

FEB 7 2001  
HUMAN RESOURCES

HOUSE FILE 213  
BY BAUDLER

Passed House, Date \_\_\_\_\_ Passed Senate, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

**A BILL FOR**

1 An Act relating to the willful failure to pay delinquent support  
2 and providing penalties.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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HF 213

1 Section 1. NEW SECTION. 252L.1 WILLFUL FAILURE TO PAY  
2 DELINQUENT SUPPORT -- PENALTIES.

3 1. If an obligor ordered to pay support under chapter 232,  
4 234, 252A, 252C, 252D, 252E, 252F, 598, or 600B, or any other  
5 applicable chapter willfully fails to make support payments to  
6 the clerk of the district court or to the collection services  
7 center pursuant to section 598.22 and becomes delinquent in an  
8 amount equal to the payments for four months, the obligor is  
9 guilty of willful failure to pay support and is subject to the  
10 penalties provided in subsection 5.

11 2. An obligor may be charged under this section only if  
12 all of the following conditions are met:

13 a. The obligor has been cited with contempt of court and  
14 fails to appear, or following the contempt of court hearing  
15 fails to comply with the order entered.

16 b. All other reasonable and available remedies have been  
17 exhausted.

18 c. Evidence exists that the obligor's past conduct  
19 includes a pattern of deception to avoid payment of support.

20 3. The existence of a support obligation that was in  
21 effect for the time period charged in the indictment or  
22 information creates a rebuttable presumption that the obligor  
23 has the ability to pay the support obligation for that time  
24 period.

25 4. It is an affirmative defense that the obligor is unable  
26 to pay the delinquent support amount. The obligor must prove  
27 by a preponderance of the evidence that the obligor is unable  
28 to pay. However, an obligor shall be deemed able to pay if,  
29 during the period the obligor was obligated to pay support,  
30 the obligor was any of the following:

31 a. Voluntarily unemployed or underemployed without good  
32 cause to avoid payment of support, including not using  
33 reasonable diligence to secure sufficient employment.

34 b. Unable to pay the support ordered due to excessive  
35 spending, indebtedness, or other legal obligation, unless the

1 spending, indebtedness, or other legal obligation was not  
2 within the control of the obligor.

3 5. a. A person convicted of willful failure to pay  
4 support for which the conviction is a first offense commits a  
5 serious misdemeanor and shall be imprisoned for a minimum of  
6 one year during which time the obligor shall be required to  
7 perform labor under the Iowa state industries program pursuant  
8 to chapter 904, division VIII.

9 b. A person convicted of willful failure to pay support  
10 for which the conviction is a second or subsequent offense,  
11 commits an aggravated misdemeanor and shall be imprisoned for  
12 a maximum of two years during which time the obligor shall be  
13 required to perform labor under the Iowa state industries  
14 program pursuant to chapter 904, division VIII.

15 c. Notwithstanding any other provision of the Code to the  
16 contrary, the obligor's total earnings through the Iowa state  
17 industries program shall be deposited in the inmate's general  
18 account and shall be used for payment of delinquent support,  
19 the current support obligation, and custodial expenses  
20 incurred by the obligor while the obligor is in the custody of  
21 the department of corrections.

22 6. Upon conviction under this section, the court shall  
23 also order restitution in an amount equal to the total  
24 delinquent support obligation as the obligation exists at the  
25 time of sentencing. Notwithstanding section 910.2, all  
26 amounts collected for the purpose of payment of restitution  
27 shall be used to pay the child support obligation before any  
28 other fines, penalties, surcharges, or other fees required to  
29 be paid under a restitution order.

30 7. In lieu of the penalties and restitution prescribed in  
31 subsections 5 and 6, the court may exercise any of the  
32 following options:

33 a. Defer judgment of the sentence, if the obligor agrees  
34 to all of the following:

35 (1) To pay in full the amount of delinquent support within

1 ten days of the order of deferred judgment.

2 (2) To comply with the terms of the support order.

3 (3) To work conscientiously at suitable employment or  
4 pursue conscientiously a course of study or vocational  
5 training that will equip the obligor for suitable employment.

6 b. Suspend the sentence, if the obligor agrees to all of  
7 the following:

8 (1) To pay in full the amount of the delinquent support in  
9 accordance with a payment plan established by the court.

10 (2) To comply with the terms of the support order.

11 (3) To work conscientiously at suitable employment or  
12 pursue conscientiously a course of study or vocational  
13 training that will equip the obligor for suitable employment.

14 EXPLANATION

15 This bill establishes the crime of willful failure to pay  
16 delinquent support. The bill provides that if an obligor is  
17 ordered to pay support, willfully fails to make payments, and  
18 becomes delinquent in an amount that equals payment for four  
19 months, the obligor is guilty of willful failure to pay  
20 support. The bill provides that an obligor may be charged  
21 with willful failure to pay support if the obligor has been  
22 cited with contempt and did not appear or did not comply with  
23 the order entered following the contempt hearing, if all other  
24 reasonable and available remedies have been exhausted, and if  
25 evidence exists that the obligor's past conduct includes a  
26 pattern of deception to avoid payment of support.

27 The bill provides that the existence of a support  
28 obligation that was in effect for the time period charged  
29 creates a rebuttable presumption that the obligor has the  
30 ability to pay the obligation charged. The bill also provides  
31 that it is an affirmative defense that the obligor is unable  
32 to pay the delinquent support amount.

33 A person convicted of willful failure to pay support for a  
34 first offense is guilty of a serious misdemeanor and is to be  
35 imprisoned for a minimum of one year during which time the

1 person is to perform labor under the Iowa state industries  
2 program. A person convicted of willful failure to pay support  
3 for a second or subsequent offense is guilty of an aggravated  
4 misdemeanor and is to be imprisoned for a maximum of two years  
5 during which time the person is to perform labor under the  
6 Iowa state industries program. Upon conviction of willful  
7 failure to pay support, the court is directed to also order  
8 restitution in the amount of delinquent support that exists at  
9 the time of sentencing.

10 The bill provides that in lieu of imprisonment, the court  
11 may exercise one of two other options. The court may defer  
12 judgment if the obligor agrees to pay the full amount of  
13 delinquent support within 10 days of the deferred judgment  
14 order, to comply with the terms of the support agreement, and  
15 to work at suitable employment or to pursue a course of study  
16 or vocational training that will equip the obligor for  
17 suitable employment. Alternatively, the court may suspend the  
18 sentence if the obligor agrees to pay the full amount of  
19 delinquent support in accordance with a payment plan  
20 established by the court, to comply with the terms of the  
21 support agreement, and to work at suitable employment or to  
22 pursue a course of study or vocational training that will  
23 equip the obligor for suitable employment.

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