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Offered: 4/20/81
Referred: Judiciary

1 IN THE HOUSE

BY THE HEALTH, EDUCATION AND
SOCIAL SERVICES COMMITTEE

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CS FOR HOUSE BILL NO. 167 (HESS)

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IN THE LEGISLATURE OF THE STATE OF ALASKA

4

TWELFTH LEGISLATURE - FIRST SESSION

5

A BILL

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For an Act entitled: "An Act relating to child support; and changing Rule

7

77 of the Alaska Rules of Civil Procedure."

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BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

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* Section 1. AS 09.65 is amended by adding a new section to read:

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Sec. 09.65.132. INCOME ASSIGNMENT ORDER FOR CHILD SUPPORT. (a)

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A judgment, court order, or order of the child support enforcement agency (AS 47.23) providing for the support of a minor child shall contain an income assignment order.

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(b) An income assignment order shall direct the obligor, his employer, future employer, and any person, political subdivision or department of the state to assign money due or to be due the obligor to the child support enforcement agency (AS 47.23) in an amount sufficient to meet the support payments imposed by the court.

(c) An income assignment order shall take effect upon the application to the clerk of court of an obligee or person or public agency designated to receive the support payments. An application shall include a sworn statement that the obligor has failed to make a support payment in full within 30 days of the date the payment was due.

(d) If an application is received by the clerk of court, notice shall be sent by certified mail to the last known address of the obligor. The notice shall be postmarked no later than 10 days after the date on which the application was filed and shall inform the obligor that the income assignment will take effect 15 days after the date on which the notice was sent. The notice shall also state that the obligor

1 may request a hearing within the 15 days after the notice was sent. If
2 the obligor requests a hearing, an income assignment may not take
3 effect until the conclusion of the hearing. The court shall hold a
4 hearing requested under this section within 15 days after the date the
5 obligor requests the hearing.

6 (e) The clerk of court shall immediately send a copy of an income
7 assignment order by certified mail to persons identified by the obligee.
8 An income assignment made under this section is binding upon a person,
9 employer, political subdivision, or department of the state immediately
10 upon receipt of a copy of the assignment from the court.

11 (f) An employer may not discharge an obligor on the basis of an
12 assignment under this section.

13 (g) An income assignment under this section has priority over all
14 other attachments, executions, garnishments, or other assignments
15 unless otherwise ordered by the court. An income assignment is not
16 limited to the wages of an obligor but may include all money owed to
17 the obligor. The exemptions from execution by judgment debtors under
18 AS 09.35.080(a) and the restrictions from execution by judgment debtors
19 under AS 09.35.080(b)(1) do not apply to income assignments under this
20 section.

21 (h) The court may order an obligor to pay all court costs involved
22 in an income assignment proceeding under this section.

23 * Sec. 2. AS 25.25.010(1) is amended to read:

24 (1) "state" includes the State of Alaska and a state, terri-
25 tory, or possession of the United States and the District of Columbia,
26 and a foreign country in which this or a substantially similar recipro-
27 cal law has been enacted;

28 * Sec. 3. AS 47.23.100 is amended to read:

29 Sec. 47.23.100. ALL PERSONS MAY USE AGENCY. The agency shall

1 provide aid to any person due child support under the laws of this
2 state upon application. [IF THE OBLIGEE IS INDIGENT OR OTHERWISE
3 UNABLE TO PAY FOR THESE SERVICES, THE AGENCY SHALL ACT WITHOUT CHARGE
4 TO THE OBLIGEE. IF THE AGENCY DETERMINES THAT THE OBLIGEE IS FINAN-
5 CIALY ABLE TO PAY, COSTS SHALL BE ASSESSED ACCORDING TO REGULATIONS
6 ADOPTED BY THE DEPARTMENT AND BE PAID INTO THE FUND ESTABLISHED IN
7 AS 47.23.030.]

8 * Sec. 4. AS 47.23.110 is amended by adding new paragraphs to read:

9 (7) "earnings" means compensation paid or payable for per-
10 sonal services, whether denominated as wages, salary, commission,
11 bonus, or other similar description and includes the gain derived from
12 the investment of capital, from labor, or from a combination of invest-
13 ment and labor;

14 (8) "disposable earnings" means that part of the earnings of
15 an individual which remains after the deduction from those earnings of
16 any amount required by law to be withheld.

17 * Sec. 5. AS 47.23.130 is repealed and reenacted to read:

18 Sec. 47.23.130. SUBROGATION OF STATE. (a) If the obligor is li-
19 able to the state under AS 47.23.120(a) or (b), the state is subrogated
20 to the rights of the obligee to

21 (1) bring an action in the superior court seeking an order
22 of support;

23 (2) proceed under AS 47.23.160 - 47.23.270 to establish a
24 duty of support; or

25 (3) enforce by execution, in accordance with AS 47.23.230 -
26 47.23.270, or otherwise, a support order entered in favor of the obli-
27 gee.

28 (b) To establish or enforce an order of support, based on the
29 subrogation of the state, the agency is not limited to the amount of

1 assistance being granted to the minor child.

2 (c) The recovery of any amount for which the obligor is liable
3 which exceeds the total assistance granted under AS 47.25.310 - 47.25.-
4 420 shall be paid to the obligee.

5 * Sec. 6. AS 47.23.140 is amended by adding a new subsection to read:

6 (c) A decision of the agency determining a duty of support shall
7 include an income assignment order as provided under AS 09.65.132.

8 * Sec. 7. AS 47.23.170(f) is amended to read:

9 (f) If the alleged obligor requesting the hearing fails to appear
10 at the hearing, the hearing officer shall enter a decision declaring
11 the property of the alleged obligor subject to execution in accordance
12 with AS 47.23.230 - 47.23.270 in the amounts stated in the notice and
13 finding [FILING] of financial responsibility.

14 * Sec. 8. AS 47.23 is amended by adding new sections to read:

15 Sec. 47.23.253. EARNINGS SUBJECT TO AN ORDER OR LIEN. (a) A
16 person, political subdivision, or department of the state shall withhold
17 the earnings of the obligor subject to an order or lien at each succeed-
18 ing interval of payment until the entire amount of the debt stated in
19 the order to withhold and deliver has been withheld.

20 (b) An order to withhold and deliver issued to the Department of
21 Revenue remains in effect throughout the calendar year in which it is
22 served. That order applies to any tax refund or other disbursements to
23 which the obligor is entitled even if the tax refund or disbursement is
24 issued more than 30 days after service of the order.

25 Sec. 47.23.255. INCOME ASSIGNMENT ORDERS. (a) The agency shall
26 pay the obligee all money recovered by the agency under an income
27 assignment order except for costs which are recovered from the obligor
28 or amounts withheld under AS 47.23.257(c).

29 (b) Notwithstanding AS 47.23.250, an income assignment order

1 contained in a decision of the agency which has not been set aside by
2 the superior court under AS 47.23.220 shall be enforced under the
3 procedure established in AS 09.65.132.

4 Sec. 47.23.257. TEMPORARY PAYMENT OF CHILD SUPPORT BY AGENCY.

5 (a) If an obligor fails to make a child support payment subject to an
6 income assignment provision under AS 09.65.132, the agency may pay the
7 obligee the amount of child support due under the order. Payment of
8 child support under this section may continue for three months or until
9 the obligor has paid all arrearages plus interest and costs, whichever
10 occurs first.

11 (b) In order to receive temporary child support payments under
12 this section the obligee must file an application under AS 09.65.132(c)
13 and file a copy of the application with the agency. The obligee must
14 cooperate fully with the agency in enforcing an income assignment
15 provision under AS 09.65.132.

16 (c) The agency is entitled to reimbursement for payments made
17 under this section from any arrearages recovered from the obligor under
18 AS 09.65.132.

19 * Sec. 9. AS 47.23.260 is amended to read:

20 Sec. 47.23.260. CIVIL LIABILITY UPON FAILURE TO COMPLY WITH AN
21 ORDER OR LIEN. If any person, political subdivision, or department of
22 the state (1) fails to make answer to an order to withhold and deliver
23 within the time prescribed in AS 47.23.250; (2) fails or refuses to
24 deliver property in accordance with an order issued under AS 47.23.250;
25 (3) pays over, releases, sells, transfers, or conveys real property
26 subject to a lien filed under AS 47.23.230 to or for the benefit of the
27 obligor or any other person; (4) fails or refuses to surrender upon
28 demand property attached; (5) fails or refuses to honor an assignment
29 of wages or an income assignment under AS 09.65.132 presented by the

1 agency, the person, political subdivision, or department of the state
2 is liable to the agency in an amount equal to 100 percent of the amount
3 constituting the basis of the lien, order to withhold and deliver,
4 attachment, or assignment of wages or income, together with costs,
5 interest, and reasonable attorney fees.

6 * Sec. 10. AS 47.23 is amended by adding a new section to read:

7 Sec. 47.23.275. LOCATION OF CHILDREN. Upon the written request
8 of the obligor and notice to the obligee, the agency shall release
9 information concerning the location of children to whom a duty of
10 support is owed if the obligor has paid all support payments which are
11 due and there is a visitation or joint custody agreement or order in
12 effect.

13 * Sec. 11. AS 09.65.132 added in sec. 1 of this Act has the effect of
14 changing Rule 77 of the Alaska Rules of Civil Procedure by establishing a
15 procedure and time limits for court review of income assignment order which
16 differ from those generally applicable in civil actions.