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SENATE FILE

265

BY DOTZLER

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

A BILL FOR

1 An Act relating to the diversion of child support payments to a
 2 college savings plan.

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

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SF 265 JUDICIARY

1 Section 1. Section 598.21, Code 2003, is amended by adding
2 the following new subsection:

3 NEW SUBSECTION. 5B. If the conditions of paragraph "a"
4 are met, a percentage of the child support payments of the
5 noncustodial parent shall be diverted as provided in paragraph
6 "b" into a qualified tuition program.

7 a. All of the following parental conditions shall be met:

8 (1) The custodial parent is remarried or cohabitating with
9 another person.

10 (2) The custodial parent has obtained a degree from an
11 accredited postsecondary college or university or accredited
12 community college prior to the date of the divorce decree.

13 (3) The net monthly household income of the custodial
14 parent equals at least one hundred ten percent of the monthly
15 allowable living expenses for the area in which the custodial
16 parent resides.

17 (4) The noncustodial parent has regular, overnight
18 visitation with the child for whom child support is provided
19 of at least ninety overnights per calendar year.

20 (5) All of the joint children of the custodial and
21 noncustodial parents are five years of age or older.

22 b. If the conditions in paragraph "a" are met, the
23 noncustodial parent shall divert a percent of the child
24 support payment to a qualified tuition program in the name of
25 that child based upon the percent that the custodial parent's
26 net monthly household income is of the monthly allowable
27 living expenses in the area in which the custodial parent
28 resides according to the following schedule:

29 Percentage of monthly
30 allowable living expenses: Percentage diverted:

31 110 - 119.99	5
32 120 - 129.99	10
33 130 - 139.99	15
34 140 - 144.99	20
35 145 - 149.99	25

1	150 - 154.99	30	
2	155 - 159.99	35	
3	160 - 164.99	40	
4	165 - 169.99	45	
5	170 - 174.99	50	
6	175 - 179.99	55	
7	180 - 184.99	60	
8	185 - 189.99	65	
9	190 - 194.99	70	
10	195 - 199.99	75	
11	200 - 204.99	80	
12	205 - 209.99	85	
13	210 - 214.99	90	
14	215 - 219.99	95	
15	220 - 224.99	100	
16	225 - 249.99	100	plus 5 percent from
17			custodial parent
18	250 - 274.99	100	plus 10 percent from
19			custodial parent
20	275 - 299.99	100	plus 15 percent from
21			custodial parent
22	300 or more	100	plus 20 percent from
23			custodial parent

24 c. For purposes of this subsection:

25 (1) "Monthly allowable living expenses" means the sum of
 26 the appropriate amounts from the food, clothing, and other
 27 items chart, the housing and utilities chart, and the
 28 transportation chart as listed in the United States internal
 29 revenue service's collection financial standards for allowable
 30 living expenses.

31 (2) "Net monthly household income" means the gross monthly
 32 income of the custodial parent and the custodial parent's
 33 spouse or person cohabitating with the custodial parent minus
 34 federal and state taxes withheld, federal old-age, survivors,
 35 and disability insurance, and federal hospital insurance.

1 (3) "Noncustodial parent" means a parent to whom anything
2 less than joint physical care of a child has been awarded.

3 (4) "Qualified tuition program" means the same as defined
4 in section 529(b) of the Internal Revenue Code.

5 d. Notwithstanding the amount of the diversion required in
6 paragraph "b", the amount of the diversion shall be reduced if
7 the diversion will result in excess contributions being made
8 on behalf of the child as prohibited under section 529(b)(6)
9 of the Internal Revenue Code.

10 e. To invoke the diverted child support provisions, the
11 noncustodial parent shall file an original affidavit with the
12 court in the county where the divorce decree was entered, and
13 shall serve a copy of the affidavit by certified mail or
14 personal service to the custodial parent, and shall mail a
15 copy of the affidavit by ordinary mail to the attorney who
16 represented the custodial parent in the divorce proceedings,
17 or to the current attorney of the custodial parent, and a copy
18 to the clerk of court's staff person responsible for receiving
19 child support payments and entering the receipt of payments
20 into the clerk's accounting system. The clerk shall ensure
21 that the diverted child support obligation is noted in the
22 clerk's accounting system. The contents of the affidavit
23 shall include all of the following:

24 (1) The names of each child who is to be a designated
25 beneficiary in a qualified tuition program.

26 (2) The dates of birth of each child.

27 (3) A statement that the custodial parent is married or
28 cohabitating with another partner. The affidavit shall
29 include the name of the spouse or partner, and the address at
30 which the couple resides.

31 (4) The amount of the custodial parent's net monthly
32 household income.

33 (5) The amount the noncustodial parent believes represents
34 the custodial parent's monthly allowable living expenses.

35 (6) A statement as to the custodial parent's education

1 level.

2 (7) A statement as to the current monthly or weekly child
3 support obligation of the noncustodial parent and a
4 calculation of the amount of child support the noncustodial
5 parent believes should be diverted, and the amount that
6 remains payable directly to the custodial parent.

7 (8) The name, mailing address, street address, telephone
8 number, fax number, and e-mail address of the broker or plan
9 administrator that will be receiving the payments for the
10 designated beneficiary of the qualified tuition program, and
11 the name of the investment or investments into which the
12 broker or plan administrator will be placing the child
13 support.

14 (9) The addresses where the broker shall send monthly
15 statements, including the current mailing addresses of the
16 custodial and noncustodial parents.

17 (10) A statement that all of the children common to the
18 custodial and noncustodial parent are at least five years of
19 age.

20 (11) A statement that the parties have joint custody and
21 that the noncustodial parent exercises periodic overnight
22 visitation with the children a minimum of ninety overnights
23 per year on average.

24 Upon filing this affidavit and serving it upon all parties,
25 the noncustodial parent may begin making payments directly to
26 the qualified tuition program in the amount determined by the
27 percent diversion schedule in paragraph "b". The noncustodial
28 parent must continue to pay the nondiverted amount to the
29 clerk of court. If a wage withholding is in effect, the
30 affidavit must be served on the employer, who shall
31 immediately adjust the wage withholding accordingly.

32 If the custodial parent objects to the accuracy of the
33 affidavit filed by the noncustodial parent, or to the
34 calculation utilized by the noncustodial parent, the custodial
35 parent may request a hearing on the accuracy of the affidavit.

1 Prior to the hearing the custodial parent must provide a
2 financial affidavit, the prior year's tax return, the most
3 recent tax return from a year in which the custodial parent
4 worked full time, the most recent tax return from a year in
5 which the custodial parent's spouse or cohabitating partner
6 worked full time, and the four most recent pay stubs of the
7 custodial parent and the custodial parent's spouse or
8 cohabitating partner. If the noncustodial parent has
9 requested these items from the custodial parent prior to
10 filing the affidavit, and the custodial parent failed to
11 deliver them within twenty days of receiving the request, the
12 custodial parent, prior to being granted a hearing on the
13 accuracy of the affidavit, must advance seven hundred fifty
14 dollars to the clerk of court, who in turn shall forward it to
15 the noncustodial parent for payment of attorney fees. The
16 noncustodial parent shall continue to make payments to the
17 qualified tuition program during the pendency of the hearing.
18 If it is determined that the noncustodial parent overstated
19 the amount of the diversion, no payments will be made to the
20 qualified tuition program in the months immediately following
21 the court order setting the new reduced amount of the diverted
22 payments following such a hearing. Payments to the qualified
23 tuition program will resume in the amount ordered by the court
24 after all overpayments to the qualified tuition program have
25 been made up in the form of direct payments to the custodial
26 parent.

27 f. Any child support payments diverted to a qualified
28 tuition program pursuant to this subsection shall be an
29 alternative to and in lieu of a postsecondary education
30 subsidy order made pursuant to subsection 5A.

31 EXPLANATION

32 This bill provides for the diversion of a portion of a
33 noncustodial parent's child support obligation to a college
34 savings plan set up by the state of Iowa or one or two
35 educational institutions in situations where the custodial

1 parent, who has benefited from higher education, has
2 sufficient income to adequately support the daily needs of the
3 child. The higher the income of the custodial parent, the
4 greater the percentage of support payments are diverted to the
5 college savings plan. The bill does not increase nor decrease
6 the noncustodial parent's monthly child support obligation.
7 The diverted portion is paid directly to the college savings
8 plan, which grows tax free, and cannot be used until the child
9 enrolls in a postsecondary institution of higher learning.
10 The income scale is based on the internal revenue service's
11 collection financial standard for allowable living expenses
12 published for each county in Iowa or region in which Iowa is
13 situated, according to family size.

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