

Original sponsors: Ray and Rodey

Offered: 4/28/81
Referred: Judiciary

1 IN THE SENATE

BY THE HEALTH, EDUCATION AND
SOCIAL SERVICES COMMITTEE

2

CS FOR SENATE BILL NO. 181 (HESS)

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 the enforcement of child support
7 and changing Rule 56 of the Alaska Rules of Civil
8 Procedure."

9

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

10

* Section 1. AS 25.25.010(1) is amended to read:

11

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

15

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

16

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

20

* Sec. 3. AS 47.23 is amended by adding a new section to read:

21

Sec. 47.23.092. REDUCING ARREARS TO JUDGMENT. The agency may
22 submit, to the superior court, with notice to the obligor, a certified
23 statement of arrears. Notice may be given to the obligor by mailing by
24 certified mail a copy of the statement to the last known address of the
25 obligor. The court shall treat the certified statement of arrears as a
26 motion for summary judgment under the Alaska Rules of Civil Procedure.
27 The court may enter judgment for the amount of support which is due and
28 overdue payment fees.

29

* Sec. 4. AS 47.23.100 is amended to read:

1 Sec. 47.23.100. ALL PERSONS MAY USE AGENCY. The agency shall
2 provide aid to any person who receives or pays [DUE] child support
3 under the laws of this state upon application. The agency may not
4 impose fees for services provided under this chapter [IF THE OBLIGEE IS
5 INDIGENT OR OTHERWISE UNABLE TO PAY FOR THESE SERVICES, THE AGENCY
6 SHALL ACT WITHOUT CHARGE TO THE OBLIGEE. IF THE AGENCY DETERMINES THAT
7 THE OBLIGEE IS FINANCIALLY ABLE TO PAY, COSTS SHALL BE ASSESSED ACCORD-
8 ING TO REGULATIONS ADOPTED BY THE DEPARTMENT AND BE PAID INTO THE FUND
9 ESTABLISHED IN AS 47.23.030].

10 * Sec. 5. AS 47.23.110(4) is amended to read:

11 (4) "obligee" means the legal custodial parent or person who
12 has the primary physical custody and responsibility for the minor child
13 [A PERSON] to whom a duty of support is owed and does not include a
14 parent who exercises regular or extended visitation rights;

15 * Sec. 6. AS 47.23.110 is amended by adding new paragraphs to read:

16 (7) "earnings"

17 (A) means compensation paid or payable for
18 personal services, whether denominated as wages, salary, commission,
19 bonus, or other similar description and includes the gain derived from
20 the investment of capital, from labor, or from a combination of in-
21 vestment and labor; and

22 (B) does not include profit gained from the
23 sale or conversion of a capital asset;

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

27 * Sec. 7. AS 47.23.130 is repealed and reenacted to read:

28 Sec. 47.23.130. SUBROGATION OF STATE. (a) If the obligor is li-
29 able to the state under AS 47.23.120(a) or (b), the state is subrogated

1 to the rights of the obligee to

2 (1) bring an action in the superior court seeking an order
3 of support or modifying an existing order of support;

4 (2) proceed under AS 47.23.160 - 47.23.270 to establish or
5 modify a duty of support; or

6 (3) enforce by execution, in accordance with AS 47.23.230 -
7 47.23.270, or otherwise, a support order entered in favor of the obli-
8 gee.

9 (b) To establish, modify, or enforce an order of support, based
10 on the subrogation of the state, the agency is not limited to the
11 amount of assistance being granted to the minor child.

12 (c) The recovery of any amount for which the obligor is liable
13 which exceeds the total assistance granted under AS 47.25.310 - 47.25.-
14 420 shall be paid to the obligee.

15 * Sec. 8. AS 47.23.150 is amended by adding a new subsection to read:

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

18 * Sec. 9. AS 47.23.160(b) is amended to read:

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

21 (1) the sum or periodic payments for which the alleged
22 obligor is found to be responsible, calculated by taking into consid-
23 eration the need of the minor child [ALLEGED OBLIGEE], the alleged
24 obligor's liability to the state under AS 47.23.130 if any, and his
25 duty of support under the law;

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

28 (3) that the alleged obligor may appear and show cause in a
29 hearing held by the agency why the finding is incorrect, should not be

1 finally ordered, and should be modified or rescinded, because (A) no
2 duty of support is owed, or (B) the amount of support found to be owed
3 is incorrect;

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

9 * Sec. 10. AS 47.23.160 is amended by adding a new subsection to read:

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

12 * Sec. 11. AS 47.23.170(e) is amended to read:

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

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

17 (2) the amount of the alleged obligor's liability to the
18 state under AS 47.23.120 [AS 47.23.125] if any;

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

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

22 * Sec. 12. AS 47.23.170(f) is amended to read:

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

28 * Sec. 13. AS 47.23.190(a) is amended to read:

29 (a) Unless a support order has been entered, the obligor, or the

1 obligee [OR HIS CUSTODIAN], may petition the agency or its designee for
2 a modification of the finding or decision of responsibility previously
3 entered with regard to future periodic support payments.

4 * Sec. 14. AS 47.23.190(c) is amended to read:

5 (c) If a hearing is granted, the agency shall serve a notice of
6 hearing together with a copy of the petition and affidavits submitted
7 on the obligee [OR HIS CUSTODIAN] and the obligor personally or by
8 [REGISTERED,] certified [, OR INSURED] mail, return receipt requested,
9 for restricted delivery only to the person to whom the notice is
10 directed or to the person authorized under federal regulation to receive
11 his restricted delivery mail.

12 * Sec. 15. AS 47.23 is amended by adding a new section to read:

13 Sec. 47.23.255. EARNINGS EXEMPT FROM ORDER OR LIEN. (a) Not
14 more than 50 percent of the disposable earnings of the obligor is
15 exempt from an order to withhold and deliver under AS 47.23.250. The
16 exempt part of the disposable earnings may be paid to the obligor even
17 if the earnings are paid monthly, weekly, or at other intervals.

18 (b) A person, political subdivision, or department of the state
19 shall withhold the nonexempt part of the earnings of the obligor at
20 each succeeding interval of payment until the entire amount of the debt
21 stated in the order to withhold and deliver has been withheld.

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

27 * Sec. 16. AS 47.23.092 added in sec. 3 of this Act has the effect of
28 changing Rule 56 of the Alaska Rules of Civil Procedure by permitting a
29 certified statement of arrears from the child support enforcement agency to

1 be treated as a motion for summary judgment under Rule 56.

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