

1 State of Arkansas

2 80th General Assembly

A Bill

3 Regular Session, 1995

HOUSE BILL

1027

4 By: Representative M. Wilson

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For An Act To Be Entitled

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"AN ACT TO ESTABLISH PROCEDURES FOR THE ENFORCEMENT OF

9

FINES ASSESSED BY ARKANSAS CIRCUIT AND CHANCERY COURTS;

10

AND FOR OTHER PURPOSES."

11

12

Subtitle

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"TO ESTABLISH PROCEDURES FOR ENFORCEMENT

14

OF FINES ASSESSED BY CIRCUIT AND

15

CHANCERY COURTS"

16

17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

18

19 SECTION 1. Scope. The procedures established by this act shall apply
20 to the assessment of all monetary fines, however designated, imposed by
21 circuit courts for criminal convictions and civil violations, by chancery
22 courts for civil violations exclusive of child support, and by juvenile
23 courts for delinquency adjudications, and shall be utilized to obtain prompt
24 and full payment of all such fines.

25

26 SECTION 2. Immediate Payment. When a court has imposed a fine, as
27 described in Section 1 of this act, the imposition of such a fine constitutes
28 *an order to pay the full amount of the fine in accordance with this act.*
29 Following imposition of the fine, the court shall inform the defendant that
30 full payment of the fine is due immediately and shall inquire of the
31 defendant what arrangements he has made to comply with the court_s order to
32 pay the fine. Without utilizing the provisions of Section 3 of this act, the
33 court may allow the defendant a period of time, not to extend beyond the time
34 of the close of the clerk_s office on the following day, within which to
35 return to the court and tender payment of the fine. If the defendant fails

1 to appear as directed, the court shall issue an order of arrest. The arrest
2 order shall be carried out by the sheriff. The court may also, upon the
3 defendant_s failure to appear, utilize any of the enforcement mechanisms
4 authorized by this act.

5 If the defendant claims an inability to pay the fine, the court shall
6 inquire into the defendant_s ability to pay and shall make a determination of
7 the defendant_s financial ability to pay the fine. If the court finds that
8 the defendant has the financial ability to make immediate payment of the fine
9 in full, the court shall order him to pay the fine. Failure or refusal to
10 pay as ordered by the court shall subject the defendant to imprisonment, as
11 provided in Section 4 of this act.

12

13 SECTION 3. Installment Payments.

14 (a) If the court concludes that the defendant has the ability to pay
15 the fine, but that requiring the defendant to make immediate payment in full
16 would cause a severe and undue hardship for the defendant and the defendant_s
17 dependents, the court may authorize payment of the fine by means of
18 installment payments in accordance with this act. When a court authorizes
19 payment of a fine by means of installment payments, it shall issue, without a
20 separate disclosure hearing, an order that the fine be paid in full by a date
21 certain and that in default of payment the defendant must appear in court to
22 explain the failure to pay. In fixing the date of payment, the court shall
23 issue an order which will complete payment of the fine as promptly as
24 possible without creating a severe and undue hardship for the defendant and
25 the defendant_s dependents.

26 (b) In addition to the fine and any other assessments authorized by
27 this act an installment fee of five dollars (\$5.00) per month shall be
28 *assessed on each person who pays a fine on an installment basis. One half*
29 *(1/2) of the installment fee shall be remitted to the Department of Finance*
30 *and Administration for deposit in the Judicial Fine Collection Enhancement*
31 *Fund, as established by Section 12 of this act and the other half of the*
32 *installment fee shall be remitted to the county treasurer to be used solely*
33 *for the administration of justice.*

34 (c) Any defendant who has been authorized by the court to pay a fine
35 by installments shall be considered to have irrevocably appointed the clerk

1 of the court as his agent upon whom all papers affecting his liability may be
2 served, and the clerk shall forthwith notify the defendant thereof by
3 ordinary mail at his last known address.

4 (d) "Ability to pay" means that the resources of the defendant,
5 including all available income and resources, are sufficient to pay the fine
6 and provide the defendant and his dependents with a reasonable subsistence
7 compatible with health and decency.

8

9 SECTION 4. Imprisonment.

10 (a) When a defendant sentenced to pay a fine defaults in the payment
11 thereof or of any installment, the court, upon its own motion or that of the
12 prosecuting attorney, may require him to show cause why he should not be
13 imprisoned for nonpayment.

14 (b) The court may issue a warrant of arrest or summons for his
15 appearance.

16 (c) Unless the defendant shows that his default was not attributable
17 to a purposeful refusal to obey the sentence of the court, or to a failure on
18 his part to make a good faith effort to obtain the funds required for
19 payment, the court may order the defendant imprisoned in the county jail or
20 other authorized institution designated by the court until the fine or costs
21 or specified part thereof is paid. The period of imprisonment shall not
22 exceed one (1) day for each ten dollars (\$10.00) of the fine or costs, thirty
23 (30) days if the fine or costs were imposed upon conviction of a misdemeanor,
24 or one (1) year if the fine or costs were imposed upon conviction of a
25 felony, whichever is the shorter period. The provisions of this subsection
26 shall be an addition to the revocation options contained in Arkansas Code
27 Annotated § 5-4-301, et seq.

28 (d) If the court determines that the default in payment of fine or
29 costs *is* not attributable to the causes specified in subsection (c) of this
30 section, the court may enter an order allowing the defendant additional time
31 for payment, reducing the amount of each installment, or revoking the fine or
32 costs or the unpaid portion thereof in whole or in part.

33 (e) When a corporation is sentenced to pay a fine or costs, it is the
34 duty of the person authorized to make disbursement from the assets of the
35 corporation to pay the fine or costs. If such disbursements require approval

1 of the board of directors, it is the duty of the board to authorize
2 disbursements to pay the fine or costs. Failure to comply with the duties
3 imposed by this subsection shall render the person or directors subject to
4 imprisonment under subsections (a), (b), and (c) of this section.

5

6 SECTION 5. Personal Checks.

7 (a) The court shall accept personal checks drawn in the favor of a
8 designated official as provided in *Section 10* of this act, in payment of any
9 fine or associated charge assessed by the court if the person issuing the
10 check furnishes satisfactory proof of residence in this state and if the
11 personal check is drawn on a banking institution located in this state.

12 (b) If any personal check offered in payment pursuant to this section
13 is returned without payment, for any reason, a reasonable charge for the
14 returned check, not to exceed the actual costs incurred by the court or
15 designated agency, may be imposed to recover processing and collection costs.
16 This charge may be added to, and become part of, any underlying obligation.

17 (c) The acceptance of a personal check pursuant to this section
18 constitutes payment of the obligation owed to the court to the extent of the
19 amount of the check as of the date of acceptance when, but not before, the
20 check is duly paid.

21

22 SECTION 6. Credit Card Payments.

23 (a) The court or the agency designated *pursuant to Section 10* of this
24 act may accept payment of fines and associated costs by an approved credit
25 card.

26 (b) The court or designated agency is authorized to enter into
27 contracts with credit card companies and to pay those companies fees normally
28 charged by those companies for allowing the court to accept their credit
29 cards in payment as authorized by subsection (a) of this section. Where the
30 offender pays fines by credit card, the court shall assess a service fee
31 equal to the amount charged to the court by the credit card issuer. This
32 charge may be added to, and become a part of, any underlying obligation.

33

34 SECTION 7. Lien on Property.

35 (a) When a defendant sentenced to pay a fine defaults in the payment

1 thereof or of any installment, the fine may be collected by any means
2 authorized for the enforcement of money judgments in civil actions.

3 (b) A judgment that the defendant pay a fine shall constitute a lien
4 on the real and personal property of the defendant in the same manner and to
5 the same extent as a money judgment in a civil action.

6
7 *SECTION 8. The court may certify in writing to the Department of*
8 *Finance and Administration that a debtor has failed to make satisfactory*
9 *arrangements for the payment of fines and request the Department to revoke,*
10 *suspend or refuse to renew the debtor's motor vehicle registration or*
11 *driver's license. For driver's license revocation, the court must provide*
12 *the Department with the debtor's full name, social security number and last*
13 *known address. For motor vehicle registration revocation, the court must*
14 *provide the Department with the debtor's full name and the license plate*
15 *number or vehicle identification number of the debtor's vehicle.*

16
17 **SECTION 9. Responsibility for Collection.**

18 (a) The quorum court of each county of the state shall, on or before
19 January 1, 1996, and on or before January 1 of each subsequent year,
20 designate a county official, agency, department, or private contractor who
21 shall be primarily responsible for the collection of fines assessed upon
22 defendants in the circuit and chancery courts of this state. A copy of the
23 ordinance making such designation shall be provided to the Administrative
24 Office of the Courts by the first (1st) day of February of each year.

25 (b) If a private contractor is selected by the quorum court to collect
26 fines, then, to insure the integrity of the court and to protect the county,
27 the contractor shall register with the Secretary of State and shall file with
28 the Secretary of State a surety bond or certificate of deposit. The amount
29 of the surety bond or certificate of deposit shall be fifty thousand dollars
30 (\$50,000). The county or any person suffering damage by reason of the acts
31 or omissions of the contractor may bring action on the bond for damages. A
32 contractor shall be ineligible to provide such services if the owner,
33 operator, partner, or employee shall have been convicted of a felony.

34
35 **SECTION 10. Form of Orders. When an order assessing a fine or penalty**

1 *is entered, information on the order shall include, but is not limited to,*
2 *the defendant_s name, current address, social security number, driver_s*
3 *license number, name and address of employment, amount of fine, and the*
4 *agreed-upon payment terms and conditions.*

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6 SECTION 11. Automated Collection Procedures. The Administrative
7 Office of the Courts shall have the responsibility to assist circuit and
8 chancery courts in the assessment and collection of fines and the management
9 and reporting of fine revenue.

10 There is hereby created on the books of the State Treasurer the
11 "Judicial Fine Collection Enhancement Fund", into which the time payment fees
12 established by Section 3 of this act shall be deposited.

13 From the revenues deposited into the Judicial Fine Enhancement Fund,
14 the Administrative Office of the Courts shall purchase computer hardware to
15 make available to entities *designated in Section 9 of this act and*
16 *responsible for fine collection in each county in order to assist with the*
17 *assessment, collection, and reporting of fines. The Administrative Office of*
18 *the Courts shall also purchase or develop computer software to provide for*
19 *the uniform assessment, collection, management, and reporting of fines.*

20

21 SECTION 12. Arkansas Code §26-36-303(1) is amended by adding a new
22 subdivision (G) to read as follows: "(1) 'Claimant agencies' means:

- 23 (A) *State-supported colleges and universities;*
- 24 (B) *The Department of Human Services;*
- 25 (C) *The Arkansas Student Loan Authority;*
- 26 (D) *The Student Loan Guarantee Foundation;*
- 27 (E) *The Auditor of State;*
- 28 (F) *The State Department of Higher Education; and*
- 29 (G) *Arkansas circuit, juvenile and chancery courts."*

30

31 SECTION 13. All provisions of this act of a general and permanent
32 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas
33 Code Revision Commission shall incorporate the same in the Code.

34

35 SECTION 14. If any provision of this act or the application thereof to

1 any person or circumstance is held invalid, such invalidity shall not affect
2 other provisions or applications of the act which can be given effect without
3 the invalid provision or application, and to this end the provisions of this
4 act are declared to be severable.

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6 **SECTION 15.** All laws and parts of laws in conflict with this act are
7 hereby repealed.

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/s/M. Wilson