

HUMAN RESOURCES

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SENATE FILE

36

BY JOHNSON

Passed Senate, Date _____

Passed House, Date _____

Vote: Ayes _____ Nays _____

Vote: Ayes _____ Nays _____

Approved _____

A BILL FOR

1 An Act relating to the immobilization of the motor vehicle of a
2 child support obligor for failure to pay delinquent support.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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SF 36
HUMAN RESOURCES

1 Section 1. Section 252B.5, Code 2001, is amended by adding
2 the following new subsection:

3 NEW SUBSECTION. 12. a. Immobilization of the motor
4 vehicle of an obligor if all of the following conditions are
5 met:

6 (1) The obligor is determined by the unit to owe
7 delinquent support under a support order as defined in section
8 252J.1, in excess of five thousand dollars.

9 (2) The obligor is sent a notice by regular mail notifying
10 the obligor of the amount of the delinquency and the obligor
11 does not challenge the delinquency, or a challenge by the
12 obligor and any subsequent findings by the unit or by the
13 district court on review result in a determination that a
14 mistake in fact does not exist.

15 (3) Other enforcement methods have been utilized by the
16 unit and have failed to result in collection of the delinquent
17 amount.

18 (4) The unit has determined by review of the title of the
19 motor vehicle that the obligor is the owner of the motor
20 vehicle.

21 b. The notice procedure pursuant to paragraph "a",
22 subparagraph (2), shall be as follows:

23 (1) The notice shall provide information regarding the
24 procedures for challenging the delinquency.

25 (2) A challenge shall be based upon mistake of fact. For
26 the purposes of this subsection, "mistake of fact" means a
27 mistake in the identity of the obligor or a mistake in the
28 amount of delinquent child support owed if the amount does not
29 equal or exceed five thousand dollars. "Mistake of fact" also
30 means that the obligor provides information and proves that
31 the obligor cannot pay the delinquency.

32 (3) If the obligor challenges the delinquency, the obligor
33 shall notify the unit within the time period specified in the
34 notice to the obligor. The obligor shall include any relevant
35 information with the challenge.

1 (4) Following the unit's review of a timely received
2 challenge, the unit shall send a written decision to the
3 obligor within ten days of timely receipt of the challenge.
4 If the unit determines that a mistake of fact does not exist,
5 the obligor may contest the determination within ten days
6 following the issuance of the decision by submitting a written
7 request for a contested case proceeding pursuant to chapter
8 17A. Following issuance of a final decision under chapter 17A
9 that no mistake of fact exists, the obligor may request a
10 hearing before the district court pursuant to chapter 17A.
11 The scope of the review by the district court shall be limited
12 to demonstration of a mistake of fact.

13 c. The unit may immobilize the obligor's motor vehicle by
14 using any device that completely prevents the motor vehicle
15 from being operated, including but not limited to the placing
16 of a metal clamp on the front tire of the motor vehicle. The
17 unit may continue immobilization of the obligor's motor
18 vehicle until such time as the obligor repays the amount of
19 the delinquency or enters into a formalized repayment plan
20 with the unit to repay the delinquency.

21 d. If a motor vehicle is immobilized under this
22 subsection, all of the following shall apply:

23 (1) If the owner of the motor vehicle is the obligor, once
24 the period of immobilization has expired, the owner of the
25 motor vehicle shall have thirty days to claim the motor
26 vehicle and pay all fees and charges imposed for immobilizing
27 the motor vehicle. The person responsible for immobilization
28 of the motor vehicle shall inform the clerk of court of the
29 costs of immobilizing the vehicle. If the obligor has not
30 claimed the motor vehicle and paid all fees and charges
31 imposed within seven days from the date of expiration of the
32 period, the clerk shall send written notification to the
33 obligor, at the obligor's last known address, notifying the
34 obligor of the date of expiration of the period of
35 immobilization and of the period in which the motor vehicle

1 must be claimed. If the obligor fails to claim the motor
2 vehicle and pay all fees and charges imposed within the
3 thirty-day period, the motor vehicle shall be forfeited to the
4 state under chapters 809 and 809A.

5 (2) During the period of immobilization, if the owner of
6 the immobilized vehicle is the obligor, the obligor shall not
7 sell or transfer the title of the motor vehicle which is
8 subject to the order of immobilization.

9 (3) If, during the period of immobilization, the title to
10 the motor vehicle which is the subject of the order is
11 transferred by the foreclosure of a chattel mortgage, a sale
12 upon execution, the cancellation of a conditional sales
13 contract, or an order of a court, the court which enters the
14 order that permits transfer of the title shall notify the
15 clerk of court of the transfer of the title.

16 (4) If the owner of the motor vehicle is a rental or
17 leasing agency, the person responsible for immobilizing the
18 motor vehicle shall contact the rental or leasing agency to
19 inform the agency that the motor vehicle is available for
20 immediate return. The agency shall be entitled to claim the
21 motor vehicle without payment of any fees or charges resulting
22 from the immobilization.

23 (5) The holder of a security interest in a motor vehicle
24 which is immobilized pursuant to this subsection or forfeited
25 in the manner provided in chapters 809 and 809A shall be
26 notified of the immobilization or forfeiture within seventy-
27 two hours of the seizure of the vehicle and shall have the
28 right to claim the motor vehicle without payment of any fees
29 or surcharges unless the value of the vehicle exceeds the
30 value of the security interest held by the creditor.

31 (6) Any of the following persons may make application to
32 the court for permission to operate a motor vehicle, which is
33 immobilized pursuant to this subsection, during the period of
34 immobilization, if the applicant's driver's license or
35 operating privilege has not been suspended, denied, revoked,

1 or barred:

2 (a) A person, other than the obligor, who is not a member
3 of the immediate family of the obligor but is a joint owner of
4 the motor vehicle.

5 (b) A member of the immediate family of the obligor, if
6 the member demonstrates that the motor vehicle that is subject
7 to the order for immobilization is the only motor vehicle
8 possessed by the family. For the purposes of this
9 subparagraph, "a member of the immediate family" means a
10 spouse, child, or parent of the obligor.

11 (7) The immobilization or forfeiture of a motor vehicle
12 under this subsection does not constitute loss of use of a
13 motor vehicle for purposes of any contract of insurance.

14 e. For the purposes of this subsection:

15 (1) "Motor vehicle" means a motor vehicle as defined in
16 section 321.1 that is subject to registration pursuant to
17 chapter 321.

18 (2) "Owner" means the registered titleholder of the motor
19 vehicle, except in the case where a rental or leasing agency
20 is the registered titleholder, in which case the lessee of the
21 vehicle shall be treated as the owner of the vehicle for
22 purposes of this section.

23 EXPLANATION

24 This bill authorizes the child support recovery unit to
25 immobilize the motor vehicle owned by a child support obligor
26 if the amount of delinquent child support owed by the obligor
27 is \$5,000 or more; if following notice and any challenges to
28 the notice no mistake in fact as to the amount of the
29 delinquency or the identify of the obligor is found or if it
30 is determined that the obligor cannot pay the delinquency; if
31 other enforcement mechanisms have not resulted in collection
32 of the delinquent amount; and if the unit determines that the
33 obligor is the owner of the motor vehicle. The bill provides
34 for notice to the obligor of the delinquency and provides a
35 procedure for challenge of the notice of delinquency by the

1 obligor based on mistake of fact. If the obligor does not
2 challenge the amount of the delinquency, or if a challenge by
3 the obligor and any subsequent review of the challenge of the
4 obligor results in no finding of a mistake in fact, the unit
5 is authorized to immobilize the motor vehicle of the obligor
6 until such time as the delinquency is repaid or until such
7 time as the obligor enters into a formalized repayment plan
8 with the unit. The bill also provides other procedures if the
9 owner is a leasing or rental agency or if there is a secured
10 interest in the motor vehicle.

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