

Offered: 3/27/85  
Referred: Finance

Original sponsor: Rules/Governor

1 IN THE HOUSE BY THE JUDICIARY COMMITTEE  
2 CS FOR HOUSE BILL NO. 92 (Judiciary)  
3 IN THE LEGISLATURE OF THE STATE OF ALASKA  
4 FOURTEENTH LEGISLATURE - FIRST SESSION  
5 A BILL  
6 For an Act entitled: "An Act relating to child and spousal support; and  
7 providing for an effective date."  
8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:  
9 \* Section 1. AS 09.65.132 is amended to read:  
10 Sec. 09.65.132. INCOME WITHHOLDING [ASSIGNMENT] ORDER FOR CHILD  
11 SUPPORT. (a) A judgment, court order, or order of the child support  
12 enforcement agency under AS 47.23 [(AS 47.23)] providing for the  
13 support of a minor child must [SHALL] contain an income withholding  
14 [ASSIGNMENT] order. An income withholding order under this section  
15 may not be enforced unless the obligor had notice of the order when it  
16 was made or an application for the order was served on the obligor in  
17 the manner provided for service of a summons under Rule 4, Alaska  
18 Rules of Civil Procedure.  
19 (b) An income withholding [ASSIGNMENT] order must [SHALL] direct  
20 the obligor, the obligor's employer, future employer, and any person,  
21 political subdivision, or department of the state to withhold [ASSIGN]  
22 money due or to be due the obligor and pay the money to the [OBLIGEE  
23 OR, WHERE THE ORDER IS ISSUED TO THE CHILD SUPPORT ENFORCEMENT AGENCY  
24 (AS 47.23) OR COLLECTIONS ARE BEING MADE THROUGH THE CHILD SUPPORT EN-  
25 FORCEMENT AGENCY, TO THAT] agency, in an amount determined under (h)  
26 of this section [SUFFICIENT TO MEET THE SUPPORT PAYMENTS IMPOSED BY  
27 THE COURT OR BY THE CHILD SUPPORT ENFORCEMENT AGENCY UNDER AS 47.23.-  
28 140].  
29 (c) If support payments are in arrears in an amount at least

1 equal to support payable for one month, the agency, on behalf of an  
2 [AN] obligee or person or public agency designated to receive support  
3 payments, shall [MAY] request an income withholding [ASSIGNMENT] order  
4 against the obligor to take effect by filing a sworn statement with  
5 the court that alleges [ALLEGING IN A SWORN STATEMENT] that the obli-  
6 gor is in arrears in an amount at least equal to the support payable  
7 for one month [HAS FAILED TO MAKE A SUPPORT PAYMENT IN FULL WITHIN 45  
8 DAYS OF THE DATE THE PAYMENT WAS DUE AND BY FILING THAT STATEMENT WITH  
9 THE COURT].

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

1 section that less than one full month's payment is due if at least one  
2 full month's payment was due on the date notice was served under this  
3 section [ . IF THE OBLIGOR PAYS ALL SUPPORT PAYMENTS DUE BEFORE THE  
4 HEARING, AN INCOME ASSIGNMENT ORDER MAY NOT TAKE EFFECT].

5 (e) The obligee or person or public agency that requested the  
6 income withholding [ASSIGNMENT] order shall immediately send a copy of  
7 the income withholding [ASSIGNMENT] order , a copy of AS 47.23.260 and  
8 AS 09.65.132, and an explanation of the effect of the statutes by  
9 certified mail to persons who may owe money to an obligor. An income  
10 withholding [ASSIGNMENT] order made under this section is binding upon  
11 a person, employer, political subdivision, or department of the state  
12 immediately upon receipt of a copy of the income withholding [ASSIGN-  
13 MENT] order. An employer shall begin withholding the specified amount  
14 from the employee's wages 14 days after the mailing date on the notice  
15 of withholding or on the first day of the next pay period, if earlier.  
16 The amount withheld shall be sent to the agency.

17 (f) An employer may not discharge, discipline, or refuse to em-  
18 ploy an obligor on the basis of an income withholding order issued  
19 [ASSIGNMENT] under this section. If an employer discharges, disci-  
20 plines, or refuses to employ an obligor because of an income withhold-  
21 ing obligation, the court, after notice and hearing, may order rein-  
22 statement or restitution to the obligor, or both. A person who vio-  
23 lates this subsection or a regulation adopted to implement it, is  
24 liable for a civil penalty of not more than \$1,000.

25 (g) An income withholding order [ASSIGNMENT] under this section  
26 has priority over all other attachments, executions, garnishments, or  
27 other legal process brought under state law against the same money  
28 [ASSIGNMENTS] unless otherwise ordered by the court. An income with-  
29 holding order [ASSIGNMENT] is not limited to the wages of an obligor

1 but may include all money owed to the obligor not otherwise exempt by  
2 law. Exemptions under AS 09.38 do not apply to income assignments  
3 under this section [; HOWEVER, 50 PERCENT OF THE OBLIGOR'S NET DISPOS-  
4 ABLE EARNINGS IS EXEMPT FROM EXECUTION UNDER THIS SECTION. IN THIS  
5 SUBSECTION, "NET DISPOSABLE EARNINGS" HAS THE MEANING GIVEN IN 15  
6 U.S.C. 1672].

7 (h) The court may order payment of [AN OBLIGOR TO PAY] all court  
8 [COURTS] costs that resulted from [INVOLVED IN] an income withholding  
9 [ASSIGNMENT] proceeding under this section.

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

11 (i) An employer shall, to the extent permitted under 15 U.S.C.  
12 1673(b), withhold the current support obligation from an obligor's  
13 wages. An employer shall withhold additional income, to the extent  
14 permitted under 15 U.S.C. 1673(b), from an obligor's wages for any  
15 support arrearage.

16 (j) An employer may combine into a single payment to the agency  
17 amounts withheld from more than one obligor if the employer specifies  
18 the portion of the payment attributable to each obligor.

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

24 (l) A petition by the obligor to the court to terminate or  
25 reduce the withholding of income may be granted upon good cause shown.

26 \* Sec. 3. AS 25.24.160 is amended to read:

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

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

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

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

20 [(5) Repealed]

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

1                   (5) [(7)] to change the name of one of the parties.  
2 \* Sec. 4. AS 47.23.020(a) is amended to read:  
3                   (a) The agency shall  
4                   (1) seek enforcement of [OBTAIN, ENFORCE, AND ADMINISTER]  
5 child support orders of the superior courts of the state in other  
6 jurisdictions and shall obtain, enforce, and administer the orders in  
7 this state;  
8                   (2) adopt regulations to carry out the purposes of this  
9 chapter, including regulations that [WHICH] establish  
10                   (A) schedules for determining the amount an obligor is  
11 liable to contribute toward the support of an obligee under this  
12 chapter and under 42 U.S.C. 651 - 665 (Title IV-D, Social Secur-  
13 ity Act);  
14                   (B) procedures for hearings conducted under AS 47.23.-  
15 170; and  
16                   (C) subject to AS 47.23.025 and to federal law, a  
17 uniform [SCHEDULE OF PENALTIES AND A] rate of interest on arrear-  
18 ages of support that shall be charged the obligor upon notice if  
19 child support payments are 10 or more days overdue or if payment  
20 is made by a check backed by insufficient funds;  
21                   (3) administer and enforce the Uniform Reciprocal Enforce-  
22 ment of Support Act (AS 25.25);  
23                   (4) establish, enforce, and administer child support obli-  
24 gations administratively in accordance with this chapter;  
25                   (5) administer the state plan required under 42 U.S.C.  
26 651 - 665 (Title IV-D, Social Security Act) as amended;  
27                   (6) disburse child support payments collected by the agency  
28 to the obligee together with interest charged under (2)(C) of this  
29 subsection; [AND]

1           (7) establish and enforce through the superior courts of  
2 the state child support orders from other jurisdictions pertaining to  
3 obligors within the state; [DEPOSIT PENALTIES CHARGED UNDER (2)(C) OF  
4 THIS SUBSECTION IN THE GENERAL FUND]

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

9           (9) obtain a medical support order as part of a child sup-  
10 port order if health care coverage is available to the obligor at a  
11 reasonable cost.

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

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

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

25 \* Sec. 6. AS 47.23.025 is amended to read:

26           Sec. 47.23.025. RATES OF [PENALTY AND] INTEREST. [A PENALTY  
27 IMPOSED UNDER AS 47.23.020(a)(2)(C) MAY NOT BE AT A RATE THAT EXCEEDS  
28 THE RATE OF INTEREST IMPOSED ON DELINQUENT TAXES UNDER AS 43.05.225.]  
29 The rate of interest imposed under AS 47.23.020(a)(2)(C) shall equal

1 the rate imposed under AS 43.05.225 or a lesser rate that is the  
2 maximum rate of interest permitted to be imposed under federal law.

3 \* Sec. 7. AS 47.23.045 is amended to read:

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

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

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

24 \* Sec. 9. AS 47.23 is amended by adding a new section to read:

25 Sec. 47.23.075. EMPLOYMENT INFORMATION. (a) An employer of an  
26 obligor or a labor union of which an obligor is a member shall provide  
27 to the agency information requested regarding the obligor's employ-  
28 ment, wages or salary, and location.

29 (b) An employer of an obligor or a labor union of which an

1 obligor is a member that knowingly violates this section is liable for  
2 a civil penalty of not more than \$1,000.

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

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

12 \* Sec. 11. AS 47.23.226 is amended to read:

13 Sec. 47.23.226. COLLECTION OF [ACTION TO COLLECT] CHILD SUPPORT.  
14 To [COMMENCE AN ACTION TO] collect the payment due, the custodian of a  
15 child, or the agency on behalf of that person, shall file with the  
16 court (1) a motion [PETITION] requesting establishment of a judgment;  
17 (2) an affidavit that states that one or more payments of child sup-  
18 port are 30 or more days past due and that specifies the amounts past  
19 due and the dates they became past due; and (3) notice of the ob-  
20 ligor's right to respond. Service on the obligor shall be in the  
21 manner provided in AS 47.23.265 [BY THE RULE OF CIVIL PROCEDURE FOR  
22 SERVICE OF SUMMONS IN A CIVIL ACTION]. The child's custodian, or the  
23 agency on behalf of the custodian, shall file with the court proof of  
24 service of the petition, affidavit, and notice. The obligor shall  
25 respond no later than 15 days after service by filing an affidavit  
26 with the court. If the obligor's affidavit states that the obligor  
27 has paid any of the amounts claimed to be delinquent, describes in  
28 detail the method of payment or offers any other defense to the peti-  
29 tion, then the obligor is entitled to a hearing. After the hearing,

1 if any, the court shall enter a judgment for the amount of money owed.  
2 If the obligor does not file an affidavit under this section, the  
3 court shall enter a default judgment against the obligor.

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

5 (i) Exemptions under AS 09.38 do not apply to proceedings to  
6 enforce the payment of child support under AS 47.23.230 - 47.23.270;  
7 however, [50 PERCENT OF THE OBLIGOR'S] net disposable earnings are  
8 [IS] exempt from execution as provided in 15 U.S.C. 1673(b) [UNDER  
9 AS 47.23.230 - 47.23.270]. In this subsection, "net disposable earn-  
10 ings" has the meaning given in 15 U.S.C. 1672.

11 \* Sec. 13. AS 47.23.255 is amended to read:

12 Sec. 47.23.255. INCOME WITHHOLDING [ASSIGNMENT] ORDERS. (a)  
13 The agency shall pay to the obligee all money recovered by the agency  
14 from the obligor under an income withholding [ASSIGNMENT] order except  
15 for court costs and money assigned to the agency under AS 47.23.120 -  
16 47.23.130 [THAT ARE RECOVERED FROM THE OBLIGOR].

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

21 \* Sec. 14. AS 47.23.260 is amended to read:

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

1           surrender upon demand property attached; (5) fails or refuses to honor  
2           an assignment of wages or an income withholding [ASSIGNMENT] order  
3           under AS 09.65.132 presented by the agency, the person, political  
4           subdivision, or department of the state is liable to the agency in an  
5           amount equal to 100 percent of the amount constituting the basis of  
6           the lien, order to withhold and deliver, attachment, or withholding  
7           [ASSIGNMENT] of wages or income, together with costs, interest, and  
8           reasonable attorney fees.

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

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

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

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

23           \* Sec. 17. This Act takes effect October 1, 1985.