

REFERENCE TITLE: nonpayment of fines; fees; consequences

State of Arizona
Senate
Forty-eighth Legislature
Second Regular Session
2008

SB 1191

Introduced by
Senator Gray C

AN ACT

AMENDING SECTION 13-810, ARIZONA REVISED STATUTES; AMENDING TITLE 13, CHAPTER 8, ARIZONA REVISED STATUTES, BY ADDING SECTION 13-814; RELATING TO RESTITUTION AND FINES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 13-810, Arizona Revised Statutes, is amended to
3 read:

4 13-810. Consequences of nonpayment of fines, fees, restitution
5 or incarceration costs

6 A. In addition to any other remedy provided by law, including a writ
7 of execution or other civil enforcement, if a defendant who is sentenced to
8 pay a fine, a fee or incarceration costs defaults in the payment of the fine,
9 fee or incarceration costs or of any installment as ordered, the clerk of the
10 court imposing the fine, fee or incarceration costs shall notify the
11 prosecutor and the sentencing court. The court, on motion of the prosecuting
12 attorney or on its own motion, ~~shall~~ MAY EITHER:

13 1. Require the defendant to show cause why the defendant's default
14 should not be treated as CIVIL contempt and may issue a summons or a warrant
15 of arrest for the defendant's appearance.

16 2. FILE A COMPLAINT, IN WRITING, UNDER OATH, SETTING FORTH THE OFFENSE
17 OF WILFULLY FAILING TO COMPLY WITH AN ORDER TO PAY A FINE, FEE OR
18 INCARCERATION COSTS PURSUANT TO SECTION 13-814 AND SHALL ISSUE A SUMMONS OR
19 WARRANT OF ARREST FOR THE DEFENDANT'S APPEARANCE.

20 B. In addition to any other remedy provided by law, including a writ
21 of execution or other civil enforcement, if a defendant who is ordered to pay
22 restitution defaults in the payment of the restitution or of any installment
23 as ordered, the clerk of the court that imposed the restitution shall notify
24 the prosecutor and the sentencing court on a monthly basis. The court, on
25 motion of the prosecuting attorney, on petition of any person entitled to
26 restitution pursuant to a court order or on its own motion, shall require the
27 defendant to show cause why the defendant's default should not be treated as
28 contempt and may issue a summons or a warrant of arrest for the defendant's
29 appearance.

30 C. At any hearing on the order to show cause the court, the
31 prosecuting attorney or a person entitled to restitution may examine the
32 defendant under oath concerning the defendant's financial condition,
33 employment and assets or on any other matter relating to the defendant's
34 ability to pay restitution.

35 D. If the court finds that the defendant has wilfully failed to pay a
36 fine, a fee, restitution or incarceration costs or finds that the defendant
37 has intentionally refused to make a good faith effort to obtain the monies
38 required for the payment, the court shall find that the default constitutes
39 contempt and may do one of the following:

40 1. Order the defendant incarcerated in the county jail until the fine,
41 fee, restitution or incarceration costs, or a specified part of the fine,
42 fee, restitution or incarceration costs, is paid.

43 2. Revoke the defendant's probation, parole or community supervision
44 and sentence the defendant to prison pursuant to law.

1 3. Enter an order pursuant to section 13-812. The levy or execution
2 for the collection of a fine, a fee, restitution or incarceration costs does
3 not discharge a defendant who is incarcerated for nonpayment of the fine,
4 fee, restitution or incarceration costs until the amount of the fine, fee,
5 restitution or incarceration costs is collected.

6 E. If the court finds that the default is not wilful and that the
7 defendant cannot pay despite sufficient good faith efforts to obtain the
8 monies, the court may take any lawful action including:

9 1. Modify the manner in which the restitution, fine, fee or
10 incarceration costs are to be paid.

11 2. Enter any reasonable order that would assure compliance with the
12 order to pay.

13 3. Enter an order pursuant to section 13-812. The levy or execution
14 for the collection of a fine, a fee, restitution or incarceration costs does
15 not discharge a defendant incarcerated for nonpayment of the fine, fee,
16 restitution or incarceration costs until the amount of the fine, fee,
17 restitution or incarceration costs is collected.

18 F. If a fine, a fee, restitution or incarceration costs are imposed on
19 an enterprise it is the duty of the person or persons authorized to make
20 disbursement from the assets of the enterprise to pay them from those assets,
21 and their failure to do so shall be held a contempt unless they make the
22 showing required in subsection A or B of this section.

23 Sec. 2. Title 13, chapter 8, Arizona Revised Statutes, is amended by
24 adding section 13-814, to read:

25 13-814. Failure to comply with an order to pay fine, fee or
26 incarceration costs; classification

27 A DEFENDANT WHO IS SENTENCED TO PAY A FINE, A FEE OR INCARCERATION
28 COSTS IS GUILTY OF A CLASS 2 MISDEMEANOR IF THE DEFENDANT DOES ANY OF THE
29 FOLLOWING:

30 1. WILFULLY DEFAULTS IN THE PAYMENT OF THE FINE, FEE OR INCARCERATION
31 COSTS OR OF ANY INSTALLMENT AS ORDERED.

32 2. INTENTIONALLY REFUSES TO MAKE A GOOD FAITH EFFORT TO OBTAIN THE
33 MONIES REQUIRED FOR THE PAYMENT.

34 3. FAILS TO REQUEST IN WRITING AN EXTENSION OF TIME IN WHICH TO PAY A
35 FINE, A FEE OR INCARCERATION COSTS AND DEFAULTS IN THE PAYMENT OF THE FINE,
36 FEE OR INCARCERATION COSTS.