

CHAPTER 1141**SCHOOL PHYSICAL PLANT AND EQUIPMENT LEVY***H.F. 2049*

AN ACT relating to the use of moneys from the physical plant and equipment levy to purchase exterior lighting, equipment and technology systems.

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

Section 1. Section 298.3, subsection 1, paragraph b, Code 1993, is amended to read as follows:

b. "Improvement of grounds" includes grading, landscaping, paving, seeding, and planting of shrubs and trees; constructing sidewalks, roadways, retaining walls, sewers and storm drains, and installing hydrants; surfacing and soil treatment of athletic fields and tennis courts; exterior lighting, including athletic fields and tennis courts; furnishing and installing flagpoles, gateways, fences, and underground storage tanks which are not parts of building service systems; demolition work; and special assessments against the school district for public improvements, as defined in section 384.37.

Sec. 2. Section 298.3, subsection 3, Code 1993, is amended to read as follows:

3. The purchase of buildings and the purchase of a single unit of equipment or a technology system exceeding five one thousand five hundred dollars in value.

Approved May 2, 1994

CHAPTER 1142**CORRECTIONS — RESTITUTION — MISCELLANEOUS PROVISIONS***H.F. 2352*

AN ACT relating to criminal offenders and the department of corrections, by making changes regarding payment of restitution by offenders and payments under the crime victim compensation program, making changes in specifications relating to corrections institutions in which offenders are housed, establishing an inmate tort claim fund, deleting requirements relating to inmate visits by the director of the department of corrections, and permitting the release of certain information regarding offenders by the department.

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

Section 1. Section 421.17, subsection 25, unnumbered paragraph 1, Code Supplement 1993, is amended to read as follows:

To establish and maintain a procedure to set off against a debtor's income tax refund or rebate any debt which is in the form of a liquidated sum due, owing, and payable to the clerk of the district court as a ~~criminal fine, civil penalty, surcharge, court costs, or restitution of attorney fees~~ as defined and ordered under sections 910.1 and 910.2 incurred as a result of services provided under chapters 13B and 815, and section 232.141. The procedure shall meet the following conditions:

Sec. 2. Section 602.8107, subsections 1 and 2, Code Supplement 1993, are amended to read as follows:

1. ~~Fines, penalties, court costs, fees, interest, restitution for court-appointed attorney fees, and surcharges~~ Restitution as defined in section 910.1 shall be paid to the clerk of the district court. All amounts collected shall be distributed pursuant to sections 602.8106 and 602.8108

or as otherwise provided by this Code. The clerk may accept payment of an obligation or a portion thereof by credit card. The clerk may charge a fee to reflect the additional cost of processing the payment by credit card.

2. If the clerk receives payment from a person who is an inmate of a state institution or who is under the supervision of a judicial district department of correctional services, the payment shall be applied to the balance owed under the identified case number of the case which has resulted in the placement of the person in a state institution or under the supervision of the judicial district department of correctional services. If a case number is not identified, the clerk shall apply the payment to the balance owed in the criminal case with the oldest judgment against the person. Payments received under this section shall be applied in the following priority order:

- a. Fines or penalties plus any interest due on unsatisfied judgments and criminal penalty surcharges plus interest due on unsatisfied amounts. Pecuniary damages as defined in section 910.1, subsection 2.
- b. Victim restitution. Fines or penalties and criminal penalty surcharges.
- c. Court costs. Crime victim compensation program reimbursement.
- d. Court-appointed Court costs, court-appointed attorney fees, or public defender expenses.

Sec. 3. Section 602.8107, subsection 5, unnumbered paragraph 2, Code Supplement 1993, is amended to read as follows:

This subsection does not apply to amounts collected for victim restitution, the ~~new~~ victim restitution compensation fund, criminal penalty surcharge, or amounts collected as a result of procedures initiated under section 421.17, subsection 25.

Sec. 4. Section 714.7A, Code 1993, is amended to read as follows:
714.7A VETERANS' GRAVE MARKERS.

A person commits a simple misdemeanor when the person takes possession or control of a veteran's grave marker which was provided pursuant to section 35B.16, with the intention to deprive the owner of the marker, regardless of the value of the marker. The person shall also be liable for ~~restitution~~ reimbursement in an amount equal to three times the cost of the marker to be paid to the county commission of veteran affairs or other person who furnished the marker.

Sec. 5. Section 714.16, subsection 7, unnumbered paragraph 1, Code 1993, is amended to read as follows:

A civil action pursuant to this section shall be by equitable proceedings. If it appears to the attorney general that a person has engaged in, is engaging in, or is about to engage in a practice declared to be unlawful by this section, the attorney general may seek and obtain in an action in a district court a temporary restraining order, preliminary injunction, or permanent injunction prohibiting the person from continuing the practice or engaging in the practice or doing an act in furtherance of the practice. The court may make orders or judgments as necessary to prevent the use or employment by a person of any prohibited practices, or which are necessary to restore to any person in interest any moneys or property, real or personal, which have been acquired by means of a practice declared to be unlawful by this section, including the appointment of a receiver in cases of substantial and willful violation of this section. If a person has acquired moneys or property by any means declared to be unlawful by this section and if the cost of administering ~~restitution~~ reimbursement outweighs the benefit to consumers or consumers entitled to the ~~restitution~~ reimbursement cannot be located through reasonable efforts, the court may order disgorgement of moneys or property acquired by the person by awarding the moneys or property to the state to be used by the attorney general for the administration and implementation of this section. Except in an action for the concealment, suppression, or omission of a material fact with intent that others rely upon it, it is not necessary in an action for ~~restitution~~ reimbursement or an injunction, to allege or to prove reliance, damages, intent to deceive, or that the person who engaged in an unlawful act had knowledge of the falsity of the claim or ignorance of the truth. A claim for ~~restitution~~

reimbursement may be proved by any competent evidence, including evidence that would be appropriate in a class action.

Sec. 6. Section 714.16A, subsection 1, unnumbered paragraph 2, Code 1993, is amended to read as follows:

A civil penalty imposed pursuant to this section shall be paid to the treasurer of state, who shall deposit the money in the elderly victim fund, a separate fund created in the state treasury and administered by the attorney general for the investigation and prosecution of frauds against the elderly. Notwithstanding section 8.33, any balance in the fund on June 30 of any fiscal year shall not revert to the general fund of the state. An award of ~~restitution~~ reimbursement pursuant to section 714.16 has priority over a civil penalty imposed by the court pursuant to this subsection.

Sec. 7. Section 904.311, Code 1993, is amended by adding the following new unnumbered paragraphs:

NEW UNNUMBERED PARAGRAPH. There is established in the office of the director an inmate tort claim fund. This fund shall be used to reimburse inmates for the damage or loss of personal property caused by the department. Reimbursement for a single loss may be up to one hundred dollars. Section 8.33 notwithstanding, moneys in the fund shall not revert but shall remain in the fund. The fund shall be replenished from the general appropriation to the institutions as necessary to meet the obligations of the fund.

NEW UNNUMBERED PARAGRAPH. Tort claims denied at the institution shall be forwarded to the state appeal board for its consideration as if originally filed with that body. This procedure shall be used in lieu of the procedure in chapter 669 for inmate tort claims of less than one hundred dollars.

Sec. 8. Section 904.401, unnumbered paragraph 2, Code 1993, is amended by striking the unnumbered paragraph.

Sec. 9. Section 904.602, subsection 1, unnumbered paragraph 1, Code 1993, is amended to read as follows:

The following information regarding individuals receiving or who have received services from the department or from the judicial district departments of correctional services under chapter 905 is public information and may be given to anyone, ~~except that the information shall be limited to the offense for which an individual was last convicted:~~

Sec. 10. Section 904.602, subsection 2, unnumbered paragraph 1 and paragraph a, Code 1993, are amended to read as follows:

The following information regarding individuals receiving or who have received services from the department or from the judicial district departments of correctional services under chapter 905 is confidential and shall not be disseminated by the department to the public:

a. Home street address of the individual receiving or who has received services or that individual's family.

Sec. 11. Section 904.603, Code 1993, is amended to read as follows:
904.603 ACTION FOR DAMAGES.

A person receiving or who has received services, or that person's family, victim or employer may institute a civil action for damages under chapter 669 or other action to restrain the release of confidential records set out in section 904.602, subsection 2, which is in violation of that section, and a person, agency or governmental body proven to have released confidential records in violation of section 904.602, subsection 2 is liable for actual damages for each violation and is liable for court costs and reasonable attorney's fees incurred by the party bringing the action.

Sec. 12. Section 904.905, subsections 1 through 4, Code 1993, are amended to read as follows:

1. An amount ~~determined to be the cost to the judicial district department of correctional services for providing food, lodging and clothing for the inmate while under the program may~~

be legally obligated to pay for the support of the inmate's dependents, the amount of which shall be paid to the dependents through the department of human services located in the county or city in which the dependents reside.

2. The actual and necessary food, travel and other expenses of the inmate when released from actual confinement under the program. Restitution as ordered by the court pursuant to chapter 910.

3. An amount the inmate may be legally obligated to pay for the support of the inmate's dependents, the amount of which shall be paid to the dependents through the local department of human services in the county or city in which the dependents reside. An amount determined to be the cost to the judicial district department of correctional services for providing food, lodging, and clothing for the inmate while under the program.

4. Restitution as ordered by the court pursuant to chapter 910. Any other financial obligations which are acknowledged by the inmate or any unsatisfied judgment against the inmate.

Sec. 13. Section 905.12, subsections 2 and 3, Code 1993, are amended to read as follows:

2. Restitution ordered by the court under chapter 910.

3. An amount determined to be the cost to the judicial district department of correctional services for food, lodging, and other expenses incurred by or on behalf of the resident.

3. Restitution ordered by the court under chapter 910.

Sec. 14. Section 909.6, Code Supplement 1993, is amended to read as follows:

909.6 FINE AS JUDGMENT — INTEREST ASSESSED.

Whenever a court has imposed a fine on any defendant, the judgment in such case shall state the amount of the fine, and shall have the force and effect of a judgment against the defendant for the amount of the fine. The law relating to judgment liens, executions, and other process available to creditors for the collection of debts shall be applicable to such judgments; provided, that no law exempting the personal property of the defendant from any lien or legal process shall be applicable to such judgments.

If a court imposes a fine on an offender, the court shall impose interest charges on any amount remaining unsatisfied from the day after sentencing at the rate provided in section 535.3.

At the time of imposing the sentence, the court shall inform the offender of the amount of the fine and that the judgment includes the imposition of a criminal surcharge, court costs, and applicable fees. The court shall also inform the offender of the duty to pay the judgment in a timely manner and that interest will be charged on unsatisfied judgments.

Sec. 15. Section 910.1, subsection 3, Code 1993, is amended to read as follows:

3. "Restitution" means payment of pecuniary damages to a victim in an amount and in the manner provided by the offender's plan of restitution. Restitution also includes fines, penalties, and surcharges, the payment of crime victim assistance compensation program reimbursements, court costs, court-appointed attorney's fees, or the expense of a public defender, and the performance of a public service by an offender in an amount set by the court when the offender cannot reasonably pay all or part of the court costs, court-appointed attorney's fees, or the expense of a public defender.

Sec. 16. Section 910.2, Code 1993, is amended to read as follows:

910.2 RESTITUTION OR COMMUNITY SERVICE TO BE ORDERED BY SENTENCING COURT.

In all criminal cases except including but not limited to simple misdemeanors under chapter 321, in which there is a plea of guilty, verdict of guilty, or special verdict upon which a judgment of conviction is rendered, the sentencing court shall order that restitution be made by each offender to the victims of the offender's criminal activities, to the clerk of court for fines, penalties, surcharges, and, to the extent that the offender is reasonably able to pay, for crime victim assistance reimbursement, court costs, court-appointed attorney's fees, or the expense of a public defender when applicable. However, victims shall be paid in full before restitution is paid for fines, penalties, and surcharges, crime victim assistance compensation program

reimbursement, court costs, court-appointed attorney's fees, or ~~for the expense~~ expenses of a public defender are paid. In structuring a plan of restitution, the court shall provide for payments in the following order of priority: victim, fines, penalties, and surcharges, crime victim assistance compensation program reimbursement, court costs, and court-appointed attorney's fees, or the expense of a public defender. When the offender is not reasonably able to pay all or a part of the crime victim assistance compensation program reimbursement, court costs, court-appointed attorney's fees, or the expense of a public defender, the court may require the offender in lieu of that portion of the crime victim assistance compensation program reimbursement, court costs, court-appointed attorney's fees, or expense of a public defender for which the offender is not reasonably able to pay, to perform a needed public service for a governmental agency or for a private, nonprofit agency which provides a service to the youth, elderly, or poor of the community. When community service is ordered, the court shall set a specific number of hours of service to be performed by the offender. The judicial district department of correctional services shall provide for the assignment of the offender to a public agency or private nonprofit agency to perform the required service.

Sec. 17. Section 910.3, Code 1993, is amended to read as follows:

910.3 DETERMINATION OF AMOUNT OF RESTITUTION.

The county attorney shall prepare a statement of pecuniary damages to victims of the defendant and, if applicable, any award by the crime victim assistance programs compensation program and shall provide the statement to the presentence investigator or submit the statement to the court at the time of sentencing. The clerk of court shall prepare a statement of court-appointed attorney's fees, the expense of a public defender, and court costs, which shall be provided to the presentence investigator or submitted to the court at the time of sentencing. If these statements are provided to the presentence investigator, they shall become a part of the presentence report. If pecuniary damage amounts are not available at the time of sentencing, the county attorney shall provide a statement of pecuniary damages incurred up to that time to the clerk of court. The statement shall be provided no later than thirty days after sentencing. If a defendant believes no person suffered pecuniary damages, the defendant shall so state. If the defendant has any mental or physical impairment which would limit or prohibit the performance of a public service, the defendant shall so state. The court may order a mental or physical examination, or both, of the defendant to determine a proper course of action. At the time of sentencing or at a later date to be determined by the court, the court shall set out the amount of restitution including the amount of public service to be performed as restitution and the persons to whom restitution must be paid. If the full amount of restitution cannot be determined at the time of sentencing, the court shall issue a temporary order determining a reasonable amount for pecuniary damages incurred restitution identified up to that time, any award by the crime victim assistance programs, court-appointed attorney's fees or the expense of a public defender, and court costs. At a later date as determined by the court, the court shall issue a permanent, supplemental order, setting the full amount of restitution. The court shall enter further supplemental orders, if necessary. These court orders shall be known as the plan of restitution.

Sec. 18. Section 910.9, unnumbered paragraph 3, Code 1993, is amended to read as follows:

Court Fines, penalties, and surcharges, crime victim compensation program reimbursement, court costs, court-appointed attorney's fees, and expenses for public defenders, shall not be withheld by the clerk of court until all victims have been paid in full. Payments to victims shall be made by the clerk of court at least quarterly. Payments by a clerk of court shall be made no later than the last business day of the quarter, but may be made more often at the discretion of the clerk of court. The clerk of court receiving final payment from an offender, shall notify all victims that full restitution has been made, and a copy of the notice shall be sent to the sentencing court. Each office or individual charged with supervising an offender who is required to perform community service as full or partial restitution shall keep records

to assure compliance with the portions of the plan of restitution and restitution plan of payment relating to community service and, when the offender has complied fully with the community service requirement, notify the sentencing court.

Sec. 19. Section 912.6, subsection 4, Code Supplement 1993, is amended to read as follows:

4. Reasonable funeral and burial expenses not to exceed ~~two thousand five hundred~~ thousand dollars.

Approved May 2, 1994

CHAPTER 1143

DISCLAIMER OF HOMESTEAD TAX CREDIT

H.F. 2413

AN ACT relating to the filing of a disclaimer of the homestead credit and the filing of a belated claim for the homestead credit.

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

Section 1. Section 425.2, unnumbered paragraph 2, Code 1993, is amended to read as follows:

Upon the filing and allowance of the claim, the claim shall be allowed on that homestead for successive years without further filing as long as the property is legally or equitably owned and used as a homestead by that person or that person's spouse on July 1 of each of those successive years, and the owner of the property being claimed as a homestead declares residency in Iowa for purposes of income taxation, and the property is occupied by that person or that person's spouse for at least six months in each of those calendar years in which the fiscal year begins. When the property is sold or transferred, the buyer or transferee who wishes to qualify shall refile for the credit. However, when the property is transferred as part of a distribution made pursuant to chapter 598, the transferee who is the spouse retaining ownership of the property is not required to refile for the credit. Property divided pursuant to chapter 598 shall not be modified following the division of the property. An owner who ceases to use a property for a homestead or intends not to use it as a homestead for at least six months in a calendar year shall provide written notice to the assessor by July 1 following the date on which the use is changed. If the written notice is not provided to the assessor by the appropriate July 1, the owner forfeits the right to file a belated claim on another homestead for the year the notice should have been given. A person who sells or transfers a homestead or the personal representative of a deceased person who had a homestead at the time of death, shall provide written notice to the assessor that the property is no longer the homestead of the former claimant.

Approved May 2, 1994