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Offered: 6/23/81

1 IN THE SENATE

BY THE FREE CONFERENCE COMMITTEE

2 FREE CONFERENCE CS FOR 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
7 77 of the Alaska Rules of Civil Procedure."

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

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

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

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

14 (b) An income assignment order shall direct the obligor, his
15 employer, future employer, and any person, political subdivision, or
16 department of the state to assign money due or to be due the obligor to
17 the child support enforcement agency (AS 47.23) in an amount sufficient
18 to meet the support payments imposed by the court or by the child
19 support enforcement agency under AS 47.23.140.

20 (c) An obligee or person or public agency designated to receive
21 support payments may request an income assignment order to take effect
22 by alleging in a sworn statement that the obligor has failed to make a
23 support payment in full within 45 days of the date the payment was due.

24 (d) If an application has been filed with the clerk of court,
25 notice shall be sent by certified mail, return receipt requested, to the
26 last known address of the obligor. The notice shall be postmarked no
27 later than 10 days after the date on which the application was filed
28 and shall inform the obligor that the income assignment will take
29 effect 15 days after the date on which the notice was received unless

1 the obligor requests a hearing within the 15 days after the notice was
2 sent. If the obligor requests a hearing, an income assignment may not
3 take effect until the conclusion of the hearing. The court shall hold
4 a hearing requested under this section within 15 days after the date
5 the obligor requests the hearing. If the obligor pays all support
6 payments due before the hearing, an income assignment order may not
7 take effect.

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

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

15 (g) An income assignment under this section has priority over all
16 other attachments, executions, garnishments, or other assignments
17 unless otherwise ordered by the court. An income assignment is not
18 limited to the wages of an obligor but may include all money owed to
19 the obligor not otherwise exempt by law. The exemptions from execution
20 by judgment debtors under AS 09.35.080(a) and the restrictions from
21 execution by judgment debtors under AS 09.35.080(b)(1) do not apply to
22 income assignments under this section; however, 50 percent of the gross
23 wages of the obligor or \$100 a week, whichever is less, is exempt from
24 execution under this section.

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

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

28 (1) "state" includes the State of Alaska and a state, terri-
29 tory, or possession of the United States and the District of Columbia,

1 and a foreign country in which this or a substantially similar recipro-
2 cal law has been enacted;

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

4 Sec. 47.23.100. ALL PERSONS MAY USE AGENCY. The agency shall
5 provide aid to any person due child support under the laws of this
6 state upon application. The agency may not impose a fee for services
7 provided under this chapter unless required by federal law. [IF THE
8 OBLIGEE IS INDIGENT OR OTHERWISE UNABLE TO PAY FOR THESE SERVICES, THE
9 AGENCY SHALL ACT WITHOUT CHARGE TO THE OBLIGEE. IF THE AGENCY DETER-
10 MINES THAT THE OBLIGEE IS FINANCIALLY ABLE TO PAY, COSTS SHALL BE
11 ASSESSED ACCORDING TO REGULATIONS ADOPTED BY THE DEPARTMENT AND BE PAID
12 INTO THE FUND ESTABLISHED IN AS 47.23.030.]

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

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

19 (8) "disposable earnings" means that part of the earnings of
20 an individual that remains after the deduction from those earnings of
21 any amount required by law to be withheld.

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

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

26 (1) bring an action in the superior court seeking an order
27 of support;

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

1 (3) enforce by execution, in accordance with AS 47.23.230 -
2 47.23.270, or otherwise, a support order entered in favor of the obli-
3 gee.

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

7 (c) The recovery of any amount for which the obligor is liable
8 that exceeds the total assistance granted under AS 47.25.310 - 47.25.-
9 420 shall be paid to the obligee.

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

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

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

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

19 * Sec. 8. AS 47.23.250(i) is amended to read:

20 (i) The exemptions from execution by judgment debtors under
21 AS 09.35.080(a) and the restrictions from execution by judgment debtors
22 under AS 09.35.080(b)(1) do not apply to proceedings to enforce the
23 payment of child support under AS 47.23.230 - 47.23.270, however, 50
24 percent of the gross wages of the obligor or \$100 a week, whichever is
25 less, is exempt from execution under AS 47.23.230 - 47.23.270.

26 * Sec. 9. AS 47.23 is amended by adding new sections to read:

27 Sec. 47.23.253. EARNINGS SUBJECT TO AN ORDER OR LIEN. (a) A
28 person, political subdivision, or department of the state shall withhold
29 the earnings of the obligor subject to an order or lien at each succeed-

1 ing interval of payment until the entire amount of the debt stated in
2 the order to withhold and deliver has been withheld.

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

8 Sec. 47.23.255. INCOME ASSIGNMENT ORDERS. (a) The agency shall
9 pay the obligee all money recovered by the agency under an income
10 assignment order except for costs that are recovered from the obligor
11 or amounts withheld under AS 47.23.257(c).

12 (b) Notwithstanding AS 47.23.250, an income assignment order
13 contained in a decision of the agency that has not been set aside by
14 the superior court under AS 47.23.220 shall be enforced under the
15 procedure established in AS 09.65.132.

16 * Sec. 10. AS 47.23.260 is amended to read:

17 Sec. 47.23.260. CIVIL LIABILITY UPON FAILURE TO COMPLY WITH AN
18 ORDER OR LIEN. If any person, political subdivision, or department of
19 the state (1) fails to make answer to an order to withhold and deliver
20 within the time prescribed in AS 47.23.250; (2) fails or refuses to
21 deliver property in accordance with an order issued under AS 47.23.250;
22 (3) pays over, releases, sells, transfers, or conveys real property
23 subject to a lien filed under AS 47.23.230 to or for the benefit of the
24 obligor or any other person; (4) fails or refuses to surrender upon
25 demand property attached; (5) fails or refuses to honor an assignment
26 of wages or an income assignment under AS 09.65.132 presented by the
27 agency, the person, political subdivision, or department of the state
28 is liable to the agency in an amount equal to 100 percent of the amount
29 constituting the basis of the lien, order to withhold and deliver,

1 attachment, or assignment of wages or income, together with costs,
2 interest, and reasonable attorney fees.

3 * Sec. 11. AS 47.23 is amended by adding a new section to read:

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

10 * Sec. 12. AS 09.65.132 added in sec. 1 of this Act has the effect of
11 changing Rule 77 of the Alaska Rules of Civil Procedure by establishing a
12 procedure and time limits for court review of an income assignment order
13 which differ from those generally applicable in civil actions.