

b. The ~~department~~ division may:

(1) ~~Contract, sue and be sued, and promulgate~~ adopt administrative rules necessary to carry out the provisions of this section, but the ~~department~~ division shall not in any manner directly or indirectly pledge the credit of the state of Iowa.

(2) Authorize payment from the historical resource grant and loan fund, from fees and from any income received by investments of money in the fund for costs, commissions, attorney fees and other reasonable expenses related to and necessary for making and protecting direct loans under this section, and for the recovery of moneys loaned or the management of property acquired in connection with such loans.

Approved March 29, 1990

## CHAPTER 1098

### SPOUSAL SUPPORT DEBTS

*S.F. 2388*

**AN ACT** relating to administrative procedures for the establishment, determination, and collection of certain spousal support debts.

*Be It Enacted by the General Assembly of the State of Iowa:*

#### Section 1. NEW SECTION. 249B.1 DEFINITIONS.

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

1. "Community spouse" means an individual who has not resided or is not likely to reside in a hospital or a health care facility for more than twenty-nine consecutive days and is married to an institutionalized spouse.

2. "Community spouse resource allowance" means a resource amount established for a community spouse pursuant to state policy adopted in accordance with the federal Social Security Act, section 1924(f)(2), as codified in 42 U.S.C. § 1396r-5(f)(2).

3. "Court order" means a judgment or order of a court of this state or another state requiring the payment of a set or determinable amount of monetary support.

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

5. "Institutionalized spouse" means a married individual who has resided or is likely to reside in a hospital or a health care facility for more than twenty-nine consecutive days.

6. "Medical assistance" means "medical assistance", "additional medical assistance", "discretionary medical assistance" or "medicare cost-sharing" as defined in section 249A.2 which is provided to an individual pursuant to chapter 249A and Title XIX of the federal Social Security Act.

7. "Minimum monthly maintenance needs allowance" or "minimum allowance" means the minimum monthly maintenance needs allowance established for the community spouse in accordance with Title XIX of the federal Social Security Act, section 1924(d)(3), as codified in 42 U.S.C. § 1396r-5(d)(3).

#### Sec. 2. NEW SECTION. 249B.2 CREATION OF SPOUSAL SUPPORT DEBT.

1. Medical assistance provided to an institutionalized spouse due to the institutionalized spouse's assignment of support rights, an inability to execute an assignment of support rights, or hardship, creates a spousal support debt due and owing to the department from the community spouse in an amount equal to the medical assistance provided on behalf of the institutionalized spouse.

2. The department may recover the spousal support debt from any income or resources of the community spouse that is not exempt for medical assistance eligibility purposes and that

is in excess of the minimum monthly maintenance needs allowance and the community spouse resource allowance.

3. When an institutionalized spouse is determined to be eligible for medical assistance pursuant to subsection 1, prior to issuing a formal notice of a spousal support debt pursuant to section 249B.3, the department shall offer to meet with the community spouse concerning creation of the spousal support debt.

**Sec. 3. NEW SECTION. 249B.3 NOTICE OF SPOUSAL SUPPORT DEBT — FAILURE TO RESPOND — HEARING — ORDER.**

1. The department may issue a notice establishing and demanding payment of an accrued or accruing spousal support debt due and owing to the department. The notice shall be served upon the community spouse in accordance with the rules of civil procedure. The notice shall include all of the following:

a. The amount of medical assistance provided to the institutionalized spouse which creates the spousal support debt.

b. A computation of spousal support debt, the minimum monthly maintenance needs allowance, and the community spouse resource allowance.

c. A demand for immediate payment of the spousal support debt.

d. (1) A statement that if the community spouse desires to discuss the amount of support that the community spouse should be required to pay, the community spouse, within ten days after being served, may contact the unit of the department which issued the notice and request a conference.

(2) A statement that if a conference is requested, the community spouse has ten days from the date set for the conference or twenty days from the date of service of the original notice, whichever is later, to send a request for a hearing to the unit of the department which issued the notice.

(3) A statement that after the holding of the conference, the department may issue a new notice and finding of financial responsibility to be sent to the community spouse by regular mail addressed to the community spouse's last known address, or if applicable, to the last known address of the community spouse's attorney.

(4) A statement that if the department issues a new notice and finding of financial responsibility, the community spouse has ten days from the date of issuance of the new notice or twenty days from the date of service of the original notice, whichever is later, to send a request for a hearing to the unit of the department which issued the notice.

e. A statement that if the community spouse objects to all or any part of the notice or finding of financial responsibility and no negotiation conference is requested, the community spouse, within twenty days of the date of service, shall send to the unit of the department which issued the notice, a written response setting forth any objections and requesting a hearing.

f. A statement that if a timely written request for a hearing is received by the unit of the department which issued the notice, the spouse has the right to a hearing to be held in district court; and that if no timely written response is received, the department will enter an order in accordance with the notice and finding of financial responsibility.

g. A statement that, as soon as the order is entered, the property of the community spouse is subject to collection action, including but not limited to wage withholding, garnishment, attachment of a lien, and execution.

h. A statement that the community spouse must notify the department of any change of address or employment.

i. A statement that if the community spouse has any questions, the community spouse should telephone or visit the department or consult an attorney.

j. Other information as the department finds appropriate.

2. If a timely written response setting forth objections and requesting a hearing is received by the unit of the department which issued the notice, a hearing shall be held in district court.

3. If timely written response and request for hearing is not received by the department, the department may enter an order in accordance with the notice, and the order shall specify all of the following:

- a. The amount to be paid with directions as to the manner of payment.
- b. The amount of the spousal support debt accrued and accruing in favor of the department.
- c. Notice that the property of the community spouse is subject to collection action, including but not limited to wage withholding, garnishment, attachment of a lien, and execution.
4. The community spouse shall be sent a copy of the order by regular mail addressed to the community spouse's last known address, or if applicable, to the last known address of the community spouse's attorney. The order is final, and action by the department to enforce and collect upon the order may be taken from the date of the issuance of the order.

**Sec. 4. NEW SECTION. 249B.4 CERTIFICATION TO COURT — HEARING — DEFAULT.**

1. If a timely written request for a hearing is received, the department shall certify the matter to the district court in the county where the institutionalized spouse resides.
2. The certification shall include true copies of the notice and finding of financial responsibility or notice of the spousal support debt accrued and accruing, the return of service, the written objections and request for hearing, and true copies of any administrative orders previously entered.
3. The district court shall set the matter for hearing and notify the parties of the time and place of hearing.
4. If a party fails to appear at the hearing, upon a showing of proper notice to the party, the district court may find the party in default and enter an appropriate order.

**Sec. 5. NEW SECTION. 249B.5 FILING AND DOCKETING OF FINANCIAL RESPONSIBILITY ORDER — ORDER EFFECTIVE AS COURT DECREE.**

A true copy of an order entered by the department pursuant to this chapter, along with a true copy of the return of service if applicable, may be filed in the office of the clerk of the district court in the county in which the institutionalized spouse resides. Upon filing, the clerk shall enter the order in the judgment docket, and the department's order shall be presented to the district court for ex parte review and approval, and unless defects appear on the face of the order or on the attachments, the district court shall approve the order and the order has the force, effect, and attributes of a docketed order or decree of the district court.

**Sec. 6. NEW SECTION. 249B.6 INTEREST ON SPOUSAL SUPPORT DEBTS.**

Interest accrues on a spousal support debt at the rate provided in section 535.3 for court judgments. The department may collect the accrued interest, but is not required to maintain interest balance accounts. The department may waive payment of the interest if the waiver will facilitate the collection of the spousal support debt.

**Sec. 7. NEW SECTION. 249B.7 SECURITY FOR PAYMENT OF SPOUSAL SUPPORT — FORFEITURE.**

Upon entry of a court order or upon the failure of a community spouse to make payments pursuant to a court order, the court may require the community spouse to provide security, a bond, or other guarantee which the court determines is satisfactory to secure the payment of the spousal support obligation under the court order. If the community spouse fails to make payments pursuant to the court order, the court may declare the security, bond, or other guarantee forfeited.

**CHAPTER 1099****FINE FOR VEHICLE SIZE AND WEIGHT VIOLATIONS***H.F. 664*

**AN ACT** relating to the fine for certain violations regarding motor vehicles of excessive size or weight.

*Be It Enacted by the General Assembly of the State of Iowa:*

Section 1. Section 321E.16, Code 1989, is amended to read as follows:  
321E.16 VIOLATIONS – PENALTIES.

Any person who is convicted of a violation of any provision of this chapter or of rules adopted under section 321E.15, other than length, height, width, or weight allowed by any permit issued under this chapter shall be punished by a fine of not less than one hundred dollars for the first conviction, two hundred fifty dollars for a second conviction within a twelve-month period, and five hundred dollars for a third conviction within a twelve-month period. The fine for violation of the length, height, width, and weight allowed by permit shall be based upon the difference between the actual length, height, width, and weight of the vehicle and load and the maximum allowable by permit and in accordance with section 321.482 for violations of length, height, or width limitations and sections 321.482 and 321.463 for violation of weight limitations. If a vehicle with indivisible load traveling under permit is found to be in violation of weight limitations, the vehicle operator shall be allowed a reasonable amount of time to remove any ice, mud, snow, and other weight attributable to climatic conditions accumulated along the route prior to application of the penalties prescribed in sections 321.463 and 321.482. The department shall adopt rules to require peace officer escorts for permit holders convicted for the third time in a twelve-month period of violating a provision of this chapter or a provision of rules adopted pursuant to section 321E.15.

Approved March 29, 1990

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**CHAPTER 1100****DEBT MANAGEMENT SERVICES FEE***H.F. 2092*

**AN ACT** relating to debt management services.

*Be It Enacted by the General Assembly of the State of Iowa:*

Section 1. Section 533A.9, Code 1989, is amended to read as follows:  
533A.9 FEE AGREED IN ADVANCE.

The fee of the licensee shall be agreed upon in advance and stated in the contract and provision for settlement in case of cancellation or prepayment shall be clearly stated herein. The fee of the licensee shall not exceed ~~twelve and one-half~~ fifteen percent of any payment made by the debtor and distributed to the creditors pursuant to the contract. In case of total payment of the contract before the contract period has expired, the licensee shall be entitled only to a fee of no more than three percent of such final payment.

Sec. 2. Section 533A.11, subsection 7, Code 1989, is amended by striking the subsection.

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