may be considered by the court in that
6 action are the application of the guidelines in establishing
7 the amount of support pursuant to subsection 4, and provision
8 for medical support under chapter 252E. Issues related to
9 custody, visitation, joint physical care, or other provisions
10 unrelated to support shall be considered only under a separate
11 application for modification.

12 Sec. 5. Section 598.23, subsection 2, Code 1997, is
13 amended by adding the following new paragraphs:

14 NEW PARAGRAPH. c. Directs the parties to provide access
15 to the child through a neutral party or neutral site or
16 center.

17 NEW PARAGRAPH. d. Imposes sanctions or specific
18 requirements or orders the parties to participate in mediation
19 to enforce the joint custody provisions of the decree.

20 Sec. 6. Section 598.23, Code 1997, is amended by adding
21 the following new subsection:

22 NEW SUBSECTION. 3. In addition to the provisions for
23 punishment for contempt under this section, if the court finds
24 a person in contempt for failing to comply with the visitation
25 provisions of an order or decree without good cause, the court
26 may enjoin the contemnor from engaging in the activity
27 governed by a license to operate a motor vehicle through
28 suspension or revocation of the license and may impose
29 conditions for reinstatement of the license.

30 Sec. 7. NEW SECTION. 598.23B UNLAWFUL INTERFERENCE WITH
31 VISITATION.

32 1. If a party to a temporary order or final decree detains
33 or conceals a child with the intent to deprive another person
34 of that person's rights to visitation, the person detaining or
35 concealing the child commits unlawful interference with

1 visitation.

2 2. a. A law enforcement officer who has cause to believe
3 that a person has committed or is committing unlawful
4 interference with visitation shall issue a citation to the
5 person. The citation shall include the name and address of
6 the person, the nature of the offense, the time and place at
7 which the person is to appear in court, and the penalty for
8 nonappearance. Before the cited person is released, the
9 person shall sign the citation as a written promise to appear
10 in court at the time and place specified. A copy of the
11 citation shall be given to the person.

12 b. The law enforcement officer issuing the citation shall
13 file a complaint in the court in which the cited person is
14 required to appear, as soon as practicable, charging the
15 person with the crime of unlawful interference with
16 visitation.

17 3. Upon failure of the cited person to appear in court,
18 the court shall issue an arrest warrant for the person.

19 4. It is an affirmative defense to unlawful interference
20 with visitation that any of the following conditions exist:

21 a. A person committed the act to protect the child from
22 imminent physical harm, provided that the person had a
23 reasonable belief that the physical harm was imminent and that
24 the person's conduct in withholding visitation was a
25 reasonable response to the physical harm reasonably believed
26 to be imminent.

27 b. The act was committed with the mutual consent of all
28 parties having a right to custody and visitation of the child.

29 c. The act is otherwise authorized by law.

30 5. A person who commits unlawful interference with
31 visitation under this section commits the following violation:

32 a. For a first offense, the person commits a scheduled
33 violation under section 805.8, subsection 13.

34 b. For a second or subsequent offense, the person commits
35 a serious misdemeanor.

1 Sec. 8. NEW SECTION. 598.23C PLAINTIFFS PROCEEDING PRO
2 SE -- ENFORCEMENT OF VISITATION PROVISIONS.

3 1. A person may proceed pro se in order to seek relief
4 from the willful disobedience of another person to comply with
5 the visitation provisions of an order or decree under this
6 chapter by filing a verified petition in the district court.
7 Venue shall lie where either party resides. The petition
8 shall state all of the following:

9 a. The name of the plaintiff and a mailing address for the
10 plaintiff.

11 b. The name and address, if known, of the defendant.

12 c. The nature of the alleged disobedience of the order or
13 decree.

14 d. The name and age of each child to whom the order or
15 decree pertains.

16 e. The desired relief.

17 f. Any other information which the supreme court
18 determines necessary to facilitate resolution of the matter.

19 2. Upon filing the petition to proceed pro se, the
20 plaintiff may attach an affidavit stating that the plaintiff
21 does not have sufficient funds to pay the costs of filing and
22 service, and the petition shall be filed and service shall be
23 made without payment of the costs.

24 3. If a petition is filed and service is made without
25 payment of costs, the court shall determine at the hearing if
26 the payment of costs would prejudice the plaintiff's financial
27 ability to provide economic necessities for the plaintiff. If
28 the court finds that the payment of costs would not prejudice
29 the plaintiff's financial ability to provide economic
30 necessities for the plaintiff, the court may order the
31 plaintiff to pay the costs of filing and service. However, in
32 making the determination, the court shall not consider funds
33 no longer available to the plaintiff as a result of the
34 commencement of the action.

35 4. The supreme court shall prescribe standard forms to be

164

1 used by plaintiffs seeking orders to enforce visitation by
 2 proceeding pro se in actions under this section. The standard
 3 forms shall include language in fourteen-point boldface type,
 4 with a box which may be checked by the plaintiff, indicating
 5 that the plaintiff does not have sufficient funds to pay the
 6 cost of filing and service. Standard forms prescribed by the
 7 supreme court shall be the exclusive forms used by plaintiffs
 8 in proceeding pro se, and may be used by other plaintiffs.
 9 The supreme court shall distribute the forms to the clerks of
 10 the district courts.

11 5. The clerk of the district court shall furnish the
 12 required forms to persons seeking visitation enforcement
 13 orders through pro se proceedings pursuant to this section.

14 6. Hearings on a petition filed under this section shall
 15 be in accordance with section 598.8 as it applies to child
 16 custody hearings.

17 Sec. 9. Section 598.41, Code 1997, is amended to read as
 18 follows:

19 598.41 CUSTODY OF CHILDREN.

20 1. a. The court, insofar as is reasonable and in the best
 21 interest of the child, shall order the custody award,
 22 including liberal visitation rights where appropriate, which
 23 will assure the child the opportunity for the maximum possible
 24 continuing physical and emotional ~~contact-with~~ access to both
 25 parents after the parents have separated or dissolved the
 26 marriage, and which will encourage parents to share the rights
 27 and responsibilities of raising the child unless direct
 28 physical harm or significant emotional harm to the child,
 29 other children, or a parent is likely to result from such
 30 ~~contact-with~~ access to one parent.

31 b. Notwithstanding paragraph "a", if the court finds that
 32 a history of domestic abuse exists, a rebuttable presumption
 33 against the awarding of joint custody exists.

34 c. The court shall consider the denial by one parent of
 35 the child's ~~opportunity-for~~ right to the maximum possible

1 continuing ~~contact-with~~ access to the other parent, without
2 just cause, a significant factor in determining the proper
3 custody arrangement. Just cause may include a determination
4 by the court pursuant to subsection 3, paragraph "j", that a
5 history of domestic abuse exists between the parents.

6 d. If a history of domestic abuse exists as determined by
7 a court pursuant to subsection 3, paragraph "j", and if a
8 parent who is a victim of such domestic abuse relocates or is
9 absent from the home based upon the fear of or actual acts or
10 threats of domestic abuse perpetrated by the other parent, the
11 court shall not consider the relocation or absence of that
12 parent as a factor against that parent in the awarding of
13 custody or visitation.

14 e. Unless otherwise ordered by the court in the custody
15 decree, both parents shall have legal access to information
16 concerning the child, including but not limited to medical,
17 educational and law enforcement records.

18 2. a. On the application of either parent, the court
19 shall consider granting joint custody in cases where the
20 parents do not agree to joint custody.

21 b. If the court does not grant joint custody under this
22 subsection, the court shall cite clear and convincing
23 evidence, pursuant to the factors in subsection 3, that joint
24 custody is unreasonable and not in the best interest of the
25 child to the extent that the legal custodial relationship
26 between the child and a parent should be severed.

27 c. A finding by the court that a history of domestic abuse
28 exists, as specified in subsection 3, paragraph "j", which is
29 not rebutted, shall outweigh consideration of any other factor
30 specified in subsection 3 in the determination of the awarding
31 of custody under this subsection.

32 d. Before ruling upon the joint custody petition in these
33 cases, unless the court determines that a history of domestic
34 abuse exists as specified in subsection 3, paragraph "j", or
35 unless the court determines that direct physical harm or

1 significant emotional harm to the child, other children, or a
2 parent is likely to result, the court may require the parties
3 to participate in custody mediation to determine whether joint
4 custody is in the best interest of the child. The court may
5 require the child's participation in the mediation insofar as
6 the court determines the child's participation is advisable.

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

9 3. In considering what custody arrangement under
10 subsection 2 is in the best interest of the minor child, the
11 court shall consider the following factors:

12 a. Whether each parent would be a suitable custodian for
13 the child.

14 b. Whether the psychological and emotional needs and
15 development of the child will suffer due to lack of active
16 ~~contact-with~~ access to and attention from both parents.

17 c. Whether the parents can communicate with each other
18 regarding the child's needs.

19 d. Whether both parents have actively cared for the child
20 before and since the separation.

21 e. Whether each parent can support the other parent's
22 relationship with the child.

23 f. Whether the custody arrangement is in accord with the
24 child's wishes or whether the child has strong opposition,
25 taking into consideration the child's age and maturity.

26 g. Whether one or both the parents agree or are opposed to
27 joint custody.

28 h. The geographic proximity of the parents.

29 i. Whether the safety of the child, other children, or the
30 other parent will be jeopardized by the awarding of joint
31 custody or by unsupervised or unrestricted visitation.

32 j. Whether a history of domestic abuse, as defined in
33 section 236.2, exists. In determining whether a history of
34 domestic abuse exists, the court's consideration shall
35 include, but is not limited to, commencement of an action

1 pursuant to section 236.3, the issuance of a protective order
2 against the parent or the issuance of a court order or consent
3 agreement pursuant to section 236.5, the issuance of an
4 emergency order pursuant to section 236.6, the holding of a
5 parent in contempt pursuant to section 236.8, the response of
6 a peace officer to the scene of alleged domestic abuse or the
7 arrest of a parent following response to a report of alleged
8 domestic abuse, or a conviction for domestic abuse assault
9 pursuant to section 708.2A.

10 4. Subsection 3 shall not apply when parents agree to
11 joint custody.

12 5. ~~Joint legal custody does not require joint physical~~
13 ~~care.~~ When the court determines such action would be in the
14 best interest of preserve the relationship between each parent
15 and the child, joint physical care may be given awarded to
16 both joint custodial parents or physical care may be awarded
17 to one joint custodial parent and not to the other. If one
18 joint custodial parent is awarded physical care, the court
19 ~~shall hold that~~ parent responsible for providing ~~for the best~~
20 ~~interest of~~ physical care shall support the other parent's
21 relationship with the child. ~~However, physical~~ Physical care
22 ~~given awarded~~ to one parent does not affect the other parent's
23 rights and responsibilities as a joint legal custodian of the
24 child. Rights and responsibilities as joint legal custodian
25 of the child include, but are not limited to, equal
26 participation in decisions affecting the child's legal status,
27 medical care, education, extracurricular activities, third-
28 party child care, and religious instruction.

29 6. When the a parent awarded legal custody or physical
30 care of the a child cannot act as custodian or caretaker
31 because the parent has died or has been judicially adjudged
32 incompetent, the court shall award legal custody including
33 physical care of the child to the surviving parent unless the
34 court finds that such an award is not in the child's best
35 interest.

1 7. If an application for modification of a decree or a
 2 petition for modification of an order is filed, based upon
 3 differences between the parents regarding the custody
 4 arrangement established under the decree or order, unless the
 5 court determines that a history of domestic abuse exists as
 6 specified in subsection 3, paragraph "j", or unless the court
 7 determines that direct physical harm or significant emotional
 8 harm to the child, other children, or a parent is likely to
 9 result, the court may require the parents to participate in
 10 mediation to attempt to resolve the differences between the
 11 parents.

12 8. A parent who is awarded joint legal custody and
 13 physical care or sole legal custody of a minor child shall
 14 provide written notice to the other parent of the parent's
 15 intent to relocate the residence of the minor child outside of
 16 the state at least sixty days prior to the relocation.

17 Sec. 10. Section 805.8, Code 1997, is amended by adding
 18 the following new subsection:

19 NEW SUBSECTION. 13. UNLAWFUL INTERFERENCE WITH
 20 VISITATION. For a first violation under section 598.23B, the
 21 scheduled fine is one hundred dollars.

22 Sec. 11. Section 805.10, Code 1997, is amended by adding
 23 the following new subsection:

24 NEW SUBSECTION. 2A. When the violation charged is
 25 unlawful interference with visitation under section 598.23B.

26 EXPLANATION

27 This bill makes changes in child custody provisions of the
 28 Code.

29 The bill defines joint physical care, as distinguished from
 30 joint legal custody, of a minor child and also defines legal
 31 custody of a minor child. The bill provides for incorporation
 32 of provisions into the child support guidelines to reflect an
 33 award of joint physical care and provides other provisions in
 34 the awarding and modification of child support to reflect
 35 awards of joint physical care. The bill provides new factors

1 for consideration by the court in determining if a substantial
2 change in circumstances exists as a basis for modification of
3 the custody provisions of an order. The new factors include
4 interference by one parent with access by the other parent to
5 the child and a change in the work schedule of one parent
6 which creates a conflict with access by the child to the other
7 parent. The bill also provides that if a party awarded joint
8 legal custody and physical care or sole legal custody
9 relocates the residence of the minor child and if the change
10 of residence will be to a location outside of the state, the
11 order is to be modified to preserve to the greatest extent
12 possible the existing relationship between the minor child and
13 the nonrelocating parent. The modification is to include, at
14 a minimum, extended visitation during summer vacations and
15 school breaks and scheduled telephone contact. The modified
16 order may also assign responsibility for the transportation of
17 the minor child for purposes of visitation with the
18 nonrelocating parent to either or both parents. The bill
19 provides that if there has been prior interference by one
20 parent with access to the minor child by the other parent, the
21 parent awarded joint legal custody and physical care or sole
22 legal custody may be required to post a cash bond to assure
23 future compliance. The bill provides that as an alternative
24 to punishment for contempt based upon a party willfully
25 disobeying an order or decree, the court may direct the
26 parties to provide access to the child through a neutral party
27 or neutral site or center and provides for the imposing of
28 sanctions or specific requirements or for the ordering of
29 participation in mediation by the parties to enforce the joint
30 custody provisions of a decree. The bill also requires a
31 parent awarded joint legal custody and physical care or sole
32 legal custody who is planning to relocate outside of the state
33 to notify the other parent, in writing, of this intent at
34 least 60 days prior to relocation. The bill also makes other
35 conforming changes in the dissolution chapter to reflect the

1 new terminology.

2 The bill provides that in addition to other punishments for
3 contempt for disobeying the visitation provisions of an order
4 or decree, a person may be enjoined from engaging in the
5 activity governed by a license to operate a motor vehicle
6 through suspension or revocation of the license.

7 The bill establishes the crime of unlawful interference
8 with visitation, the penalty for which is a scheduled fine of
9 \$100 for a first offense; and a serious misdemeanor for a
10 second or subsequent offense, for which the punishment is a
11 fine of at least \$250, not to exceed \$1,500, and in addition
12 may include imprisonment not to exceed one year. Unlawful
13 interference with visitation means detaining or concealing a
14 child with the intent to deprive another person of that
15 person's rights to visitation.

16 The bill also provides for pro se procedures for
17 enforcement of visitation provisions including procedures for
18 filing a petition to commence an action and providing standard
19 forms for such proceedings.

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