

Reprinted

SENATE FILE 2388
BY COMMITTEE ON HUMAN
RESOURCES

FILED FEB 19 1990

(SUCCESSOR TO SSB 2257)

Passed Senate, Date 2/27/90 (p. 149) Passed House, Date _____
Vote: Ayes 45 Nays 0 Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to administrative procedures for the
2 establishment, determination, and collection of certain
3 spousal support debts.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
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SENATE FILE 2388

S-5213

1 Amend Senate File 2388 as follows:
2 1. Page 2, by inserting after line 9 the
3 following:
4 "3. When an institutionalized spouse is determined
5 to be eligible for medical assistance pursuant to
6 subsection 1, prior to issuing a formal notice of a
7 spousal support debt pursuant to section 249B.3, the
8 department shall offer to meet with the community
9 spouse concerning creation of the spousal support
10 debt."

By MAGGIE TINSMAN
BEVERLY A. HANNON
JIM RIORDAN

S-5213 FILED FEBRUARY 23, 1990

Adopted 2/27 (p. 149)

SF 2388

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

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

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

8 2. "Community spouse resource allowance" means a resource
9 amount established for a community spouse pursuant to state
10 policy adopted in accordance with the federal Social Security
11 Act, section 1924(f)(2), as codified in 42 U.S.C. § 1396r-
12 5(f)(2).

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

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

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

21 6. "Medical assistance" means "medical assistance",
22 "additional medical assistance", "discretionary medical
23 assistance" or "medicare cost-sharing" as defined in section
24 249A.2 which is provided to an individual pursuant to chapter
25 249A and Title XIX of the federal Social Security Act.

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

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

33 1. Medical assistance provided to an institutionalized
34 spouse due to the institutionalized spouse's assignment of
35 support rights, an inability to execute an assignment of

1 support rights, or hardship, creates a spousal support debt
2 due and owing to the department from the community spouse in
3 an amount equal to the medical assistance provided on behalf
4 of the institutionalized spouse.

5 2. The department may recover the spousal support debt
6 from any income or resources of the community spouse that is
7 not exempt for medical assistance eligibility purposes and
8 that is in excess of the minimum monthly maintenance needs
5213 9 allowance and the community spouse resource allowance.

10 Sec. 3. NEW SECTION. 249B.3 NOTICE OF SPOUSAL SUPPORT
11 DEBT -- FAILURE TO RESPOND -- HEARING -- ORDER.

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

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

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

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

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

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

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

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

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

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

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

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

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

35 j. Other information as the department finds appropriate.

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

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

9 a. The amount to be paid with directions as to the manner
10 of payment.

11 b. The amount of the spousal support debt accrued and
12 accruing in favor of the department.

13 c. Notice that the property of the community spouse is
14 subject to collection action, including but not limited to
15 wage withholding, garnishment, attachment of a lien, and
16 execution.

17 4. The community spouse shall be sent a copy of the order
18 by regular mail addressed to the community spouse's last known
19 address, or if applicable, to the last known address of the
20 community spouse's attorney. The order is final, and action
21 by the department to enforce and collect upon the order may be
22 taken from the date of the issuance of the order.

23 Sec. 4. NEW SECTION. 249B.4 CERTIFICATION TO COURT --
24 HEARING -- DEFAULT.

25 1. If a timely written request for a hearing is received,
26 the department shall certify the matter to the district court
27 in the county where the institutionalized spouse resides.

28 2. The certification shall include true copies of the
29 notice and finding of financial responsibility or notice of
30 the spousal support debt accrued and accruing, the return of
31 service, the written objections and request for hearing, and
32 true copies of any administrative orders previously entered.

33 3. The district court shall set the matter for hearing and
34 notify the parties of the time and place of hearing.

35 4. If a party fails to appear at the hearing, upon a

1 showing of proper notice to the party, the district court may
2 find the party in default and enter an appropriate order.

3 Sec. 5. NEW SECTION. 249B.5 FILING AND DOCKETING OF
4 FINANCIAL RESPONSIBILITY ORDER -- ORDER EFFECTIVE AS COURT
5 DECREE.

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

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

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

26 Sec. 7. NEW SECTION. 249B.7 SECURITY FOR PAYMENT OF
27 SPOUSAL SUPPORT -- FORFEITURE.

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

1 guarantee forfeited.

2 EXPLANATION

3 This bill relates to administrative procedures for the
4 establishment, determination, and collection of certain
5 spousal support debts created due to the receipt of medical
6 assistance by an institutionalized spouse, under certain
7 circumstances. The bill creates a new Code chapter
8 tentatively numbered chapter 249B.

9 Terms are defined. Under circumstances involving
10 assignments of support rights to the department of human
11 services or involving inability to execute an assignment or
12 hardship, a spousal support debt is created against the
13 community spouse of an individual who resides in a hospital or
14 health care facility when medical assistance is provided on
15 behalf of the individual. The spousal support debt is owed to
16 the department of human services. Certain income and
17 resources of the community spouse are exempt from the spousal
18 support debt.

19 Procedures for notice, service of notice, conferences,
20 filing of objections, requests for a district court hearing,
21 and judgment orders are provided. Authority is granted to the
22 district court for ex parte review and approval of the
23 department's administrative orders.

24 Interest accrues on spousal support debts in the same
25 manner as judgments and decrees of the court. The department
26 can waive the interest. The court may order a guarantee to be
27 provided to secure payment of the support debt and may order
28 the guarantee to be forfeited.

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SSB 2257

Human Resources

Tinsman, W.
Norman
Richard

SENATE FILE _____
BY (PROPOSED DEPARTMENT OF
HUMAN SERVICES BILL)

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

A BILL FOR

1 An Act relating to administrative procedures for the
2 establishment, determination, and collection of certain
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4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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8 2. "Community spouse resource allowance" means a resource
9 amount established for a community spouse pursuant to state
10 policy adopted in accordance with the federal Social Security
11 Act, section 1924(f)(2), as codified in 42 U.S.C. § 1396r-
12 5(f)(2).

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15 determinable amount of monetary support.

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23 assistance" or "medicare cost-sharing" as defined in section
24 249A.2 which is provided to an individual pursuant to chapter
25 249A and Title XIX of the federal Social Security Act.

26 7. "Minimum monthly maintenance needs allowance" or
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3 an amount equal to the medical assistance provided on behalf
4 of the institutionalized spouse.

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19 institutionalized spouse which creates the spousal support
20 debt.

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22 monthly maintenance needs allowance, and the community spouse
23 resource allowance.

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

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

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

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2 the department may issue a new notice and finding of financial
3 responsibility to be sent to the community spouse by regular
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5 or if applicable, to the last known address of the community
6 spouse's attorney.

7 (4) A statement that if the department issues a new notice
8 and finding of financial responsibility, the community spouse
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14 or any part of the notice or finding of financial
15 responsibility and no negotiation conference is requested, the
16 community spouse, within twenty days of the date of service,
17 shall send to the unit of the department which issued the
18 notice, a written response setting forth any objections and
19 requesting a hearing.

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

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

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

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

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18 by regular mail addressed to the community spouse's last known
19 address, or if applicable, to the last known address of the
20 community spouse's attorney. The order is final, and action
21 by the department to enforce and collect upon the order may be
22 taken from the date of the issuance of the order.

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24 HEARING -- DEFAULT.

25 1. If a timely written request for a hearing is received,
26 the department shall certify the matter to the district court
27 in the county where the institutionalized spouse resides.

28 2. The certification shall include true copies of the
29 notice and finding of financial responsibility or notice of
30 the spousal support debt accrued and accruing, the return of
31 service, the written objections and request for hearing, and
32 true copies of any administrative orders previously entered.

33 3. The district court shall set the matter for hearing and
34 notify the parties of the time and place of hearing.

35 4. If a party fails to appear at the hearing, upon a

1 showing of proper notice to the party, the district court may
2 find the party in default and enter an appropriate order.

3 Sec. 5. NEW SECTION. 249B.5 FILING AND DOCKETING OF
4 FINANCIAL RESPONSIBILITY ORDER -- ORDER EFFECTIVE AS COURT
5 DECREE.

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

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

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

26 Sec. 7. NEW SECTION. 249B.7 SECURITY FOR PAYMENT OF
27 SPOUSAL SUPPORT -- FORFEITURE.

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

1 guarantee forfeited.

2

EXPLANATION

3 This bill relates to administrative procedures for the
4 establishment, determination, and collection of certain
5 spousal support debts created due to the receipt of medical
6 assistance by an institutionalized spouse, under certain
7 circumstances. The bill creates a new Code chapter
8 tentatively numbered chapter 249B.

9 Terms are defined. Under circumstances involving
10 assignments of support rights to the department of human
11 services or involving inability to execute an assignment or
12 hardship, a spousal support debt is created against the
13 community spouse of an individual who resides in a hospital or
14 health care facility when medical assistance is provided on
15 behalf of the individual. The spousal support debt is owed to
16 the department of human services. Certain income and
17 resources of the community spouse are exempt from the spousal
18 support debt.

19 Procedures for notice, service of notice, conferences,
20 filing of objections, requests for a district court hearing,
21 and judgment orders are provided. Authority is granted to the
22 district court for ex parte review and approval of the
23 department's administrative orders.

24 Interest accrues on spousal support debts in the same
25 manner as judgments and decrees of the court. The department
26 can waive the interest. The court may order a guarantee to be
27 provided to secure payment of the support debt and may order
28 the guarantee to be forfeited.

29

BACKGROUND STATEMENT

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SUBMITTED BY THE AGENCY

31 The federal Medicare Catastrophic Coverage Act of 1988
32 provides that in determining federal/state medical assistance
33 eligibility for a person in a medical institution who has a
34 spouse who is not in a medical institution, the resources of
35 both spouses must be considered. The federal law provides a

1 resource allowance for the noninstitutionalized spouse
2 (community spouse resource allowance).

3 However, even when the community spouse's resources exceed
4 the community spouse resource allowance and the resource
5 eligibility limits for the institutionalized spouse, medical
6 assistance eligibility must be granted to the
7 institutionalized spouse in three situations: when the
8 institutionalized spouse assigns the support rights to the
9 state; when the institutionalized spouse lacks the ability
10 physically or mentally to assign support rights to the state;
11 and when spouses are separated, and even though the separated
12 spouse has cooperated in establishing the amount of the
13 community spouse resource allowance and may be receiving some
14 of the income of the institutionalized spouse, the community
15 spouse will not make the resources of the community spouse
16 available and thus eligibility due to a hardship is granted
17 the institutionalized spouse.

18 The effect of these provisions is to allow medical
19 assistance payment for the spouse in the medical institution
20 regardless of the amount of resources held by the community
21 spouse. These provisions would also allow the spouse in the
22 institution who owns resources in excess of the medical
23 assistance resource limits to transfer an unlimited amount of
24 resources to the community spouse and become eligible for
25 medical assistance.

26 Where institutionalized spouses are made eligible under
27 these provisions, regardless of their spouses' resources, the
28 department believes that it should seek support from the
29 community spouse to repay the medical assistance payments for
30 the institutionalized spouse. However, the department would
31 not seek to obtain spousal support from exempt resources such
32 as the home and household goods. The department would seek to
33 obtain spousal support only if the community spouse has
34 resources or income over the resource and monthly income
35 allowances provided by the federal law.

LSB 7312SD 73

SENATE FILE 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.

JO ANN ZIMMERMAN
President of the Senate

DONALD D. AVENSON
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 2388, Seventy-third General Assembly.

JOHN F. DWYER
Secretary of the Senate

Approved March 29, 1990

TERRY E. BRANSTAD
Governor

Section 1. NEW SECTION. 2495.2 "COMMUNITY SPOUSE".

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-2(a)(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. 2495.2 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

1 support rights, or hardship, creates a spousal support debt
2 due and owing to the department from the community spouse in
3 an amount equal to the medical assistance provided on behalf
4 of the institutionalized spouse.

5 2. The department may recover the spousal support debt
6 from any income or resources of the community spouse that is
7 not exempt for medical assistance eligibility purposes and
8 that is in excess of the minimum monthly maintenance needs
52/3 9 allowance and the community spouse resource allowance.

10 Sec. 3. NEW SECTION. 249B.3 NOTICE OF SPOUSAL SUPPORT
11 DEBT -- FAILURE TO RESPOND -- HEARING -- ORDER.

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

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

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

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

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

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

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

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

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

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

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

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

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

35 j. Other information as the department finds appropriate.

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

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

9 a. The amount to be paid with directions as to the manner
10 of payment.

11 b. The amount of the spousal support debt accrued and
12 accruing in favor of the department.

13 c. Notice that the property of the community spouse is
14 subject to collection action, including but not limited to
15 wage withholding, garnishment, attachment of a lien, and
16 execution.

17 4. The community spouse shall be sent a copy of the order
18 by regular mail addressed to the community spouse's last known
19 address, or if applicable, to the last known address of the
20 community spouse's attorney. The order is final, and action
21 by the department to enforce and collect upon the order may be
22 taken from the date of the issuance of the order.

23 Sec. 4. NEW SECTION. 249B.4 CERTIFICATION TO COURT --
24 HEARING -- DEFAULT.

25 1. If a timely written request for a hearing is received,
26 the department shall certify the matter to the district court
27 in the county where the institutionalized spouse resides.

28 2. The certification shall include true copies of the
29 notice and finding of financial responsibility or notice of
30 the spousal support debt accrued and accruing, the return of
31 service, the written objections and request for hearing, and
32 true copies of any administrative orders previously entered.

33 3. The district court shall set the matter for hearing and
34 notify the parties of the time and place of hearing.

35 4. If a party fails to appear at the hearing, upon a

1 knowing of proper notice to the party, the district court may
2 bind the party in default, and enter an appropriate order.

3 Sec. 5. NEW SECTION. 249B.5 FILING AND DOCKETING OF
4 FINANCIAL RESPONSIBILITY ORDER -- ORDER EFFECTIVE AS COURT
5 DECREE.

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

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

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

26 Sec. 7. NEW SECTION. 249B.7 SECURITY FOR PAYMENT OF
27 SPOUSAL SUPPORT -- FORFEITURE.

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

1 guarantee forfeited.

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EXPLANATION

This bill relates to administrative procedures for the establishment, determination, and collection of certain spousal support debts created due to the receipt of medical assistance by an institutionalized spouse, under certain circumstances. The bill creates a new Code chapter tentatively numbered chapter 249B.

Terms are defined. Under circumstances involving assignments of support rights to the department of human services or involving inability to execute an assignment or hardship, a spousal support debt is created against the community spouse of an individual who resides in a hospital or health care facility when medical assistance is provided on behalf of the individual. The spousal support debt is owed to the department of human services. Certain income and resources of the community spouse are exempt from the spousal support debt.

Procedures for notice, service of notice, conferences, filing of objections, requests for a district court hearing, and judgment orders are provided. Authority is granted to the district court for ex parte review and approval of the department's administrative orders.

Interest accrues on spousal support debts in the same manner as judgments and decrees of the court. The department can waive the interest. The court may order a guarantee to be provided to secure payment of the support debt and may order the guarantee to be forfeited.

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

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

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

8 2. "Community spouse resource allowance" means a resource
9 amount established for a community spouse pursuant to state
10 policy adopted in accordance with the federal Social Security
11 Act, section 1924(f)(2), as codified in 42 U.S.C. § 1396r-
12 5(f)(2).

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

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

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

21 6. "Medical assistance" means "medical assistance",
22 "additional medical assistance", "discretionary medical
23 assistance" or "medicare cost-sharing" as defined in section
24 249A.2 which is provided to an individual pursuant to chapter
25 249A and Title XIX of the federal Social Security Act.

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

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

33 1. Medical assistance provided to an institutionalized
34 spouse due to the institutionalized spouse's assignment of
35 support rights, an inability to execute an assignment of

1 support rights, or hardship, creates a spousal support debt
2 due and owing to the department from the community spouse in
3 an amount equal to the medical assistance provided on behalf
4 of the institutionalized spouse.

5 2. The department may recover the spousal support debt
6 from any income or resources of the community spouse that is
7 not exempt for medical assistance eligibility purposes and
8 that is in excess of the minimum monthly maintenance needs
9 allowance and the community spouse resource allowance.

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

16 Sec. 3. NEW SECTION. 249B.3 NOTICE OF SPOUSAL SUPPORT
17 DEBT -- FAILURE TO RESPOND -- HEARING -- ORDER.

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

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

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

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

32 d. (1) A statement that if the community spouse desires
33 to discuss the amount of support that the community spouse
34 should be required to pay, the community spouse, within ten
35 days after being served, may contact the unit of the

1 department which issued the notice and request a conference.

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

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

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

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

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

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

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

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

6 j. Other information as the department finds appropriate.

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

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

15 a. The amount to be paid with directions as to the manner
16 of payment.

17 b. The amount of the spousal support debt accrued and
18 accruing in favor of the department.

19 c. Notice that the property of the community spouse is
20 subject to collection action, including but not limited to
21 wage withholding, garnishment, attachment of a lien, and
22 execution.

23 4. The community spouse shall be sent a copy of the order
24 by regular mail addressed to the community spouse's last known
25 address, or if applicable, to the last known address of the
26 community spouse's attorney. The order is final, and action
27 by the department to enforce and collect upon the order may be
28 taken from the date of the issuance of the order.

29 Sec. 4. NEW SECTION. 249B.4 CERTIFICATION TO COURT --
30 HEARING -- DEFAULT.

31 1. If a timely written request for a hearing is received,
32 the department shall certify the matter to the district court
33 in the county where the institutionalized spouse resides.

34 2. The certification shall include true copies of the
35 notice and finding of financial responsibility or notice of

1 the spousal support debt accrued and accruing, the return of
2 service, the written objections and request for hearing, and
3 true copies of any administrative orders previously entered.

4 3. The district court shall set the matter for hearing and
5 notify the parties of the time and place of hearing.

6 4. If a party fails to appear at the hearing, upon a
7 showing of proper notice to the party, the district court may
8 find the party in default and enter an appropriate order.

9 Sec. 5. NEW SECTION. 249B.5 FILING AND DOCKETING OF
10 FINANCIAL RESPONSIBILITY ORDER -- ORDER EFFECTIVE AS COURT
11 DECREE.

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

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

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

32 Sec. 7. NEW SECTION. 249B.7 SECURITY FOR PAYMENT OF
33 SPOUSAL SUPPORT -- FORFEITURE.

34 Upon entry of a court order or upon the failure of a
35 community spouse to make payments pursuant to a court order,

1 the court may require the community spouse to provide
2 security, a bond, or other guarantee which the court
3 determines is satisfactory to secure the payment of the
4 spousal support obligation under the court order. If the
5 community spouse fails to make payments pursuant to the court
6 order, the court may declare the security, bond, or other
7 guarantee forfeited.

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