

CS FOR SENATE BILL NO. 190(FIN)
 IN THE LEGISLATURE OF THE STATE OF ALASKA
 EIGHTEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE FINANCE COMMITTEE

Offered: 4/6/94
 Referred: Rules

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 (m) of this section, the income withholding order must provide for immediate
 8 income withholding if the support order is

9 (1) being enforced by the agency and was issued or modified on or
 10 after the effective date of this Act; or

11 (2) not being enforced by the agency and was issued on or after the
 12 effective date of this Act [AN INCOME WITHHOLDING ORDER UNDER THIS
 13 SECTION MAY NOT BE ENFORCED UNLESS THE OBLIGOR HAD NOTICE OF
 14 THE ORDER WHEN IT WAS MADE OR AN APPLICATION FOR THE ORDER

1 WAS SERVED ON THE OBLIGOR IN THE MANNER PROVIDED FOR SERVICE
2 OF A SUMMONS UNDER RULE 4, ALASKA RULES OF CIVIL PROCEDURE].

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

4 (b) An income withholding order must direct the obligor, the obligor's
5 employer, future employer, and any person, political subdivision, or department of the
6 state to withhold money due or to be due the obligor and pay the money to the agency,
7 in an amount determined under (i) of this section. A court that issues a support
8 order on or after the effective date of this Act shall send a copy of the order to
9 the agency.

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 AS 25.27.062(c) is repealed and reenacted to read:

11 (c) Income withholding under a support order that does not require immediate
12 withholding may be initiated under AS 25.27.150 if the support order is being enforced
13 by the agency, or under (d) of this section if the support order is not being enforced
14 by the agency, if

15 (1) the obligor requests withholding;

16 (2) the payments that the obligor has failed to make within 30 days of
17 the monthly due date specified in the support order are equal to or greater than the
18 support payable for one month; or

19 (3) the obligee requests withholding and

20 (A) the agency approves the request because all or part of the
21 monthly payment of the obligor has been more than 10 days overdue more than
22 one time in the preceding 12 months or there is reason to believe that the
23 obligor might withdraw assets to avoid payment of support; in this paragraph,
24 "10 days overdue" means occurring 10 days after the monthly due date
25 specified in a support order; or

26 (B) the court approves the request for good cause.

27 * Sec. 4. AS 25.27.062(d) is repealed and reenacted to read:

28 (d) Income withholding under a support order that does not require immediate
29 income withholding and that is not being enforced by the agency may be initiated by
30 filing a motion with the court and complying with applicable court rules. The court
31 shall order the beginning of income withholding under this subsection if the court finds

1 that any of the grounds in (c)(1), (c)(2), or (c)(3)(B) of this section is satisfied. It is
2 not a defense to a motion based on (c)(2) of this section that less than one full month's
3 payment is past due by 30 days if at least one full month's payment was past due by
4 30 days on the date the motion was filed. Notice to the obligor of income withholding
5 ordered under this subsection must be given in a manner that complies with court
6 rules. In this subsection, "past due by 30 days" means unpaid 30 days after the
7 monthly due date specified in the support order.

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

9 (e) The [OBLIGEE OR PERSON OR PUBLIC] agency or the person who
10 obtains an [THAT REQUESTED THE] income withholding order under this chapter
11 shall immediately send a copy of the income withholding order, a copy of the relevant
12 provisions of AS 25.27.260 and this section, and an explanation of the effect of the
13 statutes [BY CERTIFIED MAIL] to persons who may owe money to an obligor.
14 These items may be sent by first class mail or certified mail, return receipt
15 requested, or they may be served personally by a process server. An income
16 withholding order made under this chapter [SECTION] is binding upon a person,
17 employer, political subdivision, or department of the state immediately upon receipt
18 of a copy of the income withholding order. An employer shall begin withholding the
19 specified amount from the employee's wages (1) 14 working days after the mailing
20 date on the order [NOTICE] of withholding or 14 working days after the date on
21 which the order was personally served, whichever is applicable, or (2) on the first
22 day of the next pay period, if earlier. The amount withheld shall be sent to the agency
23 within 10 working days after the date the employee is paid. An employer may,
24 for each payment made under an order, deduct \$5 from other wages or salary
25 owed to the obligor.

26 * Sec. 6. AS 25.27.062(f) is amended to read:

27 (f) An employer may not discharge, discipline, or refuse to employ an obligor
28 on the basis of an income withholding order issued under this chapter [SECTION].
29 If an employer discharges, disciplines, or refuses to employ an obligor because of an
30 income withholding obligation, the court, after notice and hearing, may order
31 reinstatement or restitution to the obligor, or both. A person who violates this

1 subsection or a regulation adopted to implement it, is liable for a civil penalty of not
2 more than \$1,000.

3 * Sec. 7. AS 25.27.062(g) is amended to read:

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

10 * Sec. 8. AS 25.27.062(h) is amended to read:

11 (h) The court may order payment of all court costs that resulted from an
12 income withholding proceeding under this chapter [SECTION].

13 * Sec. 9. AS 25.27.062(k) is repealed and reenacted to read:

14 (k) An employer who is withholding income of an employee under an order
15 that provides that the withheld income shall be paid to the agency shall notify the
16 agency promptly when the employee gives or receives notice of termination of
17 employment and provide to the agency the employee's last known home address and
18 the name and address of the employee's new employer, if known.

19 * Sec. 10. AS 25.27.062(i) is repealed and reenacted to read:

20 (i) Unless modified or terminated by the agency or the court, an order to
21 withhold income under this chapter remains in effect until the support order is
22 satisfied. The agency or court may not terminate or modify an income withholding
23 order solely on the ground that the obligor has paid all arrearages. Upon satisfaction
24 of a support order, if the order is

25 (1) being enforced by the agency, the agency shall, within 15 working
26 days, notify all persons served by the agency with the income withholding order that
27 withholding is no longer required; if the agency receives money from an obligor under
28 an income withholding order after the underlying support order has been satisfied and
29 the agency was enforcing the support order at the time it became satisfied, the agency
30 shall immediately return the overpayment to the obligor; if the agency fails to return
31 an overpayment as required under this paragraph, the state is liable to the obligor for

1 the amount of the overpayment, plus interest at the rate imposed under AS 43.05.225,
2 and a person to whom the agency erroneously disbursed the overpayment is liable to
3 the state for the amount disbursed, plus interest at the rate imposed under
4 AS 43.05.225;

5 (2) not being enforced by the agency, the obligor shall file a motion
6 in court requesting termination of the withholding order and serve the motion on the
7 obligee; the court shall enter an order terminating the withholding order if the court
8 determines that the support order has been satisfied; the obligor may deliver a copy
9 of the termination order to persons who were served with the income withholding
10 order; when a termination order is entered, the obligee shall, upon request of the
11 obligor, notify the obligor of all persons who have been served with the income
12 withholding order by the obligee.

13 * Sec. 11. AS 25.27.062 is amended by adding new subsections to read:

14 (m) An income withholding order described in (a)(1) - (2) of this section is
15 not subject to immediate withholding if the support order is

16 (1) being enforced by the agency and the obligor agrees to keep the
17 agency informed of the obligor's current employer and the availability of employment-
18 related health insurance coverage for the children covered by the support order until
19 the support order is satisfied and

20 (A) the agency has entered into its record a written agreement
21 between the obligor and the obligee that provides for an alternative
22 arrangement and income withholding has not been terminated previously and
23 subsequently initiated; the agency must also be a party to an agreement under
24 this paragraph if support has been assigned to the state; or

25 (B) the obligor or obligee demonstrates and the agency, in
26 compliance with applicable federal law, finds good cause not to require
27 immediate income withholding because it would not be in the best interests of
28 the child and, in a case involving the modification of a support order, the
29 obligor has made voluntary support payments under a court or agency order
30 and has not been in arrears in an amount equal to the support payable for one
31 month; in this paragraph, "in arrears" means failing to make a support payment

1 within 30 days of the monthly due date specified in the order;

2 (2) not being enforced by the agency and the obligor agrees to keep the
3 obligee informed of the obligor's current employer and the availability of employment-
4 related health insurance coverage for the children covered by the support order until
5 the support order is satisfied and

6 (A) the court finds that (i) a written agreement exists between
7 the obligor and the obligee that provides for an alternative arrangement and (ii)
8 income withholding has not been terminated previously and subsequently
9 initiated; the agency must also be a party to an agreement under this paragraph
10 if support has been assigned to the state; or

11 (B) the obligor or obligee demonstrates, and the court, in
12 compliance with applicable federal law, finds good cause not to require
13 immediate income withholding because it would not be in the best interests of
14 the child and, in a case involving the modification of a support order, the
15 obligor has made voluntary support payments under a court or agency order
16 and has not been in arrears in an amount equal to the support payable for one
17 month; in this paragraph, "in arrears" means failing to make a support payment
18 within 30 days of the monthly due date specified in the order; or

19 (3) an order that involves an obligor who is receiving social security
20 or other disability compensation that includes regular payments to the children who are
21 the subjects of the support order, except to the extent that the payments to the children
22 do not equal the child support due each month.

23 (n) In calculating the amount of child support to be withheld under an income
24 withholding order, the agency shall give credit to the obligor for the cost to the obligor
25 of medical and dental insurance for the children and educational payments for the
26 children to the extent that the insurance coverage and educational payments are
27 required in the applicable child support order and are actually paid for by the obligor.

28 * Sec. 12. AS 25.27.100 is amended to read:

29 Sec. 25.27.100. ALL PERSONS MAY USE AGENCY; FEES FOR
30 SERVICES. The agency shall provide aid to any person due child support under the
31 laws of this state upon application. Subject to (b) of this section, the [THE] agency

1 may, by regulation, impose a fee for services provided under this chapter.

2 * **Sec. 13.** AS 25.27.100 is amended by adding a new subsection to read:

3 (b) To the extent allowed under federal law, for each payment made by the
4 agency to a custodian from money sent to the agency under an income withholding
5 order issued under this chapter, the agency shall impose a fee of \$5 on the custodian.
6 To the extent allowed under federal law, the agency shall subtract this fee from the
7 money it receives under the income withholding order before disbursing the balance
8 of the money to the custodian.

9 * **Sec. 14.** AS 25.27.140(b) is amended to read:

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

13 * **Sec. 15.** AS 25.27.150 is repealed and reenacted to read:

14 Sec. 25.27.150. INITIATED INCOME WITHHOLDING; REQUIRED
15 NOTICE AND HEARING. (a) In order to initiate income withholding for a support
16 order being enforced by the agency for which immediate income withholding is not
17 required under AS 25.27.062(a), the agency shall serve a notice of its intent to initiate
18 income withholding on the obligor. Notice under this subsection shall be served upon
19 the obligor by certified mail to the obligor's last known address, and service is
20 complete when the notice is properly addressed, certified, and mailed.

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

23 (c) The notice shall inform the obligor that the income withholding order will
24 take effect 15 days after the date on which the notice is served unless the obligor
25 requests a hearing within 15 days after the notice is served. If the obligor requests a
26 hearing, an income withholding order may not take effect until the conclusion of the
27 hearing.

28 (d) If the obligor requests a hearing, it shall be conducted under the
29 department's regulations for informal conferences and shall be held within 15 days of
30 the date of the request. The hearing may only be held to determine if there is a
31 mistake of fact that makes the income withholding order improper because the amount

1 of current or overdue support is incorrect, the identity of the obligor is inaccurate, or,
2 for initiated withholding based on AS 25.27.062(c)(3)(A), the alleged facts regarding
3 overdue payments or potential withdrawal of assets are incorrect. The order is not
4 subject to any other legal defenses. It is not a defense to an income withholding order
5 issued under AS 25.27.062(c)(2) that less than one full month's payment is past due
6 if at least one full month's payment was past due on the date notice was served under
7 this section.

8 (e) The appeals officer shall inform the obligor, either at the hearing or within
9 15 days after the hearing, whether or not the withholding will occur and of the date
10 on which it is to commence.

11 (f) If the appeals officer determines that withholding will occur, the obligor
12 may request a formal hearing, as provided in the department's regulations. The
13 income withholding order shall be issued and withholding shall begin under the
14 procedures in AS 25.27.062, whether or not the obligor requests a formal hearing,
15 unless the obligor posts security or a bond in the amount that would have been
16 withheld pending the outcome of a formal hearing.

17 * Sec. 16. AS 25.27.160(b) is amended to read:

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

20 (1) the sum or periodic payments for which the alleged obligor is found
21 to be responsible, calculated by taking into consideration the need of the alleged
22 obligee, the alleged obligor's liability to the state under AS 25.27.120 [AS 25.27.130]
23 if any, and the duty of support under the law;

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

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

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

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

30 (4) that if the person served with the notice and finding of financial
31 responsibility does not request a hearing within 30 days, the property and income of

1 the person will be subject to execution under AS 25.27.062 and 25.27.230 - 25.27.270
2 [IN ACCORDANCE WITH AS 25.27.230 - 25.27.270] in the amounts stated in the
3 finding without further notice or hearing.

4 * Sec. 17. AS 25.27.170(b) is amended to read:

5 (b) If a request for a formal hearing under (a) of this section is made, the
6 execution under AS 25.27.062 and 25.27.230 - 25.27.270 may not [AS 25.27.230 -
7 25.27.270 SHALL] be stayed unless the obligor posts security or a bond in the
8 amount of child support that would have been due under the finding of financial
9 responsibility pending the decision on the hearing [, OR THE DECISION OF A
10 COURT, IF APPEALED]. If no request for a hearing is made, the finding of
11 responsibility is final at the expiration of the 30-day period.

12 * Sec. 18. AS 25.27.170(d) is amended to read:

13 (d) The hearing officer shall determine the amount of periodic payments
14 necessary to satisfy the past, present, and future liability of the alleged obligor under
15 AS 25.27.120 [AS 25.27.130], if any, and under any duty of support imposable under
16 the law. The amount of periodic payments determined under this subsection is not
17 limited by the amount of any public assistance payment made to or for the benefit of
18 the child.

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

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

25 * Sec. 20. AS 25.27.180(b) is amended to read:

26 (b) Liability to the state under AS 25.27.120 [AS 25.27.130] is limited to the
27 amount for which the obligor is found to be responsible under (a) of this section.

28 * Sec. 21. AS 25.27.230(a) is amended to read:

29 (a) At the expiration of 30 days from either (1) the date of distribution of an
30 income withholding order under AS 25.27.062 [SERVICE OF NOTICE UNDER
31 AS 25.27.150], or (2) the date of service of a notice and finding of financial

1 responsibility under AS 25.27.160, the agency may assert a lien upon the real or
2 personal property of the obligor, in the amount of the obligor's liability.

3 * Sec. 22. AS 25.27.230(c) is amended to read:

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

13 * Sec. 23. AS 25.27.250(a) is amended to read:

14 (a) At the expiration of either (1) 15 [30] days from the date of service of an
15 income withholding order under AS 25.27.062 or notice under AS 25.27.150, or (2)
16 30 days from the date of service of a notice and finding of financial responsibility
17 under AS 25.27.160, the agency may issue to any person, political subdivision, or
18 department of the state an order to withhold and deliver property.

19 * Sec. 24. AS 25.27.250(b) is amended to read:

20 (b) All real or personal property belonging to the obligor is subject to an order
21 to withhold and deliver, including, but not limited to, earnings that are due, owing, or
22 belonging to the debtor. In calculating the amount to be withheld and delivered
23 under an order issued under this section, the agency shall give credit to the
24 obligor for the cost to the obligor of medical and dental insurance for the children
25 and educational payments for the children to the extent that the insurance
26 coverage and educational payments are required in the applicable child support
27 order and are actually paid for by the obligor.

28 * Sec. 25. AS 25.27.250(f) is amended to read:

29 (f) If a person, political subdivision, or department of the state upon whom
30 service of an order to withhold and deliver has been made possesses property due,
31 owing, or belonging to the obligor, that person, subdivision, or department shall

1 withhold the property immediately upon receipt of the order and shall deliver the
2 property to the agency [UPON DEMAND] after the expiration of the 14-day period
3 from the date of service of the order or expiration of the period specified in
4 AS 25.27.062(e), whichever is earlier. The agency shall hold property delivered
5 under this subsection in trust for application against the liability of the obligor under
6 AS 25.27.062, 25.27.120, or 25.27.160 [AS 25.27.130] or for return, without interest,
7 depending on final determination of liability or nonliability under this chapter. The
8 agency may accept a good and sufficient bond to secure payment of past, present,
9 and future support conditioned upon final determination of liability in lieu of
10 requiring delivery [DELIVERING] of property under this subsection.

11 * Sec. 26. AS 25.27.250 is amended by adding a new subsection to read:

12 (j) A person, political subdivision, or department that fails to comply with an
13 order to withhold and deliver served under this subsection is subject to penalties under
14 AS 25.27.260. A person, political subdivision, or department may, for each payment
15 made under an order to withhold and deliver, deduct \$5 from other wages or salary
16 owed to the obligor.

17 * Sec. 27. AS 25.27.255(a) is amended to read:

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

28 * Sec. 28. AS 25.27.260 is amended to read:

29 Sec. 25.27.260. CIVIL LIABILITY UPON FAILURE TO COMPLY WITH
30 AN ORDER OR LIEN. If a [ANY] person, political subdivision, or department of the
31 state (1) fails to make an answer to an order to withhold and deliver within the time

1 prescribed in AS 25.27.250; (2) fails or refuses to deliver property in accordance with
2 an order issued under AS 25.27.250; (3) pays over, releases, sells, transfers, or conveys
3 real property subject to a lien recorded under AS 25.27.230 to or for the benefit of the
4 obligor or any other person; (4) fails or refuses to surrender upon demand property
5 attached; or (5) fails or refuses to honor an assignment of wages or an income
6 withholding order under AS 25.27.062 that was served [PRESENTED] by the agency
7 through personal service by a process server or through certified mail, return
8 receipt requested, the person, political subdivision, or department of the state is liable
9 to the agency in an amount equal to 100 percent of the amount constituting the basis
10 of the lien, order to withhold and deliver, attachment, or withholding of wages or
11 income, together with costs, interest, and reasonable attorney fees.

12 * Sec. 29. AS 25.27.260 is amended by adding a new subsection to read:

13 (b) A person, political subdivision, or department of the state that intentionally
14 fails or refuses to honor a properly served income withholding order under
15 AS 25.27.062 that is not being enforced by the agency is liable to the obligee in an
16 amount equal to 100 percent of the amount ordered to be withheld together with costs,
17 interest, and reasonable attorney fees.

18 * Sec. 30. AS 33.30.131(b) is amended to read:

19 (b) Unless alternative arrangements are expressly approved by the
20 commissioner, when a prisoner is employed outside a correctional facility as part of
21 a prerelease or short-duration furlough program, or as part of serving time in a
22 correctional restitution center under AS 33.30.151 - 33.30.181, the earnings of the
23 prisoner shall be delivered to the commissioner. If an employer transmits the earnings
24 to the commissioner, the employer has no liability to the prisoner for the earnings. The
25 commissioner shall disburse the earnings of the prisoner, in an order determined
26 appropriate, under procedures adopted by the commissioner to

27 (1) pay for the room, board, and personal expenses of the prisoner in
28 an amount or at a rate determined by the commissioner;

29 (2) pay any restitution or fine ordered by the sentencing court;

30 (3) reimburse the state for an award made for violent crimes
31 compensation under AS 18.67 arising out of the criminal conduct of the prisoner;

1 (4) pay a civil judgment arising out of the criminal conduct of the
2 prisoner; and

3 (5) support the dependents of the prisoner, and to provide child support
4 payments as required by AS 25.27 [AS 25.27.062].

5 * Sec. 31. AS 25.27.255(b), 25.27.255(c), and secs. 2 and 5, ch. 75, SLA 1991, are
6 repealed.

7 * Sec. 32. TRANSITIONAL PROVISION. (a) Notwithstanding other provisions of this
8 Act, in the case of a support order issued by a court on or after January 1, 1994, and before
9 the effective date of this Act, the court shall, upon filing of a motion by an obligee who is the
10 subject of the support order, issue an immediate income withholding order for support,
11 regardless of whether support payments are in arrears, unless

12 (1) a written agreement exists between the obligor and the obligee that
13 provides for an alternative arrangement;

14 (2) the obligor demonstrates, and the court finds, that there is good cause not
15 to require immediate income withholding; or

16 (3) the support order is being enforced by the child support enforcement
17 agency.

18 (b) An immediate income withholding order issued under this section is governed by
19 AS 25.27, as amended by this Act, and shall be treated as an immediate income withholding
20 order issued under AS 25.27.062(a).

21 * Sec. 33. This Act takes effect on the 10th day after the date it becomes law under
22 AS 01.10.070(a).