

Offered: 2/18/85
Referred: Judiciary and Finance

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1 IN THE HOUSE
2
3 CS FOR HOUSE BILL NO. 92 (HESS)
4 IN THE LEGISLATURE OF THE STATE OF ALASKA
5 FOURTEENTH LEGISLATURE - FIRST SESSION
6 A BILL
7 For an Act entitled: "An Act relating to child and spousal support; and
8 providing for an effective date."
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:
10 * Section 1. AS 09.65.132 is amended to read:
11 Sec. 09.65.132. INCOME WITHHOLDING [ASSIGNMENT] ORDER FOR CHILD
12 SUPPORT. (a) A judgment, court order, or order of the child support
13 enforcement agency under AS 47.23 [(AS 47.23)] providing for the
14 support of a minor child must [SHALL] contain an income withholding
15 [ASSIGNMENT] order.
16 (b) An income withholding [ASSIGNMENT] order must [SHALL] direct
17 the obligor, the obligor's employer, future employer, and any person,
18 political subdivision, or department of the state to withhold [ASSIGN]
19 money due or to be due the obligor and pay the money to the [OBLIGEE
20 OR, WHERE THE ORDER IS ISSUED TO THE CHILD SUPPORT ENFORCEMENT AGENCY
21 (AS 47.23) OR COLLECTIONS ARE BEING MADE THROUGH THE CHILD SUPPORT EN-
22 FORCEMENT AGENCY, TO THAT] agency, in an amount determined under (h)
23 of this section [SUFFICIENT TO MEET THE SUPPORT PAYMENTS IMPOSED BY
24 THE COURT OR BY THE CHILD SUPPORT ENFORCEMENT AGENCY UNDER AS 47.23.-
25 140].
26 (c) If support payments are in arrears in an amount at least
27 equal to support payable for one month, the agency, on behalf of an
28 [AN] obligee or person or public agency designated to receive support
29 payments, shall [MAY] request an income withholding [ASSIGNMENT] order
against the obligor [TO TAKE EFFECT] by filing a sworn statement with

1 the court that alleges [ALLEGING IN A SWORN STATEMENT] that the
2 obligor is in arrears in an amount at least equal to the support
3 payable for one month [HAS FAILED TO MAKE A SUPPORT PAYMENT IN FULL
4 WITHIN 45 DAYS OF THE DATE THE PAYMENT WAS DUE AND BY FILING THAT
5 STATEMENT WITH THE COURT].

6 (d) If an application is [HAS BEEN] filed with the clerk of
7 court, notice shall be served upon the obligor in the manner provided
8 by Rule 5, Alaska Rules of Civil Procedure or any other method permit-
9 ted by law. The notice shall [BE SENT BY CERTIFIED MAIL, RETURN
10 RECEIPT REQUESTED, TO THE LAST KNOWN ADDRESS OF THE OBLIGOR. THE
11 NOTICE SHALL BE POSTMARKED NO LATER THAN 10 DAYS AFTER THE DATE ON
12 WHICH THE APPLICATION WAS FILED AND SHALL] inform the obligor that the
13 income withholding order [ASSIGNMENT] will take effect 15 days after
14 the date on which the notice is served [WAS RECEIVED] unless the
15 obligor requests a hearing within the 15 days after the notice is
16 served [WAS SENT]. If the obligor requests a hearing, an income
17 withholding order [ASSIGNMENT] may not take effect until the conclu-
18 sion of the hearing. The court shall hold a hearing requested under
19 this section within 15 days after the date the obligor requests the
20 hearing, to determine if there are any mistakes of fact that make the
21 withholding order improper, if the amount to be withheld is incorrect,
22 or if there are any other legal defenses. The court shall inform the
23 obligor, either at the hearing or within 15 days after the hearing,
24 whether or not the withholding will occur and of the date on which it
25 is to commence. [IF THE OBLIGOR PAYS ALL SUPPORT PAYMENTS DUE BEFORE
26 THE HEARING, AN INCOME ASSIGNMENT ORDER MAY NOT TAKE EFFECT.]

27 (e) The obligee or person or public agency that requested the
28 income withholding [ASSIGNMENT] order shall immediately send a copy of
29 the income withholding [ASSIGNMENT] order and a copy of AS 47.23.260

1 and 47.23.270 by certified mail to persons who may owe money to an
2 obligor. An income withholding [ASSIGNMENT] order made under this
3 section is binding upon a person, employer, political subdivision, or
4 department of the state immediately upon receipt of a copy of the
5 income withholding [ASSIGNMENT] order. An employer shall begin with-
6 holding the specified amount from the employee's wages 14 days after
7 the mailing date on the notice or on the first day of the next pay
8 period, if earlier. The amount withheld shall be sent to the agency.

9 (f) An employer may not discharge, discipline, or refuse to em-
10 ploy an obligor on the basis of an income withholding order issued
11 [ASSIGNMENT] under this section. If an employer discharges, disci-
12 plines, or refuses to employ an obligor because of an income withhold-
13 ing obligation, the court, after notice and hearing, may order rein-
14 statement or restitution to the obligor, or both. A person who vio-
15 lates this subsection or a regulation adopted to implement it, is
16 liable for a fine of not more than \$1,000.

17 (g) An income withholding order [ASSIGNMENT] under this section
18 has priority over all other attachments, executions, garnishments, or
19 other legal process brought under state law against the same wages
20 [ASSIGNMENTS] unless otherwise ordered by the court. An income with-
21 holding order [ASSIGNMENT] is not limited to the wages of an obligor
22 but may include all money owed to the obligor not otherwise exempt by
23 law. Exemptions under AS 09.38 do not apply to income assignments
24 under this section[; HOWEVER, 50 PERCENT OF THE OBLIGOR'S NET DISPOS-
25 ABLE EARNINGS IS EXEMPT FROM EXECUTION UNDER THIS SECTION. IN THIS
26 SUBSECTION, "NET DISPOSABLE EARNINGS" HAS THE MEANING GIVEN IN 15
27 U.S.C. 1672].

28 (h) The court may order an obligor to pay the plaintiff's court
29 [ALL COURTS] costs and reasonable attorney fees which resulted from

1 [INVOLVED IN] an income withholding [ASSIGNMENT] proceeding under this
2 section.

3 * Sec. 2. AS 09.65.132 is amended by adding new subsections to read:

4 (i) An employer shall, to the extent permitted under 15 U.S.C.
5 1673(b), withhold the current support obligation from an obligor's
6 wages. An employer shall withhold additional income, to the extent
7 permitted under 15 U.S.C. 1673(b), from an obligor's wages for any
8 support arrearage.

9 (j) An employer may combine into a single payment amounts with-
10 held from more than one obligor if the employer specifies the portion
11 of the payment attributable to each obligor. If in receipt of more
12 than one income withholding order regarding one obligor, the employer
13 shall honor the orders by paying each in full in the sequence of its
14 receipt to the extent permitted under 15 U.S.C. 1673(b).

15 (k) At the time an obligor terminates employment with an em-
16 ployer then in receipt of an unsatisfied income withholding order
17 regarding the obligor, the employer shall immediately inform the
18 agency of the obligor's name and last known address and the name and
19 address of all other known employers of the obligor.

20 (l) An obligor may petition the court to terminate or reduce the
21 withholding of income, if all support payments are current, upon good
22 cause shown, such as the emancipation of a child for whom support is
23 paid, or the lack of contact by the agency with the obligee.

24 * Sec. 3. AS 25.24.160 is amended to read:

25 Sec. 25.24.160. JUDGMENT. In a judgment in an action for di-
26 vorce or action declaring a marriage void or at any time after judg-
27 ment, the court may provide

28 (1) [Repealed

29 (2)] for the payment by either or both parties of an amount

1 of money or goods, in gross or installments that may include automatic
2 cost-of-living increases, as may be just and proper for the parties to
3 contribute toward the nurture and education of their children, and the
4 court may order the parties to arrange with their employers for an
5 automatic payroll deduction each month or each pay period, if the
6 period is other than monthly, of the amount of the installment; if the
7 employer agrees, the installment shall be forwarded by the employer to
8 the clerk of the superior court which entered the judgment or to the
9 court trustee, and the amount of the installment is exempt from
10 execution;

11 (2) [(3)] for the recovery by one party from the other of
12 an amount of money for maintenance, in gross or in installments, as
13 may be just and necessary without regard to which of the parties is in
14 fault;

15 (3) [(4)] for the delivery to either party of that party's
16 personal property in the possession or control of the other party at
17 the time of giving the judgment;

18 [(5) Repealed]

19 (4) [(6)] for the division between the parties of their
20 property, whether joint or separate, acquired only during coverture,
21 in the manner as may be just, and without regard to which of the
22 parties is in fault; however, the court, in making the division, may
23 invade the property of either spouse acquired before marriage when the
24 balancing of the equities between the parties requires it; and to
25 accomplish this end the judgment may require that one or both of the
26 parties assign, deliver, or convey any of their real or personal
27 property to the other party;

28 (5) [(7)] to change the name of one of the parties.

29 * Sec. 4. AS 47.23.020(a) is amended to read:

1 (a) The agency shall
2 (1) seek enforcement of [OBTAIN, ENFORCE, AND ADMINISTER]
3 child support orders of the superior courts of the state in other
4 jurisdictions and shall obtain, enforce, and administer the orders in
5 this state;
6 (2) adopt regulations to carry out the purposes of this
7 chapter, including regulations that [WHICH] establish
8 (A) schedules for determining the amount an obligor is
9 liable to contribute toward the support of an obligee under this
10 chapter and under 42 U.S.C. 651 - 665 (Title IV-D, Social Secur-
11 ity Act);
12 (B) procedures for hearings conducted under AS 47.23.-
13 170; and
14 (C) subject to AS 47.23.025 and to federal law, a
15 uniform [SCHEDULE OF PENALTIES AND A] rate of interest on arrear-
16 ages of support that shall be charged the obligor upon notice if
17 child support payments are 10 or more days overdue or if payment
18 is made by a check backed by insufficient funds;
19 (3) administer and enforce the Uniform Reciprocal Enforce-
20 ment of Support Act (AS 25.25);
21 (4) establish, enforce, and administer child support obli-
22 gations administratively in accordance with this chapter;
23 (5) administer the state plan required under 42 U.S.C.
24 651 - 665 (Title IV-D, Social Security Act) as amended;
25 (6) disburse child support payments collected by the agency
26 to the obligee together with interest charged under (2)(C) of this
27 subsection; [AND]
28 (7) establish and enforce through the superior courts of
29 the state child support orders from other jurisdictions pertaining to

1 obligors within the state; [DEPOSIT PENALTIES CHARGED UNDER (2)(C) OF
2 THIS SUBSECTION IN THE GENERAL FUND]

3 (8) enforce and administer spousal support orders if a
4 spousal support obligation has been established with respect to the
5 spouse and if the support obligation established with respect to the
6 child of that spouse is also being administered; and

7 (9) obtain a medical support order as part of a child or
8 spousal support order if health care coverage is available to the
9 obligor at a reasonable cost.

10 * Sec. 5. AS 47.23 is amended by adding a new section to read:

11 Sec. 47.23.022. ENFORCEMENT REQUESTS FROM OTHER STATES. (a)
12 The agency may act, under the laws of this state, upon requests from
13 similar state agencies in other states that operate child support
14 enforcement programs under 42 U.S.C. 651 - 665 (Title IV-D Social
15 Security Act) to establish and enforce against obligors within this
16 state support obligations determined in other states.

17 (b) Requests from child support enforcement agencies in other
18 states shall be made by application containing the information that
19 this state's agency requires and including written authorization from
20 the requesting state agency and the obligee for this state's agency to
21 initiate action necessary to establish, enforce, and collect the
22 support obligation on their behalf.

23 * Sec. 6. AS 47.23.025 is amended to read:

24 Sec. 47.23.025. RATES OF [PENALTY AND] INTEREST. [A PENALTY
25 IMPOSED UNDER AS 47.23.020(a)(2)(C) MAY NOT BE AT A RATE THAT EXCEEDS
26 THE RATE OF INTEREST IMPOSED ON DELINQUENT TAXES UNDER AS 43.05.225.]
27 The rate of interest imposed under AS 47.23.020(a)(2)(C) shall equal
28 the rate imposed under AS 43.05.225 or a lesser rate that is the
29 maximum rate of interest permitted to be imposed under federal law.

1 * Sec. 7. AS 47.23.045 is amended to read:

2 Sec. 47.23.045. DETERMINATION OF SUPPORT OBLIGATION. The agency
3 may appear in an action seeking an award of support on [IN] behalf of
4 a child owed a duty of support, or to enforce a spousal support order
5 if a spousal support obligation has been established and if a support
6 obligation, established with respect to a child of that spouse, is
7 also being administered, and may also appear in an action seeking
8 modification of a support order, decree or judgment already entered.
9 Action under this section may be undertaken upon application of an
10 obligee, or at the agency's own discretion if the obligor is liable to
11 the state under AS 47.23.120(a) or (b).

12 * Sec. 8. AS 47.23.060(c) is amended to read:

13 (c) In a court proceeding where the support of a minor child is
14 at issue, the court may order either or both parents to pay the amount
15 necessary for support, maintenance, nurture, and education of the
16 child. The court shall issue a medical support order as part of a
17 child or spousal support order if health care coverage is available to
18 the obligor at a reasonable cost. Upon a showing of good cause the
19 court may order the parents required to pay support to give reasonable
20 security for payments. An order for prospective child support may be
21 modified or revoked as the court considers necessary.

22 * Sec. 9. AS 47.23.100 is amended to read:

23 Sec. 47.23.100. ALL PERSONS MAY USE AGENCY. The agency shall
24 provide aid upon application to any person due child support under the
25 laws of this state regardless of whether assistance is received under
26 AS 47.25.310 - 47.25.410 [UPON APPLICATION]. The agency may not
27 impose a fee for services provided under AS 47.23.010 - 47.23.280
28 unless required by federal law.

29 * Sec. 10. AS 47.23.150(a) is amended to read:

1 (a) Action to enforce a support order administratively under
2 AS 47.23.230 - 47.23.270 is initiated by the agency serving a notice
3 on the obligor of the obligor's liability under the support order.
4 [NOTICE UNDER THIS SUBSECTION SHALL BE SERVED PERSONALLY OR BY REGIS-
5 TERED, CERTIFIED, OR INSURED MAIL, RETURN RECEIPT REQUESTED, FOR
6 RESTRICTED DELIVERY ONLY TO THE PERSON TO WHOM THE NOTICE IS DIRECTED
7 OR TO THE PERSON AUTHORIZED UNDER FEDERAL REGULATION TO RECEIVE THAT
8 PERSON'S RESTRICTED DELIVERY MAIL.]

9 * Sec. 11. AS 47.23.226 is amended to read:

10 Sec. 47.23.226. COLLECTION OF [ACTION TO COLLECT] CHILD SUPPORT.
11 To [COMMENCE AN ACTION TO] collect the payment due, the custodian of a
12 child, or the agency on behalf of that person, shall file with the
13 court (1) a motion [PETITION] requesting establishment of a judgment;
14 (2) an affidavit that states that one or more payments of child sup-
15 port are 30 or more days past due and that specifies the amounts past
16 due and the dates they became past due; and (3) notice of the ob-
17 ligor's right to respond. Service on the obligor shall be in the
18 manner provided in AS 47.23.265 [BY THE RULE OF CIVIL PROCEDURE FOR
19 SERVICE OF SUMMONS IN A CIVIL ACTION]. The child's custodian, or the
20 agency on behalf of the custodian, shall file with the court proof of
21 service of the petition, affidavit, and notice. The obligor shall
22 respond no later than 15 days after service by filing an affidavit
23 with the court. If the obligor's affidavit states that the obligor
24 has paid any of the amounts claimed to be delinquent, describes in
25 detail the method of payment or offers any other defense to the peti-
26 tion, then the obligor is entitled to a hearing. After the hearing,
27 if any, the court shall enter a judgment for the amount of money owed.
28 If the obligor does not file an affidavit under this section, the
29 court shall enter a default judgment against the obligor.

1 * Sec. 12. AS 47.23.250(i) is amended to read:

2 (i) Exemptions under AS 09.38 do not apply to proceedings to
3 enforce the payment of child support under AS 47.23.230 - 47.23.270;
4 however, 50 percent of the obligor's net disposable earnings is exempt
5 from execution under AS 47.23.230 - 47.23.253 [47.23.270]. In this
6 subsection, "net disposable earnings" has the meaning given in 15
7 U.S.C. 1672.

8 * Sec. 13. AS 47.23.255 is amended to read:

9 Sec. 47.23.255. INCOME WITHHOLDING [ASSIGNMENT] ORDERS. (a)
10 The agency shall pay the obligee all money recovered by the agency
11 under an income withholding [ASSIGNMENT] order except for costs and
12 attorney fees that are recovered from the obligor.

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

17 * Sec. 14. AS 47.23.260 is amended to read:

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

1 amount equal to 100 percent of the amount constituting the basis of
2 the lien, order to withhold and deliver, attachment, or withholding
3 [ASSIGNMENT] of wages or income, together with costs, interest, and
4 reasonable attorney fees.

5 * Sec. 15. AS 47.23.265(a) is amended to read:

6 (a) Except as otherwise provided under this chapter, when a
7 notice, paper, or other document is required by this chapter to be
8 given or served upon a person by the agency, the notice, paper, or
9 other document may be served as required by Rule 5, Alaska Rules of
10 Civil Procedure or any other method permitted by law [SENT BY REGIS-
11 TERED OR CERTIFIED MAIL TO THE LAST KNOWN ADDRESS OF THAT PERSON.
12 SERVICE BY MAIL UNDER THIS CHAPTER IS EFFECTED WHEN THE NOTICE, PAPER,
13 OR OTHER DOCUMENT IS PROPERLY ADDRESSED REGISTERED OR CERTIFIED, AND
14 MAILED].

15 * Sec. 16. AS 47.23 is amended by adding a new section to read:

16 Sec. 47.23.278. PAYMENTS NOT DISBURSED. Support payments col-
17 lected and held by the agency for seven years without disbursal shall
18 be returned to the obligor.

19 * Sec. 17. This Act takes effect immediately in accordance with AS 01.-
20 10.070(c).