

Introduced by Senator Harman

February 21, 2007

An act to amend Section 4504 of the Family Code, relating to child support obligations.

LEGISLATIVE COUNSEL'S DIGEST

SB 403, as introduced, Harman. Child support obligations: survivor benefits.

Existing law permits certain payments that are made by the federal government for the support of a child, because of the retirement or disability of a noncustodial parent of that child, and transmitted to the custodial parent, to be credited toward the child support paid by the noncustodial parent.

This bill would, among other things, allow federally derived survivor benefit payments of a deceased noncustodial parent, received on behalf of a surviving dependent minor and transmitted to the custodial parent, to be credited toward the deceased noncustodial parent's child support obligation, as specified.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 4504 of the Family Code is amended to
2 read:
3 4504. (a) If the noncustodial parent is receiving payments
4 from the federal government pursuant to the Social Security Act
5 or Railroad Retirement Act, or from the Department of Veterans
6 Affairs because of the retirement or disability of the noncustodial

1 parent and the noncustodial parent notifies the custodial person,
2 or notifies the local child support agency in a case being enforced
3 by the local child support agency pursuant to Title IV-D of the
4 Social Security Act, then the custodial parent or other child support
5 obligee shall contact the appropriate federal agency within 30 days
6 of receiving notification that the noncustodial parent is receiving
7 those payments to verify eligibility for each child to receive
8 payments from the federal government because of the disability
9 of the noncustodial parent. If the child is potentially eligible for
10 those payments, the custodial parent or other child support obligee
11 shall apply for and cooperate with the appropriate federal agency
12 for the receipt of those benefits on behalf of each child. The
13 noncustodial parent shall cooperate with the custodial parent or
14 other child support obligee in making that application and shall
15 provide any information necessary to complete the application.

16 (b) If the court has ordered a noncustodial parent to pay for the
17 support of a child, payments for the support of the child made by
18 the federal government pursuant to the Social Security Act or
19 Railroad Retirement Act, or by the Department of Veterans Affairs
20 because of the retirement or disability of the noncustodial parent
21 and received by the custodial parent or other child support obligee
22 shall be credited toward the amount ordered by the court to be paid
23 by the noncustodial parent for support of the child unless the
24 payments made by the federal government were taken into
25 consideration by the court in determining the amount of support
26 to be paid. Any payments shall be credited in the order set forth
27 in Section 695.221 of the Code of Civil Procedure.

28 (c) If the custodial parent or other child support obligee refuses
29 to apply for those benefits or fails to cooperate with the appropriate
30 federal agency in completing the application but the child or
31 children otherwise are eligible to receive those benefits, the
32 noncustodial parent shall be credited toward the amount ordered
33 by the court to be paid for that month by the noncustodial parent
34 for support of the child or children in the amount of payment that
35 the child or children would have received that month had the
36 custodial parent or other child support obligee completed an
37 application for the benefits if the noncustodial parent provides
38 evidence to the local child support agency indicating the amount
39 the child or children would have received. The credit for those
40 payments shall continue until the child or children would no longer

1 be eligible for those benefits or the order for child support for the
2 child or children is no longer in effect, whichever occurs first.

3 *(d) If the surviving dependent minor child of the deceased*
4 *noncustodial parent is receiving survivor benefit payments from*
5 *the federal government pursuant to the Social Security Act or*
6 *Railroad Retirement Act, or from the Department of Veterans*
7 *Affairs, or military retirement survivor benefits because of the*
8 *death of the noncustodial parent, and the court has ordered the*
9 *noncustodial parent to pay for the support of a child, survivor*
10 *benefit payments received by the custodial parent or other child*
11 *support obligee, on behalf of the minor child, shall be credited*
12 *toward the amount ordered by the court to be paid by the estate*
13 *of the deceased noncustodial parent for the support of the child.*
14 *The credit for those payments shall continue until the child or*
15 *children would no longer be eligible for those benefits or the order*
16 *for child support for the child or children is no longer in effect,*
17 *whichever occurs first.*

18 *(e) If the surviving dependent minor child of the deceased*
19 *noncustodial parent was receiving derivative benefit payments*
20 *from the federal government pursuant to the Social Security Act*
21 *or Railroad Retirement Act, or from the Department of Veterans*
22 *Affairs, or military retirement survivor benefits because of the*
23 *noncustodial parent's disability or retirement, prior to the death*
24 *of the noncustodial parent, and these derivative benefits were taken*
25 *into consideration when the court ordered the child support*
26 *obligation, then either the custodial parent or the executor of the*
27 *estate of the deceased noncustodial parent may bring a motion to*
28 *modify the child support obligation due to the potential change in*
29 *circumstances precipitated by the lost derivative federal or*
30 *retirement benefits and the gain of the federal survivorship benefits.*
31 *Until a child support modification motion is brought, the federal*
32 *survivor benefit payments received by the custodial parent or other*
33 *child support obligee, on behalf of the minor child, shall be*
34 *credited toward the amount ordered by the court to be paid by the*
35 *estate of the deceased noncustodial parent for the support of the*
36 *child. The credit for those payments shall continue until the child*
37 *or children would no longer be eligible for those benefits or the*

- 1 *order for child support for the child or children is no longer in*
- 2 *effect, whichever occurs first.*

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