

Introduced: 2/16/81
Referred: Health, Education
& Social Services and
Judiciary

1 IN THE SENATE

BY RAY and RODEY

2 SENATE BILL NO. 181

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to child support and changing Rule 56
7 of the Alaska Rules of Civil Procedure."

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

9 * Section 1. AS 09.55.220 is amended by adding a new subsection to read:

10 (b) In a proceeding to modify an obligation to pay future child
11 support, a change of 20 percent or more in the consumer price index
12 since the establishment or subsequent modification of a judicial or
13 administrative support order for future child support payments is prima
14 facie evidence of a change in circumstances. In this subsection "con-
15 sumer price index" means the All Urban Consumer Price Index (CPIU) as
16 compiled by the United States Department of Labor, Bureau of Labor
17 Statistics, for Anchorage, Alaska or, if the parties live in the same
18 judicial district in this state, the index for a municipality within
19 the judicial district if the United States Department of Labor compiles
20 an index for that district.

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

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

26 * Sec. 3. AS 25.25.010(6) is amended to read:

27 (6) "duty of support" includes a duty of support imposed or
28 imposable by law, or by a court order, decree or judgment, whether
29 interlocutory or final, whether incidental to a proceeding for divorce,

1 legal separation, separate maintenance or otherwise, and includes the
2 duty to pay arrearages of support past due and unpaid plus interest
3 and overdue payment fee under AS 47.23.020(2)(c);

4 * Sec. 4. AS 25.25.010 is amended by adding a new paragraph to read:

5 (11) "interest" means post judgment interest on a judgment
6 of arrears at 10 percent a year or at the rate established by the
7 Department of Health and Social Services by regulation, whichever is
8 higher.

9 * Sec. 5. AS 25.25.258 is amended by adding a new subsection to read:

10 (d) Registration of a foreign support order does not subject the
11 obligee to the general jurisdiction of the courts of this state unless
12 the obligee is a resident of this state. The jurisdiction of the
13 superior court over a nonresident obligee and the duty of the child
14 support enforcement agency to represent an obligee are confined to
15 those matters identified in (a) and (c) of this section, and collateral
16 matters such as custody and visitation may not be considered in proceed-
17 ings under this chapter.

18 * Sec. 6. AS 47.23.020(2)(A) is amended to read:

19 (A) schedules for determining the amount an obligor is
20 liable to contribute toward the support of a minor child [AN
21 OBLIGEE] under this chapter and under Title IV-D, Social Security
22 Act;

23 * Sec. 7. AS 47.23.020(2)(C) is amended to read:

24 (C) a uniform schedule of fees which may be charged to
25 the obligor upon notice if the child support payments are 10 or
26 more days overdue or if payment is made by a check backed by
27 insufficient funds; [.]

28 * Sec. 8. AS 47.23.020 is amended by adding a new subsection to read:

29 (b) Notice under (a)(2)(C) of this section may be given to the

1 obligor by mailing by first class mail a copy of the schedule and
2 statement of overdue payments to the last known address of the obligor;

3 * Sec. 9. AS 47.23.045 is amended to read:

4 Sec. 47.23.045. AGENCY RIGHT TO INTERVENE [DETERMINATION OF
5 SUPPORT OBLIGATIONS].The agency may appear in an action seeking an
6 award of support in behalf of a child owed a duty of support, and may
7 also appear in an action seeking modification of a support order,
8 decree or judgment already entered. Action under this section may be
9 undertaken upon application of an obligee, or at the agency's own
10 discretion if the obligor is liable to the state under AS 47.23.120(a)
11 or (b).

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

13 Sec. 47.23.092. REDUCING ARREARS TO JUDGMENT. The agency may
14 submit to the superior court, with notice to the obligor, a certified
15 statement of arrears. Notice may be given to the obligor by mailing by
16 first class mail a copy of the statement to the last known address of
17 the obligor. The court shall treat the certified statement of arrears
18 as a motion for summary judgment under the Alaska Rules of Civil Proce-
19 dure. The court may enter judgment for the amount of support which is
20 due and overdue payment fees.

21 * Sec. 11. AS 47.23.100 is amended to read:

22 Sec. 47.23.100. ALL PERSONS MAY USE THE AGENCY. The agency
23 shall provide aid to any person due child support under the laws of
24 this state upon application. If the obligee is indigent or otherwise
25 unable to pay for these services, the agency shall act without charge
26 to the obligee. The agency may impose fees for services provided
27 under this chapter. Fees for services [IF THE AGENCY DETERMINES THAT
28 THE OBLIGEE IS FINANCIALLY ABLE TO PAY COSTS] shall be assessed accord-
29 ing to regulations adopted by the department and be paid into the fund

1 established in AS 47.23.030.

2 * Sec. 12. AS 47.23.110(3) is amended to read:

3 (3) "duty of support" includes a duty of child support
4 imposed or imposable by law, by a court order, decree or judgment, or
5 by a finding or decision rendered under this chapter whether interlocu-
6 tory or final, whether incidental to a proceeding for divorce, legal
7 separation, separate maintenance, or otherwise, and includes the duty
8 to pay arrearages of support past due and unpaid, plus interest and
9 overdue payment fee under AS 47.23.020(2)(C);

10 * Sec. 13. AS 47.23.110(4) is amended to read:

11 (4) "obligee" means the custodial parent or person who has
12 physical custody and responsibility for a minor child [A PERSON] to
13 whom a duty of support is owed;

14 * Sec. 14. AS 47.23.110 is amended by adding a new paragraph to read:

15 (7) "interest" means post judgment interest on a judgment of
16 arrears at 10 percent a year or the rate established by the department
17 by regulation, whichever is higher.

18 * Sec. 15. AS 47.23.130 is amended to read:

19 Sec. 47.23.130. SUBROGATION OF STATE. If the obligor is liable
20 to the state under AS 47.23.120(a) or (b), the state is subrogated to
21 the rights of the obligee to either bring an action seeking a support
22 order or to proceed under AS 47.23.160 - 47.23.270 to establish and
23 enforce a duty of support and further to enforce by execution, in
24 accordance with AS 47.23.230 - 47.23.270 or otherwise, any support
25 order already entered in favor of the obligee. The recovery of an
26 amount for which the obligor is liable in excess of [, UP TO] the
27 amount of the total assistance granted under AS 47.25.310 - 47.25.420
28 shall be given to the obligee [FOR WHICH THE OBLIGOR IS LIABLE TO THE
29 STATE UNDER AS 47.23.120(a) AND (b)].

1 * Sec. 16. AS 47.23.150 is amended by adding a new subsection to read:

2 (c) Refusal by the obligor to accept notice under (a) of this
3 section is considered service as of the time of refusal.

4 * Sec. 17. AS 47.23.160(b) is amended to read:

5 (b) The notice and finding of financial responsibility served
6 under (a) of this section shall state

7 (1) the sum or periodic payments for which the alleged
8 obligor is found to be responsible, calculated by taking into consider-
9 ation the need of the minor child [ALLEGED OBLIGEE], the alleged
10 obligor's liability to the state under AS 47.23.130, if any, and his
11 duty of support under the law;

12 (2) the name of the alleged obligee and minor child [HIS
13 CUSTODIAN];

14 (3) that the alleged obligor may appear and show cause in a
15 hearing held by the agency why the finding is incorrect, should not be
16 finally ordered, and should be modified or rescinded, because (A) no
17 duty of support is owed, or (B) the amount of support found to be owed
18 is incorrect;

19 (4) that if the person served with the notice and finding of
20 financial responsibility does not request a hearing within 30 days, the
21 property of the person will be subject to execution in accordance with
22 AS 47.23.230 - 47.23.270 in the amounts stated in the finding without
23 further notice or hearing.

24 * Sec. 18. AS 47.23.160 is amended by adding a new subsection to read:

25 (c) Refusal by the obligor to accept notice under (a) of this
26 section is considered service as of the time of refusal.

27 * Sec. 19. AS 47.23.170(e) is amended to read:

28 (e) The hearing officer shall consider the following in making
29 his determination under (d) of this section:

1 (1) the needs of the minor child [ALLEGED OBLIGEE], disre-
2 garding the income or assets [OF THE CUSTODIAN] of the alleged obligee;

3 (2) the amount of the alleged obligor's liability to the
4 state under AS 47.23.125 if any;

5 (3) the intent of the legislature that children be supported
6 as much as possible by their natural parents;

7 (4) the ability of the alleged obligor to pay.

8 * Sec. 20. 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. 21. AS 47.23 is amended by adding a new section to read:

15 Sec. 47.23.182. RATIFICATION BY COURT OF ADMINISTRATIVE ORDERS.
16 An administrative support order issued under AS 47.23.160(b)(4), 47.23.-
17 170(f) and 47.23.180(a) may be forwarded to the superior court. Unless
18 a notice of appeal under AS 47.23.210 is filed within 30 days after the
19 administrative support order is received by the court, the court may
20 enter an order confirming the administrative support order.

21 * Sec. 22. AS 47.23.190(a) is amended to read:

22 (a) Unless a support order has been entered, the obligor [,] or
23 the obligee [OR HIS CUSTODIAN,] may petition the agency or its designee
24 for a modification of the finding or decision of responsibility pre-
25 viously entered with regard to future periodic support payments.

26 * Sec. 23. AS 47.23.190(c) is amended to read:

27 (c) If a hearing is granted, the agency shall serve a notice of
28 hearing together with a copy of the petition and affidavits submitted
29 on the obligee [OR HIS CUSTODIAN] and the obligor personally or by

1 registered, certified, or insured mail, return receipt requested, for
2 restricted delivery only to the person to whom the notice is directed
3 or to the person authorized under federal regulation to receive his
4 restricted delivery mail.

5 * Sec. 24. AS 47.23.250 is repealed and reenacted to read:

6 Sec. 47.23.250. ORDER TO WITHHOLD AND DELIVER. (a) At the
7 expiration of 30 days from the date of service of notice under AS
8 47.23.150, or from the date of service of a notice and finding of
9 financial responsibility under AS 47.23.160, the agency may issue to
10 any person, political subdivision, or department of the state an order
11 to withhold and deliver property.

12 (b) All real or personal property belonging to the obligor is
13 subject to an order to withhold and deliver, including, but not limited
14 to, earnings which are due, owing, or belonging to the debtor.

15 (c) The agency may issue an order to withhold and deliver when it
16 has reason to believe that there is in the possession of a person,
17 political subdivision, or department of the state property which is
18 due, owing, or belonging to the obligor.

19 (d) The order to withhold and deliver shall be served upon the
20 person, political subdivision, or department of the state possessing
21 the property in the manner provided for service of liens under AS
22 47.23.240. The order shall state the amount of the obligor's liability
23 and shall state in summary the terms of AS 47.23.260 and 47.23.270.

24 (e) Any person, political subdivision, or department of the state
25 served with an order to withhold and deliver is required to make true
26 answers to inquiries contained in the order under oath and in writing
27 within 30 days of service of the order and is further required to
28 answer all inquiries subsequently put.

29 (f) A person, political subdivision, or department of the state

1 which regularly incurs additional indebtedness to the obligor shall
2 continue to withhold and deliver money as it comes due and owing until
3 the liability of the obligor under AS 47.23.150 is satisfied.

4 (g) An order to withhold and deliver issued to the Department of
5 Revenue is effective upon receipt by the Department and remains effec-
6 tive for that calendar year. The order shall be sufficient to subject
7 any tax refund or other disbursements due to be issued to the obligor
8 in that year to the provisions of this section even though the tax
9 refund or disbursement may be issued more than 30 days after the order.

10 (h) If any person, political subdivision, or department of the
11 state upon whom service of an order to withhold and deliver has been
12 made possesses property due, owing, or belonging to the obligor, that
13 person, subdivision, or department shall withhold the property immedi-
14 ately upon receipt of the order and shall deliver the property to the
15 agency upon demand after the expiration of the 30day period from the
16 date of service of the order. The agency shall hold property delivered
17 under this subsection in trust for application against the liability of
18 the obligor under AS 47.23.130 or for return, without interest, depend-
19 ing on final determination of liability or nonliability under this
20 chapter. The agency may accept a good and sufficient bond conditioned
21 upon final determination of liability in lieu of requiring delivering
22 of property under this subsection.

23 (i) Delivery to the agency of the money or other property due,
24 owing, or belonging to the obligor shall satisfy the requirement of the
25 order to withhold and deliver. Delivery of money due and owing to the
26 obligor under any contract of employment, express or implied, or held
27 by any person, political subdivision, or department of the state, and
28 subject to withdrawal by the obligor, shall be delivered by remittance
29 payable to the order of the agency.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29

(j) The agency shall defend and hold harmless for such actions people withholding or delivering money or property to the agency in accordance with this section.

(k) The exemptions from execution by judgment debtors under AS 09.35.080(a) and the restrictions from execution by judgment debtors under AS 09.35.080(b)(1) do not apply to proceedings to enforce the payment of child support under AS 47.23.230 - 47.23.270.

* Sec. 25. AS 47.23.092 added in sec. 10 of this Act has the effect of changing Rule 56 of the Alaska Rules of Civil Procedure by permitting a certified statement of arrears from the child support enforcement agency to be treated as a motion for summary judgment under Rule 56.