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Referred: Health, Education and Social Services,
Judiciary and Finance

go00160s

BY THE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

1 IN THE SENATE

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SENATE BILL NO. 373

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IN THE LEGISLATURE OF THE STATE OF ALASKA

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SIXTEENTH LEGISLATURE - SECOND SESSION

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A BILL

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For an Act entitled: "An Act relating to the child support enforcement agency's jurisdiction to administratively establish and modify child support orders, and the appearance by the agency in actions for modification of support orders; and relating to procedures for income withholding and for orders to withhold and deliver."

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

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* Section 1. AS 47.23.020(a)(2) is amended to read:

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

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

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

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

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(i) employed and income is being withheld from

- 1 the obligor's wages under an income withholding order;
- 2 (ii) receiving unemployment compensation and child
- 3 support obligations are being withheld from the obligor's
- 4 unemployment payments under AS 23.20.401; or
- 5 (iii) receiving compensation for disabilities under
- 6 AS 23.30 and child support obligations are being withheld
- 7 from the obligor's compensation payments;
- 8 (D) procedures for income withholding on child support
- 9 orders enforced by the agency, including immediate income with-
- 10 holding on orders issued or modified after October 31, 1990;
- 11 (E) procedures for review of support orders and ad-
- 12 justment, as appropriate, in accordance with guidelines for
- 13 determining child support;

14 * Sec. 2. AS 47.23.045 is amended to read:
15 Sec. 47.23.045. DETERMINATION OF SUPPORT OBLIGATION. The agency
16 may appear in an action seeking an award of support on behalf of a
17 child owed a duty of support, or to enforce a spousal support order if
18 a spousal support obligation has been established and if a support
19 obligation, established with respect to a child of that spouse, is
20 also being administered, and may also appear in an action for [SEEK-
21 ING] modification of a support order, decree or judgment already
22 entered. Action under this section may be undertaken upon application
23 of an obligee or obligor, or at the agency's own discretion if the
24 obligor is liable to the state under AS 47.23.120(a) or (b).

25 * Sec. 3. AS 47.23.062(b) is amended to read:
26 (b) An income withholding order must direct the obligor, the
27 obligor's employer, future employer, and any person, political subdi-
28 vision, or department of the state to withhold money due or to be due
29 the obligor and pay the money to the obligee [AGENCY], in an amount

1 determined under (i) of this section.

2 * Sec. 4. AS 47.23.062(c) is amended to read:

3 (c) If support payments are in arrears in an amount at least
4 equal to support payable for one month, the obligee may [AGENCY, ON
5 BEHALF OF AN OBLIGEE OR PERSON OR PUBLIC AGENCY DESIGNATED TO RECEIVE
6 SUPPORT PAYMENTS, SHALL] request an income withholding order against
7 the obligor to take effect by filing a sworn statement with the court
8 that alleges that the obligor is in arrears in an amount at least
9 equal to the support payable for one month.

10 * Sec. 5. AS 47.23.062(d) is amended to read:

11 (d) If an application is filed with the clerk of court, notice
12 shall be served upon the obligor [BY THE AGENCY] in the manner provid-
13 ed by Rule 5, Alaska Rules of Civil Procedure or any other method
14 permitted by law. The notice shall inform the obligor that the income
15 withholding order will take effect 15 days after the date on which the
16 notice is served unless the obligor requests a hearing within the 15
17 days after the notice is served. If the obligor requests a hearing, an
18 income withholding order may not take effect until the conclusion of
19 the hearing. The court shall hold a hearing requested under this
20 section within 15 days after the date the obligor requests the hear-
21 ing, to determine if there are any mistakes of fact that make the
22 withholding order improper, if the amount to be withheld is incorrect,
23 or if there are any other legal defenses. The court shall inform the
24 obligor, either at the hearing or within 15 days after the hearing,
25 whether or not the withholding will occur and of the date on which it
26 is to commence. It is not a defense under this section that less than
27 one full month's payment is due if at least one full month's payment
28 was due on the date notice was served under this section.

29 * Sec. 6. AS 47.23.062(e) is amended to read:

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

13 * Sec. 7. AS 47.23.140(a) is amended to read:

14 (a) If no support order has been entered in the superior court
15 of this state, the agency may establish a duty of support using
16 [UTILIZING] the procedures prescribed in AS 47.23.160 - 47.23.220 and
17 may enforce a duty of support using [UTILIZING] the procedure pre-
18 scribed in AS 47.23.230 - 47.23.270. Action under this subsection may
19 be undertaken upon application of an obligee or obligor, or at the
20 agency's own discretion if the obligor is liable to the state under AS
21 47.23.120(a) or (b).

22 * Sec. 8. AS 47.23.190(d) is amended to read:

23 (d) A hearing shall be set not less than 30 [15] nor more than
24 45 [30] days after [FROM] the date of mailing of notice of hearing,
25 unless extended for good cause.

26 * Sec. 9. AS 47.23.250(g) is amended to read:

27 (g) [DELIVERY TO THE AGENCY OF THE MONEY OR OTHER PROPERTY DUE,
28 OWING, OR BELONGING TO THE OBLIGOR SHALL SATISFY THE REQUIREMENT OF
29 THE ORDER TO WITHHOLD AND DELIVER.] Money [DELIVERY OF MONEY] due and

1 owing to the obligor under any contract of employment, express or
2 implied, or held by any person, political subdivision, or department
3 of the state, and subject to withdrawal by the obligor, shall be
4 delivered by remittance payable to the order of the agency.

5 * Sec. 10. AS 47.23.253 is amended to read:

6 Sec. 47.23.253. EARNINGS SUBJECT TO AN ORDER OR LIEN. (a)
7 Unless modified or terminated by the agency or the court, an order to
8 withhold and deliver remains in effect until the support order is
9 satisfied. A person, political subdivision, or department of the
10 state shall withhold the earnings of the obligor subject to an order
11 to withhold and deliver or a lien at each succeeding interval of
12 payment until the entire amount of the debt stated in the order to
13 withhold and deliver has been withheld. Upon satisfaction of a sup-
14 port order, the agency shall notify all persons served with the order
15 to withhold and deliver.

16 (b) Notwithstanding (a) of this section, an [AN] order to with-
17 hold and deliver issued to the Department of Revenue remains in effect
18 throughout the calendar year in which it is served, unless earlier
19 modified or terminated. [THAT ORDER APPLIES TO ANY TAX REFUND OR
20 OTHER DISBURSEMENTS TO WHICH THE OBLIGOR IS ENTITLED EVEN IF THE TAX
21 REFUND OR DISBURSEMENT IS ISSUED MORE THAN 30 DAYS AFTER SERVICE OF
22 THE ORDER.]

23 * Sec. 11. AS 47.23.255 is amended to read:

24 Sec. 47.23.255. ADMINISTRATION OF ORDERS TO WITHHOLD AND DELIVER
25 [INCOME WITHHOLDING ORDERS]. (a) The agency shall pay to the obligee
26 all money recovered by the agency from the obligor under an order to
27 withhold and deliver [INCOME WITHHOLDING ORDER] except for court costs
28 and money assigned to the agency under AS 47.23.120 - 47.23.130.

29 (b) [NOTWITHSTANDING AS 47.23.250, AN INCOME WITHHOLDING ORDER

1 CONTAINED IN A DECISION OF THE AGENCY THAT HAS NOT BEEN SET ASIDE BY
2 THE SUPERIOR COURT UNDER AS 47.23.220 SHALL BE ENFORCED UNDER THE
3 PROCEDURE ESTABLISHED IN AS 47.23.062.]

4 (c) An obligor may petition the agency to terminate or modify an
5 order to withhold and deliver if there are no support payments in
6 arrears in an amount that equals or exceeds the support payable for
7 one month [INCOME WITHHOLDING ORDER IF THE OBLIGOR HAS MADE PAYMENTS
8 UNDER THE ORDER FOR AT LEAST 12 MONTHS AND ALL ARREARAGES HAVE BEEN
9 PAID]. Upon receipt of the petition under this subsection, the agency
10 may terminate or modify the [INCOME WITHHOLDING] order upon a showing
11 of good cause [UNLESS THE AGENCY FINDS GOOD CAUSE TO DENY THE PETITION
12 DUE TO THE OBLIGOR'S PAYMENT HISTORY OR OTHER GROUNDS]. The agency
13 may not terminate or modify an order to withhold and deliver [INCOME
14 WITHHOLDING ORDER] solely on the ground that the obligor has paid all
15 arrearages. The agency shall notify the obligor in writing of the
16 reason for denying a petition under this subsection.

17 (d) An employer may not discharge, discipline, or refuse to
18 employ an obligor on the basis of an order to withhold and deliver.
19 If an employer discharges, disciplines, or refuses to employ an
20 obligor because of an order to withhold and deliver, the court may
21 order reinstatement or restitution, or both. A person who violates
22 this subsection, or a regulation adopted to implement it, is liable
23 for a civil penalty of not more than \$1,000.

24 (e) An employer may combine into a single payment to the agency
25 amounts withheld from more than one obligor if the employer specifies
26 the portion of the payment attributable to each obligor.

27 (f) At the time an obligor terminates employment with an employ-
28 er then in receipt of an unsatisfied income withholding order regard-
29 ing the obligor, the employer shall immediately inform the agency of

- 1 the obligor's name and last known address and the name and address of
- 2 all other known employers of the obligor.
- 3 * Sec. 12. AS 47.23.062(j) and (k) are repealed.