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SENATE FILE 399
BY COMMITTEE ON HUMAN RESOURCES

(SUCCESSOR TO SF 36)

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 399

1 Section 1. NEW SECTION. 252L.1 DEFINITIONS.

2 As used in this chapter, unless the context otherwise
3 requires:

4 1. "Department" means the department of human services.

5 2. "Immobilization" means the installation of a device on
6 a motor vehicle that completely prevents a motor vehicle from
7 being operated, including but not limited to the placing of a
8 metal clamp on the front tire of the motor vehicle.

9 3. "Law enforcement entity" means the Iowa state patrol, a
10 police department or a sheriff's office.

11 4. "Motor vehicle" means a motor vehicle as defined in
12 section 321.1 that is subject to registration pursuant to
13 chapter 321.

14 5. "Owner" means the registered title holder of the motor
15 vehicle and includes owner as defined in section 321.1.

16 6. "Support" means support as defined in section 252J.1.

17 7. "Support order" means an order for support issued
18 pursuant to chapter 232, 234, 252A, 252C, 252E, 252F, 252H,
19 252K, 598, 600B or any other applicable chapter, or under a
20 comparable statute of a foreign jurisdiction which is
21 registered with the clerk of the district court under chapter
22 252K or filed with the clerk of the district court under
23 section 252D.24.

24 8. "Unit" means the child support recovery unit created in
25 section 252B.2.

26 Sec. 2. NEW SECTION. 252L.2 PURPOSE AND USE.

27 1. Notwithstanding other statutory provisions to the
28 contrary, including chapters 809 and 809A, the unit may
29 utilize the process established in this chapter to collect
30 support.

31 2. An obligor is subject to the provisions of this chapter
32 if all of the following apply:

33 a. The unit is providing enforcement services under
34 chapter 252B.

35 b. The support payments required by the support order to

1 be paid to the clerk of the district court or the collection
2 services center pursuant to section 598.22 are not paid and
3 become delinquent in an amount equal to the support payment
4 for three months.

5 c. At the time the unit issues a notice of intent to
6 immobilize a motor vehicle, all of the following apply:

7 (1) Support payments are not being made under the support
8 order by a payor of income pursuant to chapter 252D.

9 (2) There is no pending administrative levy action
10 pursuant to sections 252I.5 through 252I.8.

11 (3) A period of at least ninety days has elapsed since the
12 unit issued a certificate of noncompliance to a licensing
13 authority under section 252J.7, the obligor has not entered
14 into a written agreement under section 252J.5, the obligor has
15 not paid the total amount of delinquent support owed, and
16 there is no district court hearing pending under section
17 252J.9.

18 d. The unit determines, based upon the unit's review of
19 records and credit reports accessed by the unit, including
20 department of transportation automated records, that the
21 obligor is an owner of a motor vehicle or the motor vehicle is
22 owned by a business of which the obligor is a proprietor or a
23 partner, or is owned by a limited liability company of which
24 the obligor is a member, and the unit has determined that
25 immobilization of the motor vehicle is cost effective.

26 3. Actions initiated by the unit under this chapter shall
27 not be subject to contested case proceedings or further review
28 pursuant to chapter 17A and any resulting court hearing shall
29 be an original hearing before the district court.

30 4. This chapter shall be construed to furnish an
31 additional or alternative civil remedy and shall not affect or
32 impair any other remedy, civil or criminal, available to the
33 unit.

34 Sec. 3. NEW SECTION. 252L.3 NOTICE TO OBLIGOR OF
35 POTENTIAL MOTOR VEHICLE IMMOBILIZATION.

1 The unit shall proceed in accordance with this chapter
2 following provision of notice of potential motor vehicle
3 immobilization to the obligor. Notice shall be sent to the
4 obligor by regular mail at the obligor's last known address
5 and to the address listed on the motor vehicle registration,
6 if the address is different than the obligor's last known
7 address. The notice shall include all of the following:

8 1. The address and telephone number of the unit and the
9 unit case number.

10 2. A statement that the obligor is not in compliance with
11 a support order and the support is delinquent in an amount
12 equal to the support payment for three months.

13 3. A statement that the unit shall issue a certificate of
14 immobilization bearing the obligor's name, address, unit case
15 number, any other identifying information needed, and
16 information identifying the motor vehicle to a law enforcement
17 entity, certifying that the obligor is not in compliance with
18 a support order, unless within twenty days of the date of
19 issuance of the notice to the obligor one of the following has
20 occurred:

21 a. The obligor has contacted the unit to schedule a
22 conference.

23 b. The obligor has paid twenty percent of the total amount
24 of delinquent support due which is listed in the notice or two
25 thousand dollars, whichever is greater.

26 4. A statement that the obligor may request a conference
27 with the unit to contest the action.

28 5. A statement that in order to stay the issuance of the
29 certificate of immobilization the request for a conference
30 shall be in writing and shall be received by the unit within
31 twenty days of the date of the issuance of notice to the
32 obligor.

33 6. Information identifying one or more motor vehicles
34 including the address on the motor vehicle registration, which
35 the unit intends to have immobilized.

1 7. A statement that if the unit issues a certificate of
2 immobilization to a law enforcement entity, the law
3 enforcement entity shall promptly locate any motor vehicle
4 listed in the certificate of immobilization and immobilize any
5 motor vehicle identified.

6 8. A statement that if a motor vehicle is immobilized, the
7 obligor shall pay the costs of immobilization and removing the
8 immobilization device.

9 9. A statement that an owner, other than the obligor,
10 claiming a right to immediate possession of the motor vehicle
11 may file a petition or post a cash bond with the district
12 court as provided in section 252L.11.

13 Sec. 4. NEW SECTION. 252L.4 CONFERENCE.

14 1. Following issuance of the notice to the obligor
15 pursuant to section 252L.3, the obligor may schedule a
16 conference with the unit.

17 2. The request for a conference shall be made to the unit,
18 in writing, and shall be received by the unit within twenty
19 days following the date of issuance of the notice to the
20 obligor.

21 3. The unit shall notify the obligor of the date, time,
22 and location of the conference by regular mail, with the date
23 of the conference to be no earlier than ten days following
24 issuance of the notice of the conference by the unit. If the
25 obligor fails to appear at the conference, the unit shall
26 issue a certificate of immobilization.

27 4. Following the conference, the unit shall issue a
28 certificate of immobilization unless any of the following
29 applies:

30 a. The unit finds a mistake in the identity of the
31 obligor.

32 b. The unit finds a mistake in determining that the amount
33 of delinquent support is equal to or greater than the amount
34 due for three months.

35 c. The obligor pays twenty percent of the total amount of

1 delinquent support due or two thousand dollars, whichever is
2 greater.

3 d. The obligor meets at least one of the conditions for an
4 exemption from the license sanction process which is in effect
5 and which has been established in accordance with rules
6 adopted by the department pursuant to chapter 17A as required
7 by section 252J.4.

8 5. If the obligor does not timely request a conference or
9 if the obligor does not pay twenty percent of the total amount
10 of delinquent support due or two thousand dollars, whichever
11 is greater, within twenty days of issuance of the notice
12 pursuant to section 252L.3, the unit shall issue a certificate
13 of immobilization.

14 Sec. 5. NEW SECTION. 252L.5 DECISION OF THE UNIT.

15 1. If an obligor is not in compliance with a support order
16 as specified in section 252L.2, the unit shall issue a written
17 decision if any of the following conditions exist:

18 a. The obligor fails to appear at a scheduled conference
19 as provided under section 252L.4.

20 b. A conference is held under section 252L.4.

21 c. The obligor fails to pay twenty percent of the total
22 amount of delinquent support due or two thousand dollars,
23 whichever is greater, within twenty days of issuance of the
24 notice pursuant to section 252L.3.

25 2. The unit shall send the written decision to the obligor
26 by regular mail at the obligor's last known address. If the
27 decision is made to issue a certificate of immobilization, a
28 copy of the certificate shall be attached to the written
29 decision and the written decision shall state all of the
30 following:

31 a. That a copy of the certificate of immobilization has
32 been provided to a law enforcement entity specifying one or
33 more motor vehicles listed in the notice provided pursuant to
34 section 252L.3.

35 b. That upon receipt of a certificate of immobilization,

1 the law enforcement entity shall promptly locate the motor
2 vehicle specified in the certificate of immobilization and
3 immobilize the motor vehicle.

4 c. That in order to obtain a termination of a certificate
5 of immobilization from the unit, the obligor shall pay twenty
6 percent of the total amount of delinquent support due or two
7 thousand dollars, whichever is greater.

8 d. That an owner, other than the obligor, claiming a right
9 to immediate possession of the motor vehicle may file a
10 petition or post a cash bond with the district court as
11 provided in section 252L.11.

12 e. That if the unit issues a written decision which
13 includes a certificate of immobilization, all of the following
14 apply:

15 (1) The individual may request a hearing as provided in
16 section 252L.8, before the district court in the county in
17 which the underlying support order is filed or registered, by
18 filing a written application to the court challenging the
19 issuance of the certificate of immobilization by the unit and
20 sending a copy of the application to the unit within the time
21 period specified in section 252L.8.

22 (2) The obligor may retain an attorney at the obligor's
23 own expense to represent the obligor at the hearing.

24 (3) The scope of review of the district court hearing
25 shall be limited to demonstration of a mistake of fact related
26 to the delinquency of the obligor.

27 3. If the unit issues a certificate of immobilization, the
28 unit shall only issue a termination of the certificate of
29 immobilization if any of the following applies:

30 a. The unit or the court finds a mistake in the identity
31 of the obligor.

32 b. The unit or the court finds a mistake in determining
33 that the amount of delinquent support due is equal to or
34 greater than the amount due for three months.

35 c. The obligor pays twenty percent of the total amount of

1 delinquent support due or two thousand dollars, whichever is
2 greater.

3 d. The obligor meets at least one of the conditions for an
4 exemption from the license sanction process which is in effect
5 and which has been established in accordance with rules
6 adopted by the department pursuant to chapter 17A as required
7 by section 252J.6.

8 Sec. 6. NEW SECTION. 252L.6 CERTIFICATE OF
9 IMMOBILIZATION TO LAW ENFORCEMENT ENTITY.

10 1. If the obligor fails to respond to the notice of
11 immobilization of a motor vehicle provided pursuant to section
12 252L.3, or the unit issues a written decision under section
13 252L.5 which states there is no mistake of fact, or that the
14 obligor has not paid twenty percent of the total amount of
15 delinquent support due or two thousand dollars, whichever is
16 greater, the unit shall certify, in writing, to a law
17 enforcement entity that the support obligor is not in
18 compliance with a support order.

19 2. The certificate of immobilization shall contain the
20 obligor's name, address, and any other identifying information
21 needed, identification of one or more motor vehicles, and the
22 name of the county where the support order is filed or
23 registered.

24 Sec. 7. NEW SECTION. 252L.7 REQUIREMENTS AND PROCEDURES
25 OF A LAW ENFORCEMENT ENTITY.

26 1. The law enforcement entity, upon receipt of a
27 certificate of immobilization, shall promptly locate the motor
28 vehicle specified in the certificate and attach the
29 immobilization device. Upon immobilization the law
30 enforcement entity shall post a notice, prepared by the unit,
31 on the motor vehicle. The notice shall include the following
32 information:

33 a. The address of the unit.

34 b. The name of the county where the support order is filed
35 or registered and the court order number.

1 c. That an owner, other than the obligor, claiming a right
2 to immediate possession of the motor vehicle may file a
3 petition or post a cash bond with the district court as
4 provided in section 252L.11.

5 2. The posting of the notice on the motor vehicle as
6 provided in subsection 1 constitutes notice to any person
7 claiming an ownership interest in the motor vehicle.

8 3. The law enforcement entity shall inform the unit of the
9 costs of immobilizing the motor vehicle, including the costs
10 for subsequent removal of the immobilization device. The
11 reimbursable amount of the costs of immobilization for one
12 motor vehicle shall be limited to the actual costs to law
13 enforcement as reported to the unit or two hundred dollars,
14 whichever is less. The payments collected for the costs for
15 immobilization and removal of the immobilization device shall
16 be used to reimburse the unit or the law enforcement entity
17 for costs incurred in immobilization of the motor vehicle.

18 4. If a law enforcement entity receives a termination of a
19 certificate of immobilization from the unit, the law
20 enforcement entity shall promptly remove the immobilization
21 device.

22 Sec. 8. NEW SECTION. 252L.8 DISTRICT COURT HEARING.

23 1. Following the issuance of a written decision by the
24 unit under section 252L.5 which includes the issuance of a
25 certificate of immobilization pursuant to section 252L.6, an
26 obligor may seek review of the decision and request a hearing
27 before the district court in the county in which the
28 underlying support order is filed or registered, by filing an
29 application with the district court, and sending a copy of the
30 application to the unit by regular mail. An application shall
31 be filed to seek review of the decision by the unit no later
32 than thirty days after issuance of the notice pursuant to
33 section 252L.5. The clerk of the district court shall
34 schedule a hearing and mail a copy of the order scheduling the
35 hearing to the obligor, the unit and the law enforcement

1 entity, if applicable. The unit shall certify a copy of its
2 written decision and certificate of immobilization indicating
3 the date of issuance to the clerk of the district court.

4 2. The filing of an application pursuant to this section
5 shall automatically stay the actions of the law enforcement
6 entity pursuant to section 252L.7. The hearing on the
7 application shall be scheduled and held within ten calendar
8 days of the filing of the application. However, if the
9 obligor fails to appear at the scheduled hearing, the stay
10 shall be lifted and the law enforcement entity shall continue
11 procedures pursuant to section 252L.7.

12 3. The scope of the review by the district court shall be
13 limited to demonstration of a mistake of fact relating to the
14 delinquency of the obligor. Issues related to visitation,
15 custody, or other provisions not related to the support
16 provisions of a support order are not grounds for a hearing
17 under this chapter.

18 4. Support orders shall not be modified by the court in a
19 hearing under this chapter.

20 5. If the court finds that the unit was in error in
21 issuing a certificate of immobilization, or in failing to
22 issue a termination of a certificate of immobilization, the
23 unit shall issue a termination of a certificate of
24 immobilization to the appropriate law enforcement entity.

25 Sec. 9. NEW SECTION. 252L.9 COSTS.

26 1. The unit shall send notice of the costs of
27 immobilization and removal of the immobilization device to the
28 obligor at the last known address of the obligor.

29 2. The obligor shall pay the costs of immobilization and
30 removal of the immobilization device to the collection
31 services center unless the unit or the court determines that
32 there was a mistake of fact in the identity of the obligor or
33 a mistake of fact that the amount of the delinquency is equal
34 to or greater than the amount due for three months.

35 3. Notwithstanding any other provision of this chapter,

1 the unit shall not issue a termination of immobilization to a
2 law enforcement entity until the obligor has paid the costs of
3 immobilization. However, a motor vehicle shall not be
4 immobilized under this chapter longer than one hundred twenty
5 days, unless the unit begins a subsequent immobilization
6 process by issuing another notice as provided in section
7 252L.3.

8 4. The unit may use the state share of support collected
9 under this chapter for expenses incurred by the unit to
10 implement and carry out the provisions of this chapter but not
11 to exceed those expenses.

12 5. The unit or law enforcement entity shall not bear any
13 costs attributable to the immobilization including but not
14 limited to tow charges, tickets, or other liabilities.

15 Sec. 10. NEW SECTION. 252L.10 CHANGE OF TITLE.

16 1. During the period of immobilization the obligor shall
17 not sell or transfer the title of the motor vehicle which is
18 subject to the immobilization.

19 2. If, during the period of immobilization, the title to
20 the immobilized motor vehicle is transferred by the
21 foreclosure of a chattel mortgage, a sale upon execution, the
22 cancellation of a conditional sales contract, or an order of a
23 court, the court which enters the order that permits transfer
24 of the title shall notify the clerk of the district court,
25 where the underlying support order is filed or registered, of
26 the transfer of the title.

27 Sec. 11. NEW SECTION. 252L.11 OWNER CLAIMING A RIGHT TO
28 IMMEDIATE POSSESSION.

29 1. An owner of a motor vehicle, other than the obligor,
30 claiming a right to immediate possession may file a petition
31 for immediate possession and, if appropriate, removal of an
32 immobilization device. The petition shall be filed in the
33 district court where the support order is filed or registered.
34 The petition shall be specific and shall provide a detailed
35 description of the specific motor vehicle sought and the

1 nature of the petitioner's interest in the motor vehicle, and
2 shall provide proof of the petitioner's interest. The
3 petition shall also state all the following:

4 a. The grounds upon which the petitioner seeks immediate
5 possession.

6 b. The date the petitioner assumed ownership in the motor
7 vehicle.

8 c. The specific provision of law relied on in asserting a
9 right to immediate possession of the motor vehicle.

10 d. All essential facts supporting each assertion.

11 2. Mere ownership of a motor vehicle is insufficient
12 grounds for granting immediate possession. The petitioner
13 shall be limited at the judicial hearing to proof of the
14 grounds set out in the petition for immediate possession. If
15 no specific grounds are set out in the petition for immediate
16 possession, or the grounds set out are insufficient as a
17 matter of law, the court may enter judgment on the pleadings
18 without further hearing. The court shall enter judgment on
19 the pleadings or hold a hearing within ten calendar days of
20 the filing of the petition and service on the unit. If
21 multiple petitioners have filed petitions for immediate
22 possession, the claims meeting the criteria for a hearing
23 shall all be heard in one proceeding.

24 3. The petitioner shall serve a copy of the petition on
25 the unit in accordance with the rules of civil procedure.

26 4. Notwithstanding the court's granting of petition under
27 this section, section 252L.9 relating to costs shall apply.

28 5. Costs and attorney fees shall not be assessed against
29 the unit.

30 6. If records accessed by the unit at the time the unit
31 issues the notice to the obligor under section 252L.3, or
32 issues a written decision and a certificate of immobilization
33 under section 252L.5, indicate there is an owner of a motor
34 vehicle in addition to the obligor, the unit shall send a
35 notice to that other owner at the address on the registration

1 or other available address. The notice shall be a copy of the
2 notice or written decision to the obligor, or a substantially
3 similar copy, and shall be sent by regular mail at the time
4 the notice under section 252L.3, or the written decision under
5 section 252L.5, is sent to the obligor.

6 7. An owner of a motor vehicle, other than the obligor,
7 claiming a right to immediate possession may obtain immediate
8 possession by posting a cash bond with the clerk of court in
9 the county where the support order is filed or registered in
10 an amount equal to the delinquent support listed in the notice
11 described in subsection 6. Upon notice to the claimant who
12 posted the cash bond, the unit may request the bond be paid as
13 support.

14 Sec. 12. REPORT. On or before October 1, 2002, the
15 department of human services shall provide a report for the
16 fiscal year beginning July 1, 2001, and ending June 30, 2002,
17 to the general assembly concerning the use and results of
18 chapter 252L.

19 EXPLANATION

20 This bill authorizes the child support recovery unit to
21 immobilize a motor vehicle owned by a child support obligor if
22 certain conditions are met, including if the unit determines
23 that immobilization of the motor vehicle is cost effective.
24 The bill provides the procedure for immobilization of a motor
25 vehicle including notice to the obligor and the opportunity
26 for the obligor to challenge the immobilization, judicial
27 review of the unit's written decision relating to the
28 challenge, enforcement of the immobilization action,
29 provisions prohibiting change of title of a motor vehicle
30 during the period of immobilization, and provisions relating
31 to owners of a motor vehicle other than an obligor. The bill
32 also requires the department of human services to provide a
33 report for the fiscal year beginning July 1, 2001, and ending
34 June 30, 2002, to the general assembly concerning the use and
35 results of the immobilization provisions.