

SENATE BILL NO. 190

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE JUDICIARY COMMITTEE BY REQUEST

Introduced: 4/13/93
Referred: JUD, FIN

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to income withholding and other methods of enforcement for
2 orders of support; and providing for an effective date."

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

4 * Section 1. AS 25.27.062(a) is amended to read:

5 (a) A judgment, court order, or order of the agency under this chapter
6 providing for support must contain an income withholding order. An income
7 withholding order under this section may not be enforced unless

8 (1) it is entered by the agency or the court during a proceeding to
9 establish or modify a duty of support being enforced by the agency;

10 (2) it is entered by the agency or the court after December 31,
11 1993, during a proceeding to establish or modify a duty of support not being
12 enforced by the agency; or

13 (3) notice of the order is served on the obligor in the manner
14 provided in (d) of this section or AS 25.27.160 [HAD NOTICE OF THE ORDER

1 WHEN IT WAS MADE OR AN APPLICATION FOR THE ORDER WAS SERVED
2 ON THE OBLIGOR IN THE MANNER PROVIDED FOR SERVICE OF A
3 SUMMONS UNDER RULE 4, ALASKA RULES OF CIVIL PROCEDURE].

4 * Sec. 2. AS 25.27.062(b) is amended to read:

5 (b) An income withholding order must direct the obligor, the obligor's
6 employer, future employer, and any person, political subdivision, or department of the
7 state to withhold money due or to be due the obligor and pay the money to the agency
8 or to another person or entity specified in the withholding order, in an amount
9 determined under (i) of this section.

10 * Sec. 3. AS 25.27.062(c) is repealed and reenacted to read:

11 (c) Except as provided in (m) of this section, an income withholding order
12 must provide for immediate withholding without the need for amendment of the
13 support order involved or other action by the court or agency that issued the order
14 other than required under this section if

15 (1) the support order is being enforced by the agency and was issued
16 or modified after October 31, 1990; or

17 (2) the support order is not being enforced by the agency and was
18 issued or modified after December 31, 1993.

19 * Sec. 4. AS 25.27.062(d) is amended to read:

20 (d) Except when immediate income withholding is required under (c) of
21 this section, income withholding may be initiated under this subsection if (1)
22 support payments are in arrears in an amount at least equal to the support
23 payable for one month; (2) the obligor requests withholding; or (3) the obligee
24 requests withholding and the agency approves the request because the obligor's
25 payments have been more than 10 days overdue more than one time in the
26 preceding 12 months or there is reason to believe that the obligor might withdraw
27 assets to avoid payment of support. The agency shall serve notice of income
28 withholding under this subsection [IF AN APPLICATION IS FILED WITH THE
29 CLERK OF COURT, NOTICE SHALL BE SERVED] upon the obligor [BY THE
30 AGENCY] in the manner provided by Rule 5, Alaska Rules of Civil Procedure, or any
31 other method permitted by law. The notice must [SHALL] inform the obligor that

1 the income withholding order will take effect 15 days after the date on which the
2 notice is served unless the obligor requests a hearing within the 15 days after the
3 notice is served. If the obligor requests a hearing, an income withholding order may
4 not take effect until the conclusion of the hearing. The court or agency shall hold a
5 hearing requested under this subsection [SECTION] within 15 days after the date the
6 obligor requests the hearing [,] to determine if there is a mistake [ARE ANY
7 MISTAKES] of fact that makes [MAKE] the withholding order improper because [,
8 IF] the amount of current or overdue support [TO BE WITHHELD] is incorrect, the
9 identity of the obligor is inaccurate, or [IF] there are any other legal defenses. The
10 court or agency, as applicable, shall inform the obligor, either at the hearing or within
11 15 days after the hearing, whether or not the withholding will occur and of the date
12 on which it is to commence. It is not a defense to an order issued under (1) of this
13 subsection [SECTION] that less than one full month's payment is due if at least one
14 full month's payment was due on the date notice was served under this subsection
15 [SECTION].

16 * Sec. 5. AS 25.27.062(e) is amended to read:

17 (e) The obligee or person or other entity [PUBLIC AGENCY] that obtains
18 an [REQUESTED THE] income withholding order shall immediately send a copy of
19 the income withholding order, a copy of AS 25.27.260 and this section, and an
20 explanation of the effect of the statutes by certified mail to persons who may owe
21 money to an obligor. An income withholding order made under this section is binding
22 upon a person, employer, political subdivision, or department of the state immediately
23 upon receipt of a copy of the income withholding order. An employer shall begin
24 withholding the specified amount from the employee's wages 14 days after the mailing
25 date on the notice of withholding or on the first day of the next pay period, if earlier.
26 The amount withheld shall be sent to the agency or other person or entity specified
27 in the order within 10 days after the date the employee is paid. An employer
28 may, for each payment made under the order, deduct \$1 from other wages or
29 salary owed to the obligor.

30 * Sec. 6. AS 25.27.062(k) is repealed and reenacted to read:

31 (k) An employer who is withholding income of an employee under an order

1 issued under this section shall notify the agency promptly when the employee gives
2 or receives notice of termination of employment and provide to the court, agency, or
3 obligee the employee's last known home address and the name and address of the
4 employee's new employer, if known.

5 * Sec. 7. AS 25.27.062(l) is repealed and reenacted to read:

6 (l) Unless modified or terminated by the agency or the court, an order to
7 withhold income under this section remains in effect until the support order is satisfied.
8 Upon satisfaction of a support order, the agency shall notify all persons served with
9 the notice to withhold income. The agency or court may not terminate or modify an
10 income withholding order solely on the ground that the obligor has paid all arrearages.

11 * Sec. 8. AS 25.27.062 is amended by adding a new subsection to read:

12 (m) An income withholding order issued under (c) of this section is not subject
13 to immediate withholding if the obligor agrees to inform the court, agency, or obligee
14 of the obligor's current employer and the availability of employment-related health
15 insurance coverage and

16 (1) the court or agency has reviewed and approved a written agreement
17 between the obligor and the obligee that provides for an alternative arrangement for
18 immediate income withholding and withholding has not been terminated previously and
19 subsequently initiated; the agency must also be a party to an agreement under this
20 paragraph if support has been assigned to the state; or

21 (2) the obligor or obligee demonstrates and the court or agency finds
22 good cause not to require immediate income withholding because it would not be in
23 the best interests of the child and, in a case involving the modification of a support
24 order, the obligor has made voluntary support payments under a court or administrative
25 order and has not been in arrears in an amount equal to the support payable for one
26 month.

27 * Sec. 9. AS 25.27.140(b) is amended to read:

28 (b) If a support order has been entered, the agency may enforce the support
29 order utilizing the procedures prescribed in AS 25.27.062, 25.27.150, [AS 25.27.150]
30 and 25.27.230 - 25.27.270.

31 * Sec. 10. AS 25.27.160(b) is amended to read:

1 (b) The notice and finding of financial responsibility served under (a) of this
2 section must state

3 (1) the sum or periodic payments for which the alleged obligor is found
4 to be responsible, calculated by taking into consideration the need of the alleged
5 obligee, the alleged obligor's liability to the state under AS 25.27.130 if any, and the
6 duty of support under the law;

7 (2) the name of the alleged obligee and the obligee's custodian;

8 (3) that the alleged obligor may appear and show cause in a hearing
9 held by the agency why the finding is incorrect, should not be finally ordered, and
10 should be modified or rescinded, because

11 (A) no duty of support is owed; or

12 (B) the amount of support found to be owed is incorrect;

13 (4) that if the person served with the notice and finding of financial
14 responsibility does not request a hearing within 30 days, the property and income of
15 the person will be subject to execution and withholding under AS 25.27.062 and
16 25.27.230 - 25.27.270 [IN ACCORDANCE WITH AS 25.27.230 - 25.27.270] in the
17 amounts stated in the finding without further notice or hearing.

18 * Sec. 11. AS 25.27.170(f) is amended to read:

19 (f) If the alleged obligor requesting the hearing fails to appear at the hearing,
20 the hearing officer shall enter a decision declaring the property and income of the
21 alleged obligor subject to execution and withholding under AS 25.27.062 and
22 25.27.230 - 25.27.270 [IN ACCORDANCE WITH AS 25.27.230 - 25.27.270] in the
23 amounts stated in the notice and finding of financial responsibility.

24 * Sec. 12. AS 25.27.230(a) is amended to read:

25 (a) At the expiration of 30 days from either (1) the date of distribution of a
26 support order under AS 25.27.062(e) [SERVICE OF NOTICE UNDER
27 AS 25.27.150], or (2) the date of service of a notice and finding of financial
28 responsibility under AS 25.27.160, the agency may assert a lien upon the real or
29 personal property of the obligor, in the amount of the obligor's liability.

30 * Sec. 13. AS 25.27.230(c) is amended to read:

31 (c) The lien shall attach to all real and personal property of the obligor and be

1 effective on the date of recording of the lien with the recorder of the recording district
2 in which the property attached is located. A lien against earnings shall attach and be
3 effective upon filing with the recorder of the recording district in which the employer
4 does business or maintains an office or agent for the purpose of doing business. A
5 lien filed at the offices of the Commercial Fisheries Entry Commission in Juneau
6 against a limited entry permit issued under AS 16.43 is considered to have been
7 filed against the permit in all recording districts in which the permit holder uses
8 the permit.

9 * Sec. 14. AS 25.27.255(a) is amended to read:

10 (a) The agency shall pay to the obligee all money recovered by the agency
11 from the obligor under an income withholding order except for court costs and money
12 assigned to the agency under AS 25.27.120 - 25.27.130. However, if there is more
13 than one income withholding order under this chapter against an obligor, the
14 agency shall allocate amounts available for withholding in a manner that gives
15 priority to current support up to the limits imposed under 15 U.S.C. 1673(b)
16 (sec. 303(b), Consumer Credit Protection Act). Notwithstanding the priority given
17 to current support, the agency shall establish procedures for allocation of support
18 among obligees so that in no case will the allocation result in a withholding order
19 for one obligee not being implemented.

20 * Sec. 15. AS 25.27.070, 25.27.255(b), and 25.27.255(c) are repealed.

21 * Sec. 16. AS 25.27.062(c)(2), enacted by sec. 3 of this Act, takes effect January 1, 1994.

22 * Sec. 17. Except as provided in sec. 16 of this Act, this Act takes effect immediately under
23 AS 01.10.070(c).