

CS FOR SENATE BILL NO. 190(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered: 2/28/94
 Referred: Finance

Sponsor(s): SENATE JUDICIARY COMMITTEE BY REQUEST

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. Except as provided
 7 in (c) of this section, an [AN] income withholding order under this section may not
 8 be enforced unless

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

11 (2) notice is served on the obligor in the manner provided in (d) of
 12 this section, AS 25.27.150, or 25.27.160 [HAD NOTICE OF THE ORDER WHEN
 13 IT WAS MADE OR AN APPLICATION FOR THE ORDER WAS SERVED ON
 14 THE OBLIGOR IN THE MANNER PROVIDED FOR SERVICE OF A SUMMONS

1 UNDER RULE 4, ALASKA RULES OF CIVIL PROCEDURE].

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

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

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 AS 25.27.062(c) is repealed and reenacted to read:

9 (c) Except as provided in (m) of this section, a child support order must
10 provide for immediate withholding without the need for amendment of the order
11 involved or other action by the court or agency that issued the order when

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

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

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

17 (d) When a child support order does not require immediate income
18 withholding, income withholding may be initiated under this subsection or, for
19 support orders being enforced by the agency, income withholding may be initiated
20 under AS 25.27.150 when (1) support payments are in arrears in an amount at
21 least equal to the support payable for one month; (2) the obligor requests
22 withholding; or (3) the obligee requests withholding and the agency or court
23 approves the request because the obligor's payments have been more than 10 days
24 overdue more than one time in the preceding 12 months or there is reason to
25 believe that the obligor might withdraw assets to avoid payment of support. In
26 order to initiate withholding under this subsection, the agency or the obligee shall
27 serve notice of income withholding [IF AN APPLICATION IS FILED WITH THE
28 CLERK OF COURT, NOTICE SHALL BE SERVED] upon the obligor [BY THE
29 AGENCY] in the manner provided by Rule 5, Alaska Rules of Civil Procedure, or any
30 other method permitted by law. The notice must [SHALL] inform the obligor that
31 the income withholding order will take effect 15 days after the date on which the

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

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

16 (e) The obligee or person or other entity [PUBLIC AGENCY] that obtains
17 an [REQUESTED THE] income withholding order shall immediately send a copy of
18 the income withholding order, a copy of AS 25.27.260 and this section, and an
19 explanation of the effect of the statutes by certified mail to persons who may owe
20 money to an obligor. An income withholding order made under this section is binding
21 upon a person, employer, political subdivision, or department of the state immediately
22 upon receipt of a copy of the income withholding order. An employer shall begin
23 withholding the specified amount from the employee's wages 14 days after the mailing
24 date on the notice of withholding or on the first day of the next pay period, if earlier.
25 The amount withheld shall be sent to the agency or other person or entity specified
26 in the order withholding within 10 working days after the date the employee is
27 paid. A person who fails to comply with an income withholding order is subject
28 to penalties under AS 25.27.260. An employer may, for each payment made
29 under the order, deduct \$1 from other wages or 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 court, the agency, or the obligee promptly
2 when the employee gives or receives notice of termination of employment and provide
3 to the court, agency, or obligee the employee's last known home address and the name
4 and address of the 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 or obligee shall notify all persons
9 served with the notice to withhold income. The agency or court may not terminate or
10 modify an income withholding order solely on the ground that the obligor has paid all
11 arrearages.

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

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

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

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

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

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

1 * **Sec. 10.** AS 25.27.150 is repealed and reenacted to read:

2 **Sec. 25.27.150. INITIATED INCOME WITHHOLDING; REQUIRED**
3 **NOTICE AND HEARING.** (a) In order to initiate income withholding for a support
4 order being enforced by the agency, the agency shall serve a notice of its intent to
5 initiate income withholding on the obligor. Notice under this subsection shall be
6 served upon the obligor by certified mail to the obligor's last known address, and
7 service is complete when the notice is properly addressed, certified, and mailed.

8 (b) The notice must state the amount of the overdue support that is owed, if
9 any, and the amount of income that will be withheld.

10 (c) The notice shall inform the obligor that the income withholding order will
11 take effect 15 days after the date on which the notice is served unless the obligor
12 requests a hearing within 15 days after the notice is served. If the obligor requests a
13 hearing, an income withholding order may not take effect until the conclusion of the
14 hearing.

15 (d) If the obligor requests a hearing, it shall be conducted under the
16 Department of Revenue's regulations for informal conferences and shall be held within
17 15 days of the date of the request. The hearing may only be held to determine if there
18 is a mistake of fact that makes the income withholding order improper because the
19 amount of current or overdue support is incorrect or the identity of the obligor is
20 inaccurate. The order is not subject to any other legal defenses. It is not a defense
21 to an income withholding order issued under AS 25.27.062(d)(1) that less than one full
22 month's payment is due if at least one full month's payment was due on the date
23 notice was served under this section.

24 (e) The appeals officer shall inform the obligor, either at the hearing or within
25 15 days after the hearing, whether or not the withholding will occur and of the date
26 on which it is to commence.

27 (f) If the appeals officer determines that withholding will occur, the obligor
28 may request a formal hearing, as provided in the Department of Revenue's regulations.
29 The income withholding order shall be issued and withholding shall begin, whether or
30 not the obligor requests a formal hearing, unless the obligor posts security or a bond
31 in the amount that would have been withheld pending the outcome of a formal hearing.

1 * Sec. 11. AS 25.27.160(b) is amended to read:

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

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

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

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

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

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

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

19 * Sec. 12. AS 25.27.170(b) is amended to read:

20 (b) If a request under (a) of this section is made, the execution under
21 AS 25.27.062 and 25.27.230 - 25.27.270 may not [AS 25.27.230 - 25.27.270 SHALL]
22 be stayed unless the obligor posts security or a bond in the amount of child
23 support that would have been due under the finding of financial responsibility
24 pending the decision on the hearing [, OR THE DECISION OF A COURT, IF
25 APPEALED]. If no request for a hearing is made, the finding of responsibility is final
26 at the expiration of the 30-day period.

27 * Sec. 13. AS 25.27.170(f) is amended to read:

28 (f) If the alleged obligor requesting the hearing fails to appear at the hearing,
29 the hearing officer shall enter a decision declaring the property and income of the
30 alleged obligor subject to execution under AS 25.27.062 and ~~25.27.230 - 25.27.270~~
31 [IN ACCORDANCE WITH AS 25.27.230 - 25.27.270] in the amounts stated in the

1 notice and finding of financial responsibility.

2 * Sec. 14. AS 25.27.230(a) is amended to read:

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

8 * Sec. 15. AS 25.27.230(c) is amended to read:

9 (c) The lien shall attach to all real and personal property of the obligor and be
10 effective on the date of recording of the lien with the recorder of the recording district
11 in which the property attached is located. A lien against earnings shall attach and be
12 effective upon filing with the recorder of the recording district in which the employer
13 does business or maintains an office or agent for the purpose of doing business. A
14 lien filed at the offices of the Commercial Fisheries Entry Commission in Juneau
15 against a limited entry permit issued under AS 16.43 is considered to have been
16 filed against the permit in all recording districts in which the permit holder uses
17 the permit.

18 * Sec. 16. AS 25.27.250(a) is amended to read:

19 (a) At the expiration of either (1) 15 [30] days from the date of service of a
20 support order under AS 25.27.062 or notice under AS 25.27.150, or (2) 30 days
21 from the date of service of a notice and finding of financial responsibility under
22 AS 25.27.160, the agency may issue to any person, political subdivision, or department
23 of the state an order to withhold and deliver property.

24 * Sec. 17. AS 25.27.250(f) is amended to read:

25 (f) If a person, political subdivision, or department of the state upon whom
26 service of an order to withhold and deliver has been made possesses property due,
27 owing, or belonging to the obligor, that person, subdivision, or department shall
28 withhold the property immediately upon receipt of the order and shall deliver the
29 property to the agency [UPON DEMAND] after the expiration of the 14-day period
30 from the date of service of the order or expiration of the period specified in
31 AS 25.27.062(e), whichever is earlier. The agency shall hold property delivered

1 under this subsection in trust for application against the liability of the obligor under
2 AS 25.27.062, 25.27.130, or 25.27.160 [AS 25.27.130] or for return, without interest,
3 depending on final determination of liability or nonliability under this chapter. The
4 agency may accept a good and sufficient bond to secure payment of past, present,
5 and future support conditioned upon final determination of liability in lieu of
6 requiring delivery [DELIVERING] of property under this subsection.

7 * Sec. 18. AS 25.27.250 is amended by adding a new subsection to read:

8 (j) A person, political subdivision, or department that fails to comply with an
9 order to withhold and deliver served under this subsection is subject to penalties under
10 AS 25.27.260. A person, political subdivision, or department may, for each payment
11 made under an order to withhold and deliver, deduct \$1 from other wages or salary
12 owed to the obligor.

13 * Sec. 19. AS 25.27.255(a) is amended to read:

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

24 * Sec. 20. AS 25.27.255(b) and 25.27.255(c) are repealed.

25 * Sec. 21. This Act takes effect immediately under AS 01.10.070(c).