

Offered: 4/21/88
Referred: Finance

go0547sB

Original sponsor: Rules/Governor

1 IN THE SENATE BY THE JUDICIARY COMMITTEE
2 HOUSE CS FOR SENATE BILL NO. 117 (Judiciary)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 FIFTEENTH LEGISLATURE - SECOND SESSION
5 A BILL
6 For an Act entitled: "An Act relating to spousal support enforcement by
7 the child support enforcement agency and child sup-
8 port enforcement."
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:
10 * Section 1. AS 23.20.401 is amended to read:
11 Sec. 23.20.401. CHILD SUPPORT INTERCEPTION. (a) Notwithstand-
12 ing any other provision of this chapter, an individual filing a new
13 claim for unemployment compensation must disclose whether child sup-
14 port obligations as defined in (h) [(g)] of this section are owed by
15 that individual. If the individual discloses that child support
16 obligations are owed and the individual is determined to be eligible
17 for unemployment compensation, the department shall notify the child
18 support enforcement agency of the Department of Revenue that the
19 individual has been determined to be eligible for unemployment compen-
20 sation.
21 (b) The department shall, unless the obligor and obligee agree
22 otherwise, deduct and withhold from unemployment compensation payable
23 to an individual who owes child support obligations as defined in (h)
24 [(g)] of this section
25 (1) the amount specified by the individual to the depart-
26 ment to be deducted and withheld under this subsection, if neither (2)
27 nor (3) of this subsection is applicable;
28 (2) the amount specified in an agreement submitted to the
29 department under section 42 U.S.C. 654(20)(B)(i) (Sec. 454 (20)(B)(i),

1 Social Security Act), by the child support enforcement agency of the
2 Department of Revenue, unless (3) of this subsection is applicable; or
3 (3) any amount required to be deducted and withheld through
4 legal process, as defined in 42 U.S.C. 662(e) (Sec. 462(e), Social
5 Security Act), properly served upon the department.

6 (c) The child support enforcement agency may order the depart-
7 ment to deduct and withhold the allowance paid for a dependent minor
8 child under AS 23.20.350(f), if the child support enforcement agency
9 finds that the individual claiming the allowance has a support obliga-
10 tion to the child and the child is not in the physical custody of the
11 individual and is dependent on the individual for more than 50 percent
12 of support.

13 (d) The department shall pay an amount deducted and withheld
14 under (b) and (c) of this section to the child support enforcement
15 agency of the Department of Revenue.

16 (e) [(d)] An amount deducted and withheld under (b) and (c) of
17 this section shall for all purposes be treated as if it were paid to
18 the individual as unemployment compensation and paid by that indi-
19 vidual to the child support enforcement agency of the Department of
20 Revenue in satisfaction of the individual's child support obligations.

21 (f) [(e)] In (a) - (e) [(d)] of this section, "unemployment
22 compensation" means compensation payable under this chapter, including
23 amounts payable under an agreement under a federal law providing for
24 compensation, assistance, or allowances with respect to unemployment.

25 (g) [(f)] This section applies only if appropriate arrangements
26 have been made for reimbursement by the child support enforcement
27 agency of the Department of Revenue for the administrative costs
28 incurred by the department under this section.

29 (h) [(g)] In this section, "child support obligations" includes

1 only obligations that are being enforced under a plan described in 42
2 U.S.C. 654 (Sec. 454, Social Security Act), which has been approved by
3 the United States Secretary of Health and Human Services under 42
4 U.S.C. 651-665 (Part D of Title IV of the Social Security Act).

5 * Sec. 2. AS 25.24.170 is amended by adding a new subsection to read:

6 (b) For the purposes of a motion to modify or revoke child
7 support, the adoption or enactment of guidelines or a significant
8 amendment to guidelines for determining support is a material change
9 in circumstances, if the guidelines are relevant to the motion.

10 * Sec. 3. AS 25.25.100 is amended by adding a new subsection to read:

11 (b) If admitted to the practice of law in the state, the direc-
12 tor of the child support enforcement agency, or the director's desig-
13 nee, may sign a complaint for support and other pleadings on behalf of
14 the agency in an action under this chapter in which the agency is not
15 represented by the attorney general.

16 * Sec. 4. AS 47.23.020 is amended to read:

17 Sec. 47.23.020. DUTIES AND RESPONSIBILITIES OF THE AGENCY. (a)

18 The agency shall

19 (1) seek enforcement of child support orders of the superi-
20 or courts of the state in other jurisdictions and shall obtain, en-
21 force, and administer the orders in this state;

22 (2) adopt regulations to carry out the purposes of this
23 chapter, including regulations that establish

24 (A) schedules for determining the amount an obligor is
25 liable to contribute toward the support of an obligee under this
26 chapter and under 42 U.S.C. 651 - 665 (Title IV-D, Social Secur-
27 ity Act);

28 (B) procedures for hearings conducted under AS 47.-
29 23.170; and

1 (C) subject to AS 47.23.025 and to federal law, a
2 uniform rate of interest on arrearages of support that shall be
3 charged the obligor upon notice if child support payments are 10
4 or more days overdue or if payment is made by a check backed by
5 insufficient funds; however, an obligor may not be charged inter-
6 est on late payment of a child support obligation, other than a
7 payment on arrearages, if the obligor is

8 (i) employed and income is being withheld from
9 the obligor's wages under an income withholding order;

10 (ii) receiving unemployment compensation and child
11 support obligations are being withheld from the obligor's
12 unemployment payments under AS 23.20.401; or

13 (iii) receiving compensation for disabilities under
14 AS 23.30 and child support obligations are being withheld
15 from the obligor's compensation payments;

16 (3) administer and enforce the Uniform Reciprocal Enforce-
17 ment of Support Act (AS 25.25);

18 (4) establish, enforce, and administer child support obli-
19 gations administratively under [IN ACCORDANCE WITH] this chapter;

20 (5) administer the state plan required under 42 U.S.C.
21 651 - 665 (Title IV-D, Social Security Act) as amended;

22 (6) disburse support payments collected by the agency to
23 the obligee, together with interest charged under (2)(C) of this
24 subsection;

25 (7) establish and enforce administratively under this
26 chapter, or through the superior courts of the state, child support
27 orders from other jurisdictions pertaining to obligors within the
28 state;

29 (8) enforce and administer spousal support orders if a

1 spousal support obligation has been established with respect to the
2 spouse and if the support obligation established with respect to the
3 child of that spouse is also being administered; and

4 (9) obtain a medical support order as part of a child
5 support order if health care coverage is available to the obligor at a
6 reasonable cost.

7 (b) In determining the amount of money an obligor must pay to
8 satisfy the obligor's immediate duty of support, the agency shall
9 consider all payments made by the obligor directly to the obligee or
10 to the obligee's custodian before the time the obligor is ordered to
11 make payments through the agency. After the obligor is ordered to
12 make payments through the agency, the agency may not consider direct
13 payments made to the obligee or the obligee's custodian unless the
14 obligor provides clear and convincing evidence of the payment.

15 * Sec. 5. AS 47.23.020 is amended by adding a new subsection to read:

16 (c) If admitted to the practice of law in the state, the direc-
17 tor of the agency, or the director's designee, shall sign a complaint
18 or other pleadings on behalf of the agency in an action to establish
19 or enforce a support obligation under this chapter in which the agency
20 is not represented by the attorney general.

21 * Sec. 6. AS 47.23.060(c) is amended to read:

22 (c) In a court proceeding where the support of a minor child is
23 at issue, the court may order either or both parents to pay the amount
24 necessary for support, maintenance, nurture, and education of the
25 child. The court shall issue a medical support order as part of a
26 child support order if health care coverage is available to the obli-
27 gor at a reasonable cost. Upon a showing of good cause the court may
28 order the parents required to pay support to give reasonable security
29 for payments.

1 (d) An order for prospective child support may be modified or
2 revoked under AS 25.24.170 [AS THE COURT CONSIDERS NECESSARY].

3 * Sec. 7. AS 47.23.062(g) is amended to read:

4 (g) An income withholding order under this section has priority
5 over all other attachments, executions, garnishments, or other legal
6 process brought under state law against the same property [MONEY]
7 unless otherwise ordered by the court. An income withholding order is
8 not limited to the wages of an obligor but may include all money owed
9 to the obligor not otherwise exempt by law. Exemptions under AS 09.38
10 do not apply to income withholdings under this section.

11 * Sec. 8. AS 47.23.062(1) is repealed and reenacted to read:

12 (1) An obligor may petition the court to terminate or modify an
13 income withholding order if the obligor has made payments under the
14 order for at least 12 months and all arrearages have been paid. Upon
15 receipt of the petition under this subsection, the court may terminate
16 or modify the income withholding order unless the court finds good
17 cause to deny the petition due to the obligor's payment history or
18 other grounds. The court may not terminate or modify an income with-
19 holding order solely on the ground that the obligor has paid all
20 arrearages.

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

22 Sec. 47.23.100. ALL PERSONS MAY USE AGENCY. The agency shall
23 provide aid to any person due child support under the laws of this
24 state upon application. The agency may, by regulation, [NOT] impose a
25 fee for services provided under this chapter [AS 47.23.010 - 47.23.280
26 UNLESS REQUIRED BY FEDERAL LAW].

27 * Sec. 10. AS 47.23.105 is amended to read:

28 Sec. 47.23.105. AUDIT OF COLLECTIONS. Within 30 [10] working
29 days after receipt of a written request from an obligor, [OR] the

1 obligor's legal representative, the obligee, or the obligee's legal
2 representative, the agency shall provide an audit of all child support
3 payments made by the obligor and received by the agency. The audit
4 shall include the date and amount of each payment, the name of the
5 obligee, and the total amount of arrearages of support past due and
6 amount of unpaid penalties and interest imposed under AS 47.23.020(a)-
7 (2)(C). The agency is required to provide only one [AN] audit each
8 year for each obligee and [AN] obligor under this section [ONLY ONCE
9 EACH YEAR].

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

11 Sec. 47.23.135. LIMITATION ON ACTIONS TO ESTABLISH CHILD SUPPORT
12 OBLIGATION. If the same causes of action concerning a duty of child
13 support are pending concurrently in court and before the agency, the
14 second action filed may be abated upon the motion of a party or the
15 agency. The court or the agency may award full costs and attorney
16 fees to the party prevailing on the abatement motion.

17 * Sec. 12. AS 47.23.150(a) is amended to read:

18 (a) Action to enforce a support order administratively under
19 AS 47.23.230 - 47.23.270 is initiated by the agency serving a notice
20 on the obligor of the obligor's liability under the support order.
21 Notice under this subsection shall be served upon the obligor by the
22 agency by certified mail to the last known address of the obligor.
23 Service by mail is effected when the notice is properly addressed,
24 certified, and mailed.

25 * Sec. 13. AS 47.23.190(e) is amended to read:

26 (e) Modification or termination of future periodic support pay-
27 ments may be ordered upon a showing of good cause and material change
28 in circumstances. The adoption or enactment of guidelines or a sig-
29 nificant amendment to guidelines for determining child support is a

1 material change in circumstances, if the guidelines are relevant to
2 the petition.

3 * Sec. 14. AS 47.23.250(e) is amended to read:

4 (e) Any person, political subdivision, or department of the
5 state served with an order to withhold and deliver is required to make
6 true answers to inquiries contained in the order under oath and in
7 writing within 14 [30] days after [OF] service of the order, and is
8 further required to answer all inquiries subsequently put.

9 * Sec. 15. AS 47.23.250(f) is amended to read:

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

23 * Sec. 16. AS 47.23.250(i) is amended to read:

24 (i) An order to withhold and deliver under this section has
25 priority over all other attachments, executions, garnishments, or
26 other legal process brought under state law against the same property
27 unless otherwise ordered by the court. Exemptions under AS 09.38 do
28 not apply to proceedings to enforce the payment of child support under
29 AS 47.23.230 - 47.23.270; however, net disposable earnings are exempt

1 from execution as provided in 15 U.S.C. 1673(b). In this subsection,
2 "net disposable earnings" has the meaning given in 15 U.S.C. 1672.

3 * Sec. 17. AS 47.23.255 is amended by adding a new subsection to read:

4 (c) An obligor may petition the agency to terminate or modify an
5 income withholding order if the obligor has made payments under the
6 order for at least 12 months and all arrearages have been paid. Upon
7 receipt of the petition under this subsection, the agency may termi-
8 nate or modify the income withholding order unless the agency finds
9 good cause to deny the petition due to the obligor's payment history
10 or other grounds. The agency may not terminate or modify an income
11 withholding order solely on the ground that the obligor has paid all
12 arrearages. The agency shall notify the obligor in writing of the
13 reason for denying a petition under this subsection.